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Mardi 12 mars 2002 à 10 heures

Tuesday 12 March 2002 at 10 a.m.

018 The PRESIDENT: Please be seated. The sitting is open and I give the floor on behalf of the Republic of Cameroon to Professor Alain Pellet.

Mr. PELLET::

VII. THE MARITIME BOUNDARY —INTRODUCTION

The role of the oil practice

1. Mr. President, Members of the Court, it seemed to us that it would be judicious to follow the oral argument on the land boundary with my friend Christian Tomuschat's comments on responsibility since, essentially, internationally wrongful acts incurring Nigeria's responsibility were committed on the mainland and culminated in the region of Lake Chad and at Bakassi. But we are not blind to the arbitrariness of this approach: the attacks on Bakassi often came from the sea and Nigeria did not hesitate to use the most reprehensible measures to prevent Cameroon from peacefully enjoying its natural maritime resources. Furthermore, the delimitation of the land boundary and the delimitation of the maritime areas belonging to the two countries are closely interlinked — which is why it would have been absurd to accede to Nigeria's insistence that these two aspects be dissociated. Indeed you declined to do this, Members of the Court, and rightly so. Despite the diversity of legal and factual problems which this case raises, it cannot be overstated that it represents a single whole.

2. This being so, I shall concentrate this morning on the sea alone and, in particular, on the role which Nigeria believes should be accorded to the oil practice. But, before doing so, let me say a few words about Nigeria's general approach to the maritime delimitation.

1. Nigeria's general approach to the maritime delimitation

3. There are four introductory points I should like to raise. I shall mention them in telegram style, the time allocated by the Court for this second round being decidedly "tight" . . . In fact, these are points which are anything but secondary, but above all concern elements of our first round of oral argument which Nigeria did not trouble to answer.

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4. But I shall begin with a remark of a different order, namely, that our opponents had the discourtesy to "return to the attack" with a vengeance regarding the errors we made in the graphic representation of the equitable line (CR 2002/13, pp. 18-22, paras. 2-14). In telegram style then:

— yes, we were at fault;

— we have apologized;

— the sin was, after all, a relatively venial one: it concerned (in the Reply at any rate) the tracing on a map of the proposed line, not the course of the line; and

— Nigeria, whose representatives have written (at least) four times to the Registrar with corrections to their written pleadings (letter of 28 March 2001), to their Annexes (letter of 14 September 1999) or to their sketch-maps (letters of 5 October 1999 and 31 January 2001) would perhaps do well to ponder their own mistakes first.

5. I would also point out, for the record, that Professor Crawford found it necessary to state that, in one of my oral arguments, I had said "things to the Court in the absence of Equatorial Guinea" (CR 2002/12, p. 57, para. 2). I confess that it had never occurred to me that that was reprehensible: the State intervening, whose representatives present in this Hall today it is my pleasure to welcome, obviously follows all our oral arguments, which are available on the Internet as soon as they have been delivered. But I must say I soon realized that this new sin of which we were accused could not be all that serious as, the following day, my accuser committed the same sin himself (CR 2002/13, pp. 26-29, paras. 33-40). Having slept on it, Mr. Crawford no doubt realized that it is difficult to speak of a maritime delimitation in the Gulf of Guinea without referring to the presence of the island of Bioko off Cameroon. In view of that, we will yield to his entreaties and will this morning, as far as possible, minimize aspects involving the rights and interests of Equatorial Guinea pending next week's hearings.

6. A third point, Mr. President, concerns an extraordinary lacuna in the oral argument of Nigeria, which still does not appear to have realized that there are *two* maritime sectors, raising quite different problems — even leaving aside the Maroua Declaration. In that (legally untenable)

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case, the delimitation of the territorial sea on the one hand, and of the exclusive economic zone and the continental shelf on the other, would necessarily have to be examined separately. Nigeria,

which (wrongly) objects to the existence of a treaty delimitation, stubbornly persists in not referring to this elementary distinction.

7. My fourth and last introductory point, Mr. President, is the line which Nigeria is proposing to you — or not proposing. Let me, if you will, revert to telegram style:

(1) On 22 February I was concerned to know *what* the delimitation line defended by Nigeria *really* was (CR 2002/5, pp. 49-50, paras. 38-39);

(2) Our opponents affect to adhere to the line in diagram 13.9 of the Rejoinder (p. 524*bis*), which was reproduced under tab S in the judges' folder of 7 March;

(3) But none of them has at any time bothered to justify that line in any way whatever; at the most, Professor Crawford remembered, *in extremis*, that the "card" Nigeria was playing was a line starting from the Rio del Rey, to which the Professor devotes a brief paragraph of his lengthy final oral argument of 7 March (CR 2002/13, p. 71, para. 68);

(4) It is true that it is no easy matter for him — first, there is the sand island, so opportunely discovered, which does not feature on any map, but which has the merit of miraculously causing the line proposed to veer westwards — extremely disadvantageous for Nigeria, but it saves the line proposed from further ridicule;

(5) And lastly, this line does not closely, or even remotely, correspond to any past or present oil practice, regardless of how it is defined.

8. Mr. President, Nigeria's argument can be summed up in one word, at least where the maritime delimitation is concerned — but this may well also be the word which inspires its dreams of terrestrial conquest, namely, *oil*.

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2. The role of the oil practice

9. Mr. President, I now come to a final point; but shall dwell on it at greater length. This is the potential role of the oil concessions and, more widely, oil practice in the maritime delimitation under consideration.

10. This question is of quite particular interest. First because, as no one can fail to be aware, the Gulf of Guinea, which — pace Nigeria — constitutes the general framework of the delimitation you are asked to make, is rich in oil deposits — table 131 in the judges' folder provides some

details of this — and consulting it, one cannot help but be struck by the "lion's share" Nigeria carves out for itself — this is a simple fact — it forms part of the context. From a more legal perspective, this question cannot be glossed over because of the special — what do I mean special? Exclusive! — importance attached to it by Nigeria.

11. However, this can only be read between the lines of the oral arguments we heard last week. For it must be said, our opponents did not tell us a great deal which was not already in their written pleadings. But they did tell us four things; the first two in considerable detail, the other two almost in passing:

— firstly, the *onshore* oil practice has no significance at all as regards sovereignty over a territory (CR 2002/9, pp. 45-47, paras. 132-142, Mr. Brownlie; CR 2002/12, pp. 61-64, paras. 13-19);

— secondly, both *onshore* and offshore oil practices are subject to entirely different rules, and produce entirely different, even diametrically opposite effects (CR 2002/13, pp. 25-26, paras. 30-31, Mr. Crawford);

— thirdly, offshore, by contrast with the rules applicable on the mainland, the oil practice is "a relevant circumstance", since it is "clear, sustained and consistent" (CR 2002/13, p. 69, para. 62, Mr. Crawford, quoting I.C.J. Chamber, Judgment of 12 October 1984, *Gulf of Maine*, *I.C.J. Reports 1984*, p. 309, para. 146);

— and fourthly, this is supposedly the case here (CR 2002/13, pp. 22-25, paras. 17-28).

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12. With great respect to my learned friends, Mr. President, "they've got it all wrong". I propose to show this by examining in turn the last three of these four propositions; my friend Maurice Mendelson spoke at sufficient length yesterday on the first.

13. But a general remark to begin with: it is difficult to form a precise idea of Nigeria's position solely on the basis of the oral argument, as Professors Brownlie and Crawford, the only counsel of Nigeria to have spoken of the oil practices, did so as it were by paralipsis, as though it was an argument to be ashamed of... Listening to them, I rather had the impression that they were consciously putting into practice the precept: "think of it always; speak of it as little as possible".

14. Mr. Crawford may well have concluded his oral argument last Thursday with the assertion that "the oil practice of the Parties and the very substantial character of the vested rights

existing on both sides . . . is determinative" (CR 2002/13, p. 71, para. 69). But this is only a pale reflection of the importance attached by Nigeria to the preservation of what it calls the "acquired rights" — without any concern for how they became acquired.

15. Nigeria was clearer in its Rejoinder, in which it expressed indignation that "[t]he Cameroon claim-line would require areas which are the subject of long-standing concessions, to be transferred from Nigeria, or respectively Equatorial Guinea, to Cameroon" (p. 613, para. 23.18 (iii)), concluding that:

> "It is inconceivable that the Court should say that large areas affected by this settled pattern of arrangements, expectations and vested rights should now be effectively transferred to another State, with all the regulatory, fiscal and other consequences that would entail." *(Ibid.)*

Mr. President, it is only inconceivable if these rights exist; if they were acquired in compliance with international law; if Nigeria conceded them in *its* maritime area! Can one imagine what would happen in domestic law if I gave a farmer the right to till the field belonging to my neighbour? To a fisherman the right to fish in a stretch of water which did not belong me? It is placing the cart before the horse, or to use another English expression, it "begs the question". The question is to ascertain — and only to ascertain — where the respective rights of the Parties stop; only when this question has been answered will it be possible to discuss rights, whether acquired ones or not.

023 16. With the benefit of that remark, I shall now revert to Nigeria's three propositions.

A. Onshore and offshore oil practices are subject to entirely different rules and produce entirely different effects

17. The first proposition is that onshore and offshore oil practices are subject to entirely different rules and produce entirely different effects. This, it must be said, is a very curious theory, highlighted by the equally curious contrast between the oral argument of Professor Brownlie on 1 March and of Professor Crawford on 7 March.

18. According to Mr. Brownlie, who in support of his position cites the recent arbitration in the *Eritrea/Yemen* case, and points out that the Tribunal devoted much effort to the examination of the granting of concessions, "the outcome was characterized by a degree of caution on the part of the Tribunal" (CR 2002/9, p. 46, para. 141); to put it plainly, my opponent denies that the oil

concessions have any relevance at all — that is, of course, the onshore concessions. But not his colleague. For Mr. Crawford considers, as I indicated a moment ago, that, at sea, oil practice is determinative. This is particularly striking because they each base themselves on the same fact: both of them point out that the concessions granted by one Party were not protested against by the other:

— Mr. Brownlie, on 1 March: "The absence of protests is, of course, irrelevant given that the petroleum-related activities were inconclusive in the context of the incidence of title to territory" (*ibid.*, p. 46, para. 137);

— but, six days later, Mr. Crawford made great issue of the fact that "except on points of detail, neither Party protested the oil licensing and exploitation activities of the other" (CR 2002/13, p. 59, para. 32; see also p. 24, para. 26 or pp. 69-70, paras. 61-62).

19. In this Nigerio-Nigerian doctrinal dispute, it is Mr. Brownlie I think who is right (at least as regards the irrelevance of the oil practice) but . . . with respect to maritime delimitation and not with respect to sovereignty over the land territory as he would have us believe.

20. But let us return to the *Eritrea/Yemen* case, on which my learned friend relies. As we know, it gave rise not to one but to two arbitral awards, the former of 9 October 1998 on territorial

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sovereignty; the latter of 17 December 1999, on maritime delimitation. It was *in the former*, the one relating *to sovereignty* over the disputed islands that the arbitral tribunal took account — rather more than Mr. Brownlie says — of oil practice. Indeed, after an exhaustive examination of it (Award, pp. 101-115, paras. 389-435), the Tribunal concluded, as pointed out by counsel of Nigeria (CR 2002/9, p. 46, para 140) that the oil practice failed, in that case, "to establish or significantly strengthen the claims of either Party to sovereignty over the disputed islands". From this it may be deduced *a contrario* that a determinative oil practice can constitute an *"effectivité"* which may be taken into consideration in the context of a conflict relating to the attribution of a territory. As Professor Mendelson showed yesterday, Cameroon may rightly invoke the concessions it granted on the Bakassi Peninsula, even if, I hasten to point out, for us it is no more than an element providing confirmation, and a rather secondary one at that.

21. Now, what do we find in the latter award, the *Eritrea/Yemen* Award, of 1999, this time relating to *maritime delimitation* and not mentioned by either Mr. Brownlie or Mr. Crawford? That

is highly regrettable moreover, as it is just as instructive — but, apparently, in the opposite sense: in that Award, the Tribunal very clearly indicates that the oil concession line it had used to determine sovereignty over the disputed islands (and which more or less corresponded to a median line) "can hardly be taken as governing once that sovereignty has been determined" (Award of 17 December 1999, p. 25, para. 83).

22. To sum up then: on land, the oil practice constitutes a perfectly admissible *"effectivité"*, despite what our opponents say — with, of course, all the usual caveats when *effectivités* are under discussion: provided it does not conflict with a treaty title, etc. On the other hand, this practice is not a relevant circumstance for the purposes of maritime delimitation.

B. Oil practice is not a relevant circumstance for the purposes of maritime delimitation

23. This is my second point. Professor Crawford put forward the contrary proposition: "oil practice . . . is undoubtedly a relevant circumstance, and for a number of reasons" (CR 2002/13, p. 69, para. 61). However, although our opponent had announced that he was going to list this "number of reasons", he did not do so. The most he did was to mention the *Tunisia/Libya* case (*ibid.*, para. 62) in passing. Moreover, it is true that, in that case, the Court took into consideration the *de facto* line constituted by the oil concessions granted by each of the two Parties (cf. Judgment of 24 February 1982, *I.C.J. Reports 1982*, p. 84, para. 117); but it took great care to make it clear

> "[t]hat the Court is not here making a finding of tacit agreement between the Parties — which, in view of the more extensive and firmly maintained claims, would not be possible — nor is it holding that they are debarred by conduct from pressing claims inconsistent with such conduct on some such basis as estoppel" (*ibid.*, para. 118).

In other words, even in the very particular circumstances of the 1982 case, the Court sees the *de facto* line as just one of the "*indicia* . . . available of the line . . . which the Parties themselves may have considered equitable or acted upon as such" (*ibid.*, emphasis added); and this only in the sector adjacent to the coast and naturally where the concessions *of both Parties* followed the same line.

24. I would add that the 1982 Judgment is a "borderline case" and that in general, your case law, like that of the arbitral tribunals which have had to rule on problems of this kind, displays great reluctance about granting any importance whatever to oil practice (cf. Judgment of

20 February 1969, *North Sea Continental Shelf, I.C.J. Reports 1969*, p. 52, para. 97; Judgment of 12 October 1984, *Gulf of Maine, I.C.J. Reports 1984*, p. 342, para. 237; Arbitral Award of 14 February 1985, *Delimitation of the Guinea and Guinea-Bissau Maritime Boundary, RGDIP* 1985, p. 513, para. 63; Arbitral Award of 10 June 1992, *St Pierre and Miquelon, RGDIP* 1992, p. 706, para. 89; etc.). On this point, may I refer you, Members of the Court, to the relevant passages in Cameroon's Reply (pp. 267-270, paras. 9.99-9.105).

25. It is true that Professor Crawford makes much of an expression in the Judgment of the Chamber of the Court in the *Gulf of Maine* case, which he takes out of context: the only requirement, he tells us, for a practice to be taken into consideration is that it "was sufficiently clear, sustained, and consistent" (CR 2002/13, p. 69, para. 62, Mr. Crawford quoting the Judgment of 12 October 1984, *I.C.J. Reports 1984*, p. 309, para. 146). But my learned friend forgets a few things, such as:

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— first, to quote the end of the sentence concerned — as the Court adds that the conduct had to be sufficiently clear, sustained and consistent "to constitute acquiescence" *(ibid.)*;

— secondly, to state that the Chamber was actually referring to the decision in the *Grisbadarna* case, whose relevance it considered doubtful *(ibid.)*; and

— lastly, to specify that there is a further major element of doubt in the present case.

26. Indeed, as Maurice Kamto pointed out in the first round (CR 2002/7, pp. 22-24, para. 13-18), Cameroon and Nigeria had agreed to inform one another of the oil activities in the area. Professor Crawford blithely dismissed this argument asking you, Members of the Court, to read the documents in question, namely, the Minutes of the Experts' Meeting in Abuja in December 1991 and Yaoundé in August 1993 (CR 2002/13, p. 25, para. 28; see also CR 2002/9, p. 46, para. 138, Mr. Brownlie). May I too invite you to do so? You will see that, although in those documents, the two Parties reaffirmed their "freedom . . . to develop [their] resources along the frontier line", as our opponent points out, they had also undertaken — a phrase which seems to have escaped him — "to tak[e] care to inform the other side . . ." (Memorial of Cameroon, Ann. 313 and Preliminary Objections of Nigeria, Ann. 55). Having not done what Cameroon had expected it to do, Nigeria is in no position to rely on Cameroon's tacit agreement.

C. The oil practice of the Parties — legal consequences

27. Mr. President, Nigeria aims to convince the Court that it should determine its maritime boundary with Cameroon exclusively on the basis of the oil practices of the States in the region and, first and foremost, of its own. Despite the very limited relevance, in law, of oil practices to maritime delimitation, I must therefore consider these practices in an attempt to determine their possible relevance for the rules I have just identified.

28. This cannot be done all in one piece, as though there were only one boundary sector, as Nigeria stubbornly persists in claiming. There are undoubtedly two sectors: one up to point G, is delimited by the Maroua Agreement; the other, beyond it, must be delimited by the Court.

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***(a)* Up to point G**

29. [Projection No. 1 — coincidence of the oil concessions and the Maroua line.] Up to point G, a *de facto* line may be said to exist, in that the oil concessions granted by each Party follow a line not unfamiliar to you, Members of the Court. This is quite simply the Maroua line.

30. We find ourselves here in a case which, although not identical to the one in the *Tunisia/Libya* case, is nevertheless somewhat similar. The concessions granted by Cameroon on the one hand and by Nigeria on the other follow the Treaty line without overlapping. [End of projection No. 1.]

31. In this connection, I should point out that, on the basis of the details given by Nigeria in its Counter-Memorial (cf. Counter-Memorial of Nigeria, p. 565, paras. 20.16 and 20.17, and sketch-maps 20.4 and 20.5, p. 566*bis* and 566*ter*), we indicated major overlaps, both north and south of point G (cf. Reply of Cameroon, p. 271, paras. 9.110 and 9.111 and sketch-maps R24 and R25). But where the first of these sectors is concerned, north of point G, these details proved to be wrong: both HIS maps of 1996 and 2001, for example, show *no overlap* north of point G; the relevant extracts from Cameroon's and Nigeria's 2001 sheets, reduced in your folders, Members of the Court, are Nos. 133 and 134 and I have tried to superimpose them; yes, it works.

32. Moreover, in his oral argument of 7 March, Mr. Crawford seeks to minimize the possible areas of overlap: "the area of overlap is a limited one" (CR 2002/13, p. 23, para. 19). It is not "a limited one", Mr. President — there is quite simply no overlap, contrary to what Nigeria would

have us believe and which, I confess, we did foolishly believe, without realizing that our opponents were intent on arming themselves with arguments in support of their claims on Bakassi.

33. It can therefore be acknowledged, Mr. President, that what we have here is a "*de facto* line". But this seems to me to be of minor interest: it corresponds very precisely to a *de jure* line, that fixed by the Maroua Agreement of 1 June 1975, which it thus merely confirms. And, as in the *Tunisia/Libya* or *Eritrea/Yemen* cases, there is certainly nothing to prevent the oil practice of the
028 Parties from confirming a line effectively drawn, in accordance with the applicable principles of the law of the sea or, *a fortiori*, as is the case here, a treaty line.

34. [Projection No. 2 — Kita Marine.] There is further proof that the oil practice supports the treaty title (and not the reverse). My friend Mr. Kamto alluded to it on 26 February (CR 2002/5, p. 61, para. 25). Here are the facts: in 1972, Elf Serepca sank a well called Kita-Marine 1. This well, which is indicated by a red circle on sketch-map No. 135 in the judges' folder, revealed the existence — you cannot see it very well on the projection but you can in the folder — of oil and gas.

It was short of the equidistance line on the Cameroonian side, but on the "wrong side" of the Maroua line (I mean, on the Nigerian side . . .). In accordance with its word and the principle of respect for treaties, Cameroon abandoned this well to Nigeria on 27 May 1976. The practice was therefore brought into line with the law; not the contrary as Nigeria would wish. [End of projection No. 2.]

35. Mr. President, as I was saying yesterday, the Parties are at last in agreement on the treaty line of the boundary, not just the land but also the maritime boundary, up to point G. And ultimately it matters little that they reach the same result by different methods — since, and I am anxious to make this absolutely clear and unequivocal, for our part, we regard the Maroua agreement as a probative conventional title and as sufficient in itself. Sir Ian Sinclair will revert to this in a few minutes.

(b)*Beyond point G*

36. Beyond point G, on the other hand, Mr. President, the situation is no longer at all the same as in the *Tunisia/Libya* case, partly because we are much further from the coasts of the Parties

and partly because there is no *de facto* line: in the vicinity of point G, there is a great deal of overlap; further away, the only line which exists is a unilateral one, stemming from Nigerian practice alone.

37. A few words now on each of these aspects — beginning with the sector immediately south of point G.

029 38. I had been planning to represent on a sketch-map the very obvious areas of overlap of the concessions granted by the three countries, Cameroon, Equatorial Guinea and Nigeria, in the area immediately south of point G. Unfortunately, we ran out of time and this consolidated sketch-map could not be got ready. However, one has only to refer, for example, to diagrams 20.4 or 20.5 in the Counter-Memorial of Nigeria, or 10.2, 10.5, 10.6, 10.8 or 13.5 in the Rejoinder — I am referring here to the written pleadings of Nigeria, which has focused much more than we have on oil practice, not to mention the series of sketch-maps in the appendix to Chapter 10 of the Rejoinder (whose probative value is doubtful incidentally) — one has only to refer to all these sketch-maps, to all these diagrams, to realize that there is no consensual line of oil practices in this area; all there is are irreconcilable, unilateral, competing lines.

39. A very clear, indisputable, "inevitable" consequence flows from this overlapping of incompatible concessions: there is clearly no *de facto* line here which could serve as a basis for delimitation, whether as an "indication" or a "method", not to mention a "relevant circumstance".

40. Of course Nigeria is of the opposite opinion. Indeed, it draws a subtle distinction between the concessions on the one hand and the wells and boreholes which, on their own, supposedly constitute the "oil practice" on which it relies (cf. CR 2002/13, pp. 23-24, paras. 18-21). Three remarks on this point Mr. President:

— let me observe first of all that it is very difficult to draw a delimitation line based on practice as so defined: concessions follow lines; wells are points which may overlap; think for example of the problems posed by the Kita Marine well which I referred to a few moments ago, or the famous Ekanga well, which Nigeria succeeded in obtaining — I was about to say extorting — from Equatorial Guinea and which has already been discussed at length;

— secondly, it is quite correct, if we confine ourselves to the wells, that Nigeria comes out "on top", as shown by the many diagrams accompanying its written pleadings and oral argument. I

hope you will allow me, Members of the Court, not to embark upon that course, not to project sketch-maps of that kind. In fact, there is a regrettable explanation for the disproportion — in favour of Nigeria and to the detriment of Cameroon and Equatorial Guinea prior to 2000 — in the number of wells in the areas of overlap: through intimidation, threats made to the oil companies concerned, Nigeria succeeded in dissuading them from sinking boreholes in the areas it claims; on the other hand, it had no compunction about commissioning boreholes, or even oil extraction operations in those areas, despite knowing they were claimed by Cameroon or Equatorial Guinea; I am still speaking of prior to 2000;

— at all events — and this is my third and last remark — it is hard to see Nigeria's justification for claiming to exclude concessions from the oil practice to which it attaches so much importance. Even in the 1982 Judgment in the *Tunisia/Libya* case, the only one which gives any semblance of credibility to the Nigerian argument in this respect, the Court based itself on "the *de facto* line *between the concessions*" (*I.C.J. Reports 1982*, p. 84, para. 118; see also p. 71, para. 96 and pp. 83-84, para. 117) and it is obviously logical therefore that, as I have already emphasized, it is a matter not of accepting a fait accompli, as Nigeria would have it, but of basing oneself on the concessions as "indicia . . . of the line . . . which the Parties themselves may have considered equitable or acted upon as such" (*ibid.*, p. 84, para. 118).

41. Mr. President, as regards, lastly, the area further south, there can be no question of a *de facto* line here — for a simple reason: Cameroon refrained from granting any concessions there; initially because the two States were in negotiation to that end; later because, as the matter was before the Court, Cameroon felt it would be discourteous, to say the least, to try and present it with a fait accompli in this way. As we know, Nigeria did not have any such scruples: not only did it hasten to create a practice; it also sought to "juridicize" that practice by concluding a, for itself, particularly advantageous treaty with Equatorial Guinea — but this is a matter I am sure we will have occasion to revert to next week.

42. For now, I can therefore stop at this point and confine myself to summarizing my conclusions with respect to the oil practice, including the concessions, of course:

(1) this practice cannot, in law, justify a maritime delimitation line of any kind;

031 (2) at the very most, it may be one element confirming a maritime boundary effectively established in conformity with the principles of the law of the sea applicable in the territorial sea or beyond it;

(3) this applies, *a fortiori*, when a line fixed by treaty is involved, as is the case of the line adopted by the Maroua agreement of 1 June 1975; and

(4) in this case, the line of the concessions granted by the Parties in fact corresponds in every respect to the line resulting from the Maroua Declaration . . . about which my eminent friend Sir Ian Sinclair is now going to speak, if you would kindly give the floor to him, Mr. President.

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

The PRESIDENT: Thank you, Professor Pellet. Je donne maintenant la parole à sir Ian Sinclair.

Le PRESIDENT : Je vous remercie, Monsieur le professeur. I now give the floor to Sir Ian Sinclair.

Sir Ian SINCLAIR :

VIII. LE PREMIER SECTEUR MARITIME

1. Monsieur le président, Madame et Messieurs de la Cour, c'est un grand honneur pour moi que de m'adresser à nouveau à vous au nom du Cameroun à l'occasion des plaidoiries sur le fond de l'affaire de la *Frontière terrestre et maritime entre le Cameroun et le Nigéria*. Ce matin, ma tâche consistera à répondre aux arguments que le Nigéria a formulés dans son premier tour de plaidoiries au sujet du tracé de la frontière maritime entre les deux Etats jusqu'au point G et, en particulier, au sujet du maintien en vigueur et de l'effet obligatoire de la déclaration de Maroua de 1975.

1. La déclaration de Maroua du 1er juin 1975

2. Comme certains de mes collègues l'ont déjà dit — et la Cour le déplorera certainement—, le conseil du Cameroun et celui de la Partie adverse semblent engagés dans un dialogue de sourds, en particulier au sujet du maintien en vigueur de ce que, pour la commodité, nous appellerons les

«dispositions relatives à Bakassi» du traité anglo-allemand du 11 mars 1913, et de la question distincte mais connexe du maintien en vigueur de la déclaration de Maroua du 1er juin 1975. Comme M. Tomuschat l'a expliqué à la Cour le 25 février (CR 2002/6, p. 18-27), la déclaration de Maroua a été le fruit d'une longue série d'entretiens et de négociations bilatérales entre le Cameroun et le Nigéria, dont le Cameroun a relaté en détail l'historique dans sa réplique. La dernière réunion de cette série a eu lieu à Maroua du 30 mai au 1er juin 1975; elle réunissait les chefs d'Etat du Cameroun (le président Ahidjo) et du Nigéria (le général Gowon), accompagnés de leurs délégations de haut niveau respectives. Vu les événements qui ont suivi, il y a peut-être lieu de noter que la délégation de haut niveau qui accompagnait le général Gowon à Maroua comprenait notamment les gouverneurs militaires de deux régions nigérianes (MC, vol. VI, annexe 250); le général Gowon était donc entouré de certains de ses collègues militaires ainsi que de conseillers spécialisés de rang élevé. La réunion a produit deux instruments importants. Le premier était un «communiqué conjoint» signé par les deux chefs d'Etat, qui mettait particulièrement l'accent sur la délimitation maritime définitive convenue entre les deux chefs d'Etat et qui faisait allusion à la déclaration portant la même date (1er juin 1975), en expliquant que celle-ci consacrait un accord conclu sans réserve par les deux chefs d'Etat. En effet, le communiqué précisait que «[l]es deux chefs d'Etat ... se sont mis entièrement d'accord sur le tracé précis de la frontière maritime telle que la définit la déclaration de Maroua du 1er juin 1975 et son annexe» (MC, vol. VI, annexe 250).

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3. Mais c'est bien sûr la déclaration de Maroua elle-même (MC, vol. VI, annexe MC 251), c'est-à-dire le second instrument adopté à cette réunion, qui définit de manière méticuleuse la «frontière maritime» du point 12 au point G, à l'aide de coordonnées géographiques précises. Le contenu de la déclaration, confirmé par l'indication claire, dans le communiqué conjoint, que les deux chefs d'Etat étaient «entièrement d'accord», suffit à établir que sous l'angle du droit des traités, les termes de la déclaration de Maroua équivalaient à la conclusion, sous une forme simplifiée, d'un accord international. Il est presque certain que la déclaration de Maroua aurait à elle seule eu cet effet, mais le communiqué conjoint notait également que les deux chefs d'Etat étaient pleinement d'accord sur le tracé exact de la ligne frontière précisée dans la déclaration de Maroua elle-même.

4. Très peu de temps après l'adoption de la déclaration qui, je me permets de le préciser, était accompagnée de la signature des deux chefs d'Etat sur l'exemplaire de la carte n° 3343 sur laquelle était représenté le tracé précis de la ligne jusqu'au point G, le Cameroun a découvert une erreur technique dans le calcul des coordonnées du point B sur la nouvelle ligne convenue. En conséquence, le président Ahidjo a, le 12 juin 1975, adressé une lettre au général Gowon dans

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laquelle il signalait l'erreur technique et proposait que, si le général marquait son accord avec les coordonnées rectifiées du point B, sa réponse, jointe à la lettre envoyée à l'origine par le président Ahidjo le 12 juin 1975, soient considérées comme des annexes valables à la déclaration de Maroua.

5. Le général Gowon a répondu à cette communication le 17 juillet 1975 pour convenir que l'erreur en question avait bien été faite et accepter la proposition du président Ahidjo quant à la manière dont il convenait de la rectifier.

6. Le Cameroun maintient sa position, à savoir que cet échange ultérieur de lettres entre le président Ahidjo et le général Gowon confirme sans l'ombre d'un doute que les deux chefs d'Etat qui ont signé solennellement la déclaration de Maroua le 1er juin 1975 estimaient que celle-ci était entrée en vigueur à la date de son adoption. L'échange de lettres qui a suivi eût été dépourvu de sens si les deux chefs d'Etat n'avaient pas été de cet avis et n'avaient pas été convaincus que l'erreur technique que comportait l'accord devait être rectifiée séance tenante.

2. La contestation par le Nigéria de la validité de la déclaration

7. Que dit le Nigéria en réponse à cette définition claire et précise du premier segment de la frontière maritime, consacrée par la déclaration de Maroua qui témoigne de l'accord conclu par les deux chefs d'Etat à ce sujet ? Le Nigéria plaide tout simplement que le général Gowon, en tant que chef d'Etat du Nigéria en 1975, n'avait pas compétence pour conclure un accord international obligatoire avec le Cameroun sans l'accord du conseil militaire suprême. Examinons cet aspect d'un peu plus près.

8. M. Brownlie, dans sa plaidoirie du 1er mars 2002 devant la Cour (CR 2002/9, par. 101), soutient que la déclaration de Maroua

> «ne liait pas juridiquement le Nigéria car, aux termes de la constitution de 1963 qui était alors en vigueur, le général Gowon n'avait pas le pouvoir d'engager son

> gouvernement sans l'approbation du conseil militaire suprême qui constituait le Gouvernement nigérian. Les textes législatifs pertinents que l'administration militaire a adoptés en 1966 et 1967 n'ont pas abrogé la constitution de 1963 et plusieurs de leurs dispositions renvoient à la constitution de 1963 en tant que *Grundnorm* (norme fondamentale).»

9. Monsieur le président, rien ne permet d'affirmer qu'il s'agit là d'une description exacte du pouvoir du chef d'Etat nigérian à l'époque; en effet, la Cour a certainement relevé que M. Brownlie ne mentionne nulle part les dispositions spécifiques de la constitution de 1963, telle que modifiée par la suite par les décrets du gouvernement militaire, qui sont à la base de son argumentation. A cet égard, le Cameroun se permet de rappeler à la Cour la partie de la plaidoirie de M. Mendelson d'hier après-midi, dans laquelle celui-ci a attiré l'attention sur des extraits pertinents de l'annexe MC 275 du mémoire du Cameroun, extraits qu'il a du reste inclus dans le dossier des juges sous la cote 130/5. Un de ceux-ci révèle que les autorités nigérianes ont, en 1985, reçu d'un fonctionnaire de haut niveau du ministère fédéral de la justice l'avis juridique catégorique selon lequel le motif invoqué par le Nigéria pour rejeter la déclaration de Maroua était indéfendable en droit international.

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3. La prétendue disposition de la constitution nigériane entrée en vigueur le 1er juin 1975 interdisant au chef de l'Etat de déclarer le Nigéria lié par un traité sans l'accord du conseil militaire suprême

10. Monsieur le président, depuis la plaidoirie de M. Brownlie, le 1er mars, le Cameroun a effectué des recherches complémentaires sur la situation au 1er juin 1975 au regard de la constitution, en ce qui concerne le pouvoir du chef d'Etat de l'époque (qui était en même temps le président du conseil militaire suprême) de conclure des accords internationaux sans l'accord formel dudit conseil. La constitution nigériane originale de 1963 conférait au président le pouvoir exécutif dans la fédération (art. 84). Ce pouvoir exécutif englobait toutes les questions au sujet desquelles le parlement était habilité à promulguer des lois (art. 85). Un conseil des ministres de la fédération avait pour fonction de conseiller le président (art. 89). Hormis certaines exceptions sans rapport avec ce qui nous occupe ici, le président était tenu de suivre l'avis de son conseil des ministres (art. 93). Sauf erreur, le Cameroun n'a pas relevé l'existence, dans la constitution de 1963, d'une disposition spécifique limitant directement le pouvoir du président de conclure, au nom du Nigéria, des traités avec d'autres Etats.

11. Tout cela a évidemment été radicalement modifié en 1966, après l'instauration du gouvernement fédéral militaire. Le décret n° 1 de ce gouvernement, daté du 17 janvier 1966, a abrogé expressément les articles 84, 85, 89 et 93 de la constitution de 1963, c'est-à-dire les dispositions que je viens de mentionner. Le texte de la constitution nigériane de 1963, du décret n° 1 du 17 janvier 1966 et du décret n° 28 de 1970, auxquels je reviendrai dans un instant, sont des documents publics, et le Cameroun s'étonne que le Nigéria n'ait pas jugé utile de fournir à la Cour

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des copies de ces documents constitutionnels et d'autres sur lesquels il tente de s'appuyer. Nous croyons savoir que le Nigéria a déposé auprès de la Cour un exemplaire du décret de 1975 relatif aux dispositions fondamentales de la constitution, mais ce texte n'est pas pertinent. En effet, bien qu'il ait un effet rétroactif, cet effet ne remonte pas jusqu'à la signature de la déclaration de Maroua. Le paragraphe 1 de l'article 8 du décret n° 1 précisait que le Nigéria était doté d'un conseil militaire suprême et d'un conseil exécutif fédéral. Le paragraphe 2 de l'article 8 fixait la composition du conseil militaire suprême et en confiait la présidence au chef du gouvernement fédéral militaire. Le paragraphe 3 de l'article 8 prévoyait que le conseil exécutif fédéral serait composé en grande partie des mêmes personnes mais qu'il ne comprendrait pas les gouverneurs militaires des régions du Nigéria septentrional, oriental, occidental et du centre-ouest. L'annexe 2 au décret n° 1 de 1966 déclare en son paragraphe 2 que «toute mention du président ou du premier ministre, ou du président ou du premier ministre agissant sur avis d'une personne ou d'un organe quelconque, doit être interprétée comme désignant le chef du gouvernement fédéral militaire». Cette disposition doit être lue conjointement avec le paragraphe 1 de l'article 7 du décret n° 1, qui précise que «[l]e pouvoir exécutif de la République fédérale du Nigéria appartient au chef du gouvernement fédéral militaire et peut être exercé par lui soit directement, soit par l'intermédiaire de personnes ou d'autorités qui lui sont subordonnées...» *[Traduction du Greffe.]*

12. Les choses sont rendues plus complexes encore du fait de l'existence de deux autres décrets de 1967 : le décret portant suspension et modification de la constitution de 1967 (décret n° 8 de 1967), et le décret portant abrogation et rétablissement de la constitution de 1967 (décret n° 13 de 1967). Ce dernier décret est publié dans le recueil de Blaustein et Flanz intitulé *Constitutions of Countries of the World* (1972). Il me suffit de me référer au second de ces décrets, à savoir le décret n° 13 de 1967, puisque, grâce au ciel sans doute pour tous ceux d'entre nous qui

sont concernés, le premier, à savoir le décret n° 8 de 1967, a été abrogé. Le décret n° 13 de 1967 a eu pour effet de rétablir la situation constitutionnelle créée par la constitution de 1966 et les décrets modificatifs n^{os} 1 à 10 (je me permets de signaler en passant que j'ai épargné à la Cour la description des décrets n^{os} 2 à 10, puisque, en substance, ils sont sans intérêt dans le présent contexte). L'effet du décret n° 13 de 1967 était de conférer le pouvoir législatif et exécutif au conseil exécutif fédéral et non au conseil militaire suprême. Blaustein et Flanz, à qui nous devons le recueil que j'ai cité, concluent que le décret n° 13 de 1967 a effectivement retiré le pouvoir au conseil militaire suprême et l'a rendu au conseil exécutif fédéral, comme le prévoyait l'article 12 du décret n° 1 de 1966.

13. Enfin (et je prie ici la Cour de m'excuser pour la complexité de cet exposé sur la situation constitutionnelle du Nigéria pendant cette période mouvementée de son histoire), j'en viens au décret de 1970 consacrant la primauté et les pouvoirs du gouvernement militaire fédéral; il s'agit du décret n° 28 de 1970, que j'ai déjà cité. Il avait pour effet de rendre impossible en droit tout contrôle juridictionnel de la constitutionnalité des mesures prises par le gouvernement militaire fédéral. Toutefois, le paragraphe 1 de l'article premier de ce décret confirme son préambule et le déclare partie intégrante du décret; le premier paragraphe du préambule énonce solennellement ce qui suit :

> «Considérant que la révolution militaire qui a eu lieu le 15 janvier 1966 et qui a été suivie d'une autre révolution le 29 juillet 1966 a effectivement mis fin à l'ordre juridique existant alors au Nigéria, sauf pour ce qui a été préservé par le décret de 1966 (n° 1) portant primauté et amendement de la constitution...» *[Traduction du Greffe.]*

Il s'agit à l'évidence du décret n° 1 du gouvernement militaire fédéral de 1966. Par conséquent, il semble que ce décret de 1970 a eu pour effet de rétablir, autant que nécessaire, la situation constitutionnelle telle qu'elle existait en vertu du décret n° 1 promulgué par le gouvernement fédéral militaire le 17 janvier 1966, dont j'ai fait état précédemment (voir par. 8 ci-dessus).

14. S'agissant de la situation constitutionnelle extrêmement complexe instaurée au Nigéria à partir du 1er juin 1975, l'interprétation du Cameroun est que, en vertu du décret n° 1 promulgué par le gouvernement fédéral militaire en 1966, le chef de ce gouvernement pouvait agir dans l'exercice du pouvoir qui était le sien de conclure des traités sans l'avis formel de quelque organe que ce soit, y compris du conseil militaire suprême.

4. La question de savoir si le Nigéria peut invoquer l'article 46 de la convention de Vienne sur le droit des traités dans les conditions actuelles

15. En tout état de cause, je tiens à rassurer la Cour : elle n'aura pas à se prononcer de façon définitive sur l'interprétation de dispositions aussi ésotériques et obscures que celles de la Constitution du Nigéria qui étaient en vigueur au 1er juin 1975. Comme la Cour le sait, l'article 46 de la convention de Vienne sur le droit des traités énonce, en des termes négatifs, la règle fondamentale concernant la compétence pour conclure des traités. La disposition est la suivante :

> «Le fait que le consentement d'un Etat à être lié par un traité a été exprimé en violation d'une disposition de son droit interne concernant la compétence pour conclure des traités ne peut être invoqué par cet Etat comme viciant son consentement, à moins que cette violation n'ait été manifeste *[manifeste]* et ne concerne une règle de son droit interne d'importance fondamentale.»

Le paragraphe 2 du même article dispose que : «une violation est manifeste si elle est objectivement évidente pour tout Etat se comportant en la matière conformément à la pratique habituelle et de bonne foi».

16. Cela dit, à supposer même pour l'instant que M. Brownlie ait peut-être raison dans l'analyse qu'il fait de l'applicabilité en 1975 de la Constitution de 1963 (applicabilité que le Cameroun nie absolument), il ne s'ensuit bien évidemment pas que le Nigéria est fondé à invoquer l'article 46 de la convention de Vienne pour invalider le consentement inconditionnel donné par le général Gowon à la déclaration de Maroua. La question est en fait de savoir si la prétendue violation des dispositions du droit interne du Nigéria concernant la compétence pour conclure des traités était «manifeste» aux yeux du président du Cameroun au moment de la signature de la déclaration de Maroua. Monsieur le président, tout le monde sait que l'on ne peut attendre d'un ressortissant d'un Etat, quel que soit son rang, qu'il connaisse parfaitement la législation et la pratique constitutionnelle d'un autre Etat. M. Brownlie semble en avoir conscience puisqu'il consacre un certain temps à tenter de montrer que M. Ahidjo, le président du Cameroun, devait, en 1975, être au courant des limites constitutionnelles dans le cadre desquelles le général Gowon exerçait son autorité. Malheureusement, M. Brownlie vend la mèche lorsqu'il cite le paragraphe 3 de la lettre envoyée le 23 août 1974 au président Ahidjo par le général Gowon, neuf mois environ avant la déclaration de Maroua. M. Brownlie soutient que cette lettre «revêt une très forte valeur probante» (CR 2002/9, p. 37, par. 104). Pour une fois, je suis d'accord. C'est sur la dernière

phrase de cette citation que je voudrais particulièrement attirer votre attention. Elle se lit comme suit : «J'ai toujours cru que nous pourrions réexaminer tous les deux ensemble la situation et parvenir sur cette question à une décision judicieuse et acceptable.» (Le général Gowon fait ici allusion aux problèmes soulevés par les documents établis par les experts le 4 avril 1971 sur la suite du tracé de la frontière maritime.) Le général Gowon dit donc ici au président Ahidjo que l'un et l'autre devraient réexaminer ensemble la situation, et il est convaincu qu'ensemble le général et le président pourraient adopter une décision sur la question qui serait acceptable pour l'un et l'autre. Pas question ici d'une approbation ultérieure ou distincte du «Gouvernement nigérian». La déduction logique — et même la seule déduction logique — à en tirer est que le général Gowon laisse entendre au président Ahidjo qu'ils pourraient régler le problème *à eux deux* (cela se passe six mois seulement avant le début de la réunion de Maroua, fixé au 30 mai 1975). Ainsi, même si le général Gowon avait violé une disposition du droit interne nigérian concernant la compétence pour conclure des traités, cette violation n'était certainement pas «manifeste» aux yeux du président Ahidjo. Elle ne pouvait tout simplement pas être «manifeste» étant donné l'opacité des dispositions constitutionnelles relatives à la conclusion de traités au Nigéria à l'époque (si tant est d'ailleurs qu'il y eût de telles dispositions), étant donné aussi que le général Gowon laisse entendre dans sa lettre du 23 août 1974 que les deux chefs d'Etat pouvaient régler la difficulté. En effet, la dernière phrase du paragraphe 3 de la lettre du général Gowon peut quasiment être lue comme incitant le président Ahidjo à penser que le général Gowon serait prêt à accepter un compromis raisonnable sur le tracé de la ligne.

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5. La déclaration de Maroua ne contient pas de disposition sur la ratification

17. La Cour constatera en outre que la partie nigériane n'a pas proposé, à Maroua, que soit intégrée à la déclaration une disposition prévoyant que ladite déclaration serait ratifiée et n'entrerait en vigueur qu'à la suite de l'échange d'instruments de ratification. S'il y avait eu véritablement un obstacle constitutionnel, ou si le Nigéria avait souhaité avoir l'occasion d'examiner plus à loisir les effets de la déclaration de Maroua, une telle disposition aurait constitué une précaution naturelle. Mais l'on n'a pas pris cette précaution.

18. Dans ce contexte, Monsieur le président, Madame et Messieurs de la Cour, j'ai été légèrement fâché par la façon dont M. Brownlie tronque parfois ses citations. La citation tronquée a eu l'effet trompeur maximum avec l'article 7 de la convention de Vienne sur le droit des traités, dans lequel M. Brownlie omet certains mots qui ne cadrent pas bien avec l'argument qu'il défend. Par opposition à la version tronquée citée par M. Brownlie dans sa plaidoirie sur ce sujet, le paragraphe 2 *a)* de l'article 7 de la convention de Vienne se lit en fait comme suit :

> «2. En vertu de leurs fonctions et sans avoir à produire de pleins pouvoirs, sont considérés comme représentant leur Etat :
>
> *a)* Les chefs d'Etat, les chefs de gouvernement et les ministres des affaires étrangères, pour tous les actes relatifs à la conclusion d'un traité.»

Je répète : *«pour tous les actes relatifs à la conclusion d'un traité»* : ce sont les mots qui ont sauté dans la citation faite par M. Brownlie. Or, parmi les actes relatifs à la conclusion d'un traité figure nécessairement l'expression du consentement de l'Etat à être lié par ledit traité. Il n'est donc pas

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tout à fait exact de soutenir, comme le fait M. Brownlie (CR 2002/9, par. 110), que l'article 7 de la convention de Vienne «vise uniquement la manière d'établir la fonction d'une personne en qualité de représentant d'un Etat». L'article traite aussi, du moins jusqu'à un certain point, de l'*étendue* des pouvoirs de ladite personne, et l'on constatera qu'un chef d'Etat doit être considéré en vertu de ses fonctions comme représentant son Etat aux fins de tous les actes relatifs à la conclusion d'un traité, y compris l'expression du consentement de l'Etat intéressé à être lié par le traité. L'article 7 doit bien sûr être lu *en liaison* avec l'article 46. Mais il n'est pas sans intérêt de constater, dans le contexte particulier de la présente affaire, que, dans le commentaire de ce qui est aujourd'hui l'article 46 de la convention de Vienne, la Commission du droit international avait expressément rejeté l'idée que des dispositions de droit interne limitant le pouvoir dont sont investis des organes de l'Etat pour signer un traité puissent rendre annulable un consentement donné au niveau international en violation d'une restriction constitutionnelle. La Commission a déclaré :

> «Si l'on devait admettre ce point de vue, il s'ensuivrait que les autres Etats ne pourraient pas faire fond sur le pouvoir d'engager l'Etat que possèdent apparemment, aux termes de l'article [7], les chefs d'Etat, premiers ministres, ministres des affaires étrangères, etc.; ils devraient vérifier par eux-mêmes, dans chaque cas, qu'il n'y a pas de violation des dispositions de la constitution de l'autre Etat, ou courir le risque de constater ensuite que le traité est nul.» (*Annuaire de la Commission du droit international*, 1966, vol. II, p. 262.)

19. On constatera donc que la Commission du droit international — qui est à l'origine de la version finale des projets d'articles sur le droit des traités, c'est-à-dire du texte de base qui sera examiné à la conférence de Vienne sur le droit des traités — était certaine que l'on ne devrait pas beaucoup s'écarter de la règle négative énoncée désormais au paragraphe 1 de l'article 46 de la convention de Vienne.

6. La capacité du Nigéria à conclure des traités à l'époque pertinente

20. Monsieur le président, il faut bien constater que la constitution nigériane, même après avoir été amendée par le décret n° 1 du 17 janvier 1966, ne dit absolument rien quant à la façon dont l'Etat doit exercer sa capacité à conclure des traités. De toute évidence, ce n'était pas au conseil militaire suprême, en tant que collectivité, qu'il appartenait d'exercer ce pouvoir, puisque ce conseil était constitué de fonctionnaires nommés, détenteurs de douze hautes fonctions de l'Etat, dont le caractère était essentiellement militaire, si je puis dire. Les membres du conseil militaire suprême devaient-ils être tous tenus collectivement responsables de la façon dont le Nigéria gérait ses relations internationales ? A qui les ambassadeurs étrangers présentaient-ils leurs lettres de

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créance à leur arrivée dans la capitale nigériane durant cette période ? Aucune réponse n'a encore été donnée à ces questions, ni à celles qu'a posées M. Tomuschat le 25 février (CR 2002/6, p. 23-24, par. 15-16).

21. Je comprends parfaitement que cette question mette M. Brownlie mal à l'aise. Il existe dans la langue anglaise un proverbe qu'il connaît sûrement et qui dit qu'«on ne peut pas faire de briques sans paille» (son équivalent français serait «à l'impossible nul n'est tenu»). On a malheureusement assigné à M. Brownlie la tâche de construire une argumentation imposante sans l'aide d'un seul fétu de paille. Aucune preuve digne de foi ne permet d'établir que la constitution empêchait le général Gowon se rendant à Maroua, à la fin du mois de mai 1975, en qualité de chef du gouvernement militaire fédéral et de président du conseil militaire suprême, d'exprimer le consentement du Nigéria à être lié par un instrument conventionnel tel que l'accord correspondant à la déclaration de Maroua. En outre, même si la Constitution le lui interdisait, il est parfaitement clair qu'en signant la déclaration de Maroua au nom du Nigéria, il ne commettait pas de violation «manifeste» des dispositions du droit interne nigérian relatives à la compétence pour conclure des

traités puisqu'en 1975, la position adoptée par la constitution du Nigéria à ce sujet était, au bas mot, extrêmement confuse et opaque. On pouvait difficilement s'attendre à ce que le président Ahidjo du Cameroun fût mieux informé de ces questions que le général Gowon lui-même.

22. Faire valoir la nullité de l'accord international correspondant à la déclaration de Maroua du 1er juin 1975 et du communiqué conjoint qui l'accompagnait au motif que ces instruments n'ont jamais été ratifiés par le conseil militaire suprême, c'est également un argument dénué de tout fondement. Aucun de ces instruments ne stipulait que leur entrée en vigueur était subordonnée à un échange d'instruments de ratification. En conséquence, en vertu du droit des traités, ces instruments appartenaient à la catégorie bien connue des «traités en forme simplifiée» qui, sauf disposition contraire du traité lui-même, entrent en vigueur au moment de leur signature. Le droit des traités n'énonce pas de règle supplétive, je dis bien, pas de règle supplétive imposant la ratification d'un traité qui n'est pas expressément soumis à ratification. Sinon, toute cette notion de «traité en forme simplifiée» — un outil très utile pour les relations internationales contemporaines — disparaîtrait purement et simplement et la communauté internationale serait privée d'un précieux moyen de conclure rapidement des traités.

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7. Le rapport entre les questions relatives à la frontière maritime et les questions relatives à la frontière terrestre

23. Après avoir examiné ce que M. Brownlie avait à dire sur le tracé de la frontière maritime jusqu'au point G, je vais passer à ce que M. Crawford avait à dire sur le même sujet, comme il nous l'a exposé le 6 mars. Ce matin-là, M. Crawford a consacré une partie de sa plaidoirie à la relation entre les questions qui ont trait à la frontière maritime et celles qui ont trait à la frontière terrestre; il a présenté à cette occasion un certain nombre de propositions que l'on pourrait qualifier de singulières. Plusieurs de mes collègues ont d'ailleurs déjà fait quelques brefs commentaires à ce sujet. Je dois vous dire qu'alors que je réfléchissais à la manière d'y répondre à mon tour, je ne pouvais m'empêcher de penser à un échange qui eut lieu à la Chambre des communes — la Chambre des communes britannique — entre Sheridan, le célèbre dramaturge anglais qui fut ministre dans l'un des nombreux gouvernements qui siégèrent à Londres à la fin du XVIIIe siècle, et son adversaire politique de l'époque, un certain M. Dundas. En réponse à un discours de M. Dundas particulièrement critique à son égard, Sheridan aurait dit ce qui suit : «M. Dundas peut

remercier sa mémoire de lui rappeler autant de plaisanteries, et son imagination, de produire autant de faits». Je n'ai rien à dire — vraiment rien — sur les plaisanteries de M. Crawford, mais je ne peux que rendre hommage à son imagination pour les prétendus «faits» qu'il invoque et sur lesquels il prétend se fonder. Ainsi, M. Crawford affirme sans rougir que «les Parties à la présente affaire n'ont pas seulement considéré les questions de délimitation maritime comme secondaires — pour autant qu'elles les aient même traitées —, mais [qu'elles] les ont même considérées comme distinctes, les découplant du litige relatif à la presqu'île de Bakassi» (CR 2002/12, par. 13). Mais c'est tout bonnement faux. Le Cameroun était disposé à négocier avec le Nigéria le tracé de la frontière maritime en direction du large à partir du point terminal situé dans l'estuaire de la rivière Akwayafé, tel qu'il est défini à l'article 22 de l'accord du 11 mars 1913, mais uniquement si les parties convenaient de faire partir la frontière de ce point précis. Le Nigéria a bel et bien accepté, au début des années soixante-dix, que la frontière maritime vers le large parte de ce point précis; le Cameroun l'a amplement répété et démontré dans ses écritures. Selon toute apparence, M. Crawford n'a pas écouté les plaidoiries de mes collègues MM. Mendelson et Thouvenin, le 22 février (CR 2002/5, p. 18-33). Je vous renvoie en particulier à l'exposé de M. Thouvenin, de ce jour-là, parce qu'il insiste sur les conséquences qu'implique pour la délimitation maritime le fait que le Nigéria a reconnu la validité de l'accord anglo-allemand du 11 mars 1913. A cet égard, je soulignerai une fois de plus la teneur de la note n° 570 en date du 27 mars 1962, par laquelle le Nigéria reconnaît expressément que la frontière, lorsqu'elle approche de la mer — je cite — «suit le cours inférieur de la rivière Akwa-yafé, sans le moindre doute, puis elle débouche sur l'estuaire de la Cross River». La Cour elle-même, dans son arrêt du 11 juin 1998 sur les exceptions préliminaires du Nigéria, rappelle que les deux Etats ont tenté à maintes reprises, avec plus ou moins de succès, de définir la limite maritime en direction du large à partir du point terminal de la frontière terrestre, qui a été fixé dans l'estuaire de la rivière Akwayafé par l'accord du 11 mars 1913 (voir *C.I.J. Recueil 1998, arrêt*, p. 301-302, par. 52-53). Cette succession de faits nous montre que la délimitation de la frontière maritime entre les deux Etats progressait lentement mais sûrement jusqu'au moment où, en 1978, à l'occasion d'une réunion à Jos, le Nigéria a soudainement annoncé qu'il dénonçait la déclaration de Maroua qui remontait à peine à trois ans.

24. Cela dit, Monsieur le président, je ne donne pas tort à M. Crawford lorsqu'il déclare que «les négociations relatives à la frontière côtière dans les années 1970 ont porté essentiellement sur des questions d'accès maritime» (CR 2002/12, p. 62); mais s'il en est ainsi, c'est uniquement parce que, jusqu'à la dénonciation unilatérale par le Nigéria de la déclaration de Maroua, en 1978, les deux Etats s'accordaient pour prolonger la frontière côtière vers le large à partir du point terminal de la ligne établie par l'accord du 11 mars 1913.

25. M. Crawford tente en toute innocence, apparemment, de dissocier le différend sur le maintien de la validité de la déclaration de Maroua du différend relatif au titre sur la presqu'île de Bakassi; c'est ce qui ressort de manière flagrante du nouvel argument qu'il avance dans sa plaidoirie du 6 mars, à savoir que «la conduite des Parties n'est compréhensible que si l'on considère les deux questions comme distinctes» (CR 2002/12, par. 15). Les deux questions dont parle M. Crawford sont à l'évidence l'octroi de permis d'exploitation pétrolière, d'une part, et, de l'autre, le différend relatif à Bakassi. Mais il va de soi que la conduite des Parties en ce qui concerne les concessions pétrolières dans la zone située au sud de Bakassi, dont M. Pellet vous a parlé ce matin, s'explique d'elle-même dès lors que l'on considère que le Nigéria, jusqu'à 1978 au moins, n'avait jamais remis en cause le titre camerounais sur Bakassi, pas plus qu'il n'avait contesté la validité de la déclaration de Maroua; tel est en tout cas le point de vue du Cameroun.

26. Monsieur le président, j'ai encore deux brèves observations à formuler concernant la position du Nigéria sur la délimitation maritime jusqu'au point G. La première est que, même si le Nigéria a fondé toute sa thèse juridique sur la prétendue invalidité de la déclaration de Maroua, il n'a apparemment pas contesté formellement la validité de la déclaration de Yaoundé II. Cette déclaration, adoptée par les deux chefs d'Etat le 14 avril 1971 à Yaoundé, fixe le tracé de la frontière côtière du point terminal situé dans l'embouchure de la rivière Akwayafé, tel que fixé par l'article 22 du traité anglo-allemand, jusqu'au point 12. Or, la nouvelle ligne que le Nigéria propose pour la délimitation maritime à proximité de la côte et qu'il fait partir du Rio del Rey signifie implicitement que le Nigéria dénonce également la validité de la déclaration de Yaoundé II, et c'est pourquoi le Cameroun dément la prétendue invalidité de cet instrument conventionnel. Le Cameroun s'appuie à cet effet sur les moyens de droit qu'il a continuellement invoqués, dans ses écritures comme dans ses plaidoiries, pour démontrer que la déclaration de Maroua est toujours

valide, car il estime que ces moyens s'appliquent *mutatis mutandis* dès lorsque la validité et le maintien de l'applicabilité de la déclaration de Yaoundé II sont à leur tour implicitement remis en cause.

27. Mon second point est que le Cameroun ne trouve aucun fondement juridique, quel qu'il soit, à l'appui de la nouvelle ligne partant d'un point situé dans le Rio del Rey que le Nigéria revendique pour la délimitation maritime à proximité de la côte. Les premiers spécialistes qui ont tracé la frontière, il y a environ cent quinze ans, ont unanimement rejeté l'idée de situer le point de départ à cet endroit lorsqu'ils ont découvert que le Rio del Rey ne faisait pas partie d'un système fluvial prenant sa source à l'intérieur du continent. La ligne revendiquée par le Nigéria est d'autant plus invraisemblable que son tracé en direction du large suivrait l'orientation apparemment donnée par un prétendu banc de sable, que le Nigéria affirme avoir découvert mais qui ne figure sur aucune carte officielle de la région autres que les siennes.

28. Monsieur le président, Madame et Messieurs de la Cour, j'en ai terminé. Je vous demanderai de bien vouloir maintenant, ou peut-être après la pause-café, appeler à la barre mon collègue M. Kamto, qui vous présentera, pour ce second tour de plaidoiries l'exposé du Cameroun sur la frontière maritime au-delà du point G.

Le PRESIDENT : Je vous remercie beaucoup, sir Ian. La Cour suspend sa séance pour une dizaine de minutes.

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

Le PRESIDENT : Veuillez vous asseoir. Je donne maintenant la parole au doyen Maurice Kamto, au nom de la République du Cameroun.

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Mr. KAMTO:

IX. THE SECOND MARITIME SECTOR

1. Mr. President, Members of the Court, I should like to make some observations on Nigeria's statements regarding the equitable line proposed and claimed by Cameroon. They will cover four points:

(1) I shall begin with some preliminary remarks on Nigeria's oral pleadings on this subject;

(2) I shall then show that the premises of Nigeria's reasoning are false and that, consequently, its conclusions are inevitably false as well;

(3) Next I shall speak about the method of construction of Cameroon's claim line in order to show why it is equitable;

(4) In conclusion, I shall explain why the Court must reject Nigeria's claims and why it should allow those of Cameroon.

1. Some preliminary remarks on Nigeria's oral pleadings

2. To begin with, some preliminary remarks, three in fact:

(1) Nigeria rebuts Cameroon's reasoning not by argument but by incantation;

(2) Secondly, Nigeria has conjured up a theory of "exclusion" delimitation in order to conceal its aims;

(3) Thirdly, the sole objective of the Nigerian negotiations is the conquest of new maritime territories.

A. Incantation is not argument

3. Mr. President, Nigeria has a very curious way of challenging Cameroon's arguments. Cameroon's "treatment" of the islands? Nigeria's counsel find it "irrational"[1]; the method of constructing the line? "Far-fetched"[2] and even "bizarre"[3] because it is "the product of a fertile
045 imagination"[4]; the equitable solution proposed by Cameroon? "Extravagant"[5] and "fanciful"[6]; Cameroon's position on the oil concessions? "Absurd"[7]; and Cameroon's pleadings, both written and oral? "Fanciful"[8] again, naturally. The question is not whether from time to time a party is entitled to use a particular word to describe some particular argument of its opponents which it considers inadequate. None of these words is taboo, and there have doubtless been instances where

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[1]CR 2002/13, p. 33, para. 24, Mr. Abi-Saab.

[2]*Ibid.*, p. 40, para. 54.

[3]*Ibid.*, p. 44, para. 71.

[4]*Ibid.*, p. 40, para. 58.

[5]*Ibid.*, p. 45, para. 77.

[6]*Ibid.*, p. 48, para. 88.

[7]CR 2002/12, p. 56, para. 1, Mr. Crawford.

[8]CR 2002/14, p. 65, para. 2, Mr. Abdullahi, Agent of Nigeria.

counsel for Cameroon have seen fit to employ one of them. The objection stems from the fact that here systematic recourse to this kind of language is made to serve as a process of reasoning. It is a novel process of "reasoning", based on the belief that the opponent's arguments can be swept away by a mere litany of words, by no more than the endless repetition of certain adjectives. This is a incantation, Mr. President, but it is not argument, because it proves nothing.

4. It is inherent in contentious proceedings that the parties' arguments diverge, because at the heart of every dispute there is a conflict of legal interests. But is does not suffice for one party to describe the other's arguments as "fanciful", "far-fetched", "irrational", "extravagant", "bizarre" or "absurd" in order to prove its case. It must still demonstrate legally the relevance of its own arguments in order to invalidate those of its opponent. Nigeria is far from having done this, as I shall show in a moment.

B. The theory of "delimitation by exclusion"

5. According to Nigeria, the maritime delimitation line proposed by Cameroon from point G onwards is an "exclusion line"[9] designed to put Nigeria out of the running, to exclude it from any subsequent delimitation in the Gulf of Guinea[10]. But who is excluding whom? And from what? Surely talking of "exclusion" means that the Nigerian approach to the maritime zone in question is in keeping with the "carve-up" approach it ascribes to Cameroon, and not the delimitation approach maintained by the Applicant? Nigeria's insistence that Cameroon should indicate the maritime

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zone which it claims suggests the same thing too. For Nigeria wants to be in charge of the carve-up, wants to know what falls to each State in the zone, and doubtless decide who gets what.

6. The true problem is not therefore that the line proposed by Cameroon is legally and technically debatable — indeed Nigeria's counsel said last Thursday that his criticisms addressed "the actual premises" of the line "rather than its details and precise path"[11]; the problem is not even that this line is not equitable. The only real problem is that it would exclude Nigeria from boundary contacts with the other States in the Gulf of Guinea. This may well be a geostrategic concern, conceived in the abstract and projected onto the entire region, but it is no kind of legal, or

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[9]CR 2002/13, p. 30, para. 5, Mr. Abi-Saab ; *ibid.*, p. 70, para. 64, Mr. Crawford.

[10]*Ibid.*, p. 30, para. 8, Mr. Abi-Saab.

[11]*Ibid.*, p. 29, para. 3.

even factual, argument. Because the mere fact of expressing this concern does not tell us what other State in the Gulf of Guinea Nigeria believes it essential to have a maritime boundary contact with, nor what legal reasons there are to justify its having one. At all events, if there is any exclusion — but Cameroon does not see what the exclusion is, or what it is from, or by whom it is done — it would be the work of the law and not the decision of Cameroon.

C. The purpose of Nigeria's maritime negotiations: maritime conquest

7. Nigeria has concealed reasons for condemning what it calls an "exclusion" delimitation and setting itself up as would-be guardian of the interests of Equatorial Guinea and Sao Tome and Principe: under cover of protecting the rights of these countries in the maritime zone concerned, what Nigeria is really seeking to preserve is the maritime conquests it has achieved at their expense.

8. As my eminent colleague and friend Professor Pellet pointed out in his statement in the first round[12], Nigeria, which is now clamouring for the application of a pure, strict and totally unadjusted equidistance approach, did not agree to its application in any of the bilateral delimitations which it effected either with Equatorial Guinea or with Sao Tome and Principe. In both cases it rejected the equidistance line in favour of a different line which sanctified the "oil fait accompli" — a line far more favourable to it — to the detriment of the other States concerned. Cameroon repeats that the treaties which Nigeria succeeded in concluding with those two States are not opposable to it, that it is not a party to them, and that they simply remain events — disputed events moreover — whose sole merit is to reveal the intentions of the other States concerned by the delimitation in the Bight of Biafra.

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2. The premises of Nigeria's reasoning are false and consequently its conclusions are inevitably false

9. I now come to the grounds of Nigeria's argument regarding the construction of the line proposed by Cameroon, or rather to what Nigeria's counsel has called the "deconstruction" of this line. In order to undo something you must have solid tools of the right kind. This is not the case here, either as regards the geography in the Bight of Biafra, or the configuration of the coastline in

[12]CR 2002/6, pp. 57-59.

the Bight, or the status of the islands, in this instance their effect on the delimitation. On these three points the premises of Nigeria's reasoning are false, and quite obviously its conclusions are inevitably false as well. Today, however, I shall confine myself to the first two points. My distinguished colleague, Professor Crawford, criticized Cameroon last Thursday for having said too much about Equatorial Guinea in its absence in the first round of pleadings (for reasons which I found difficult to understand, since he himself did not hesitate to refer abundantly to Equatorial Guinea in his statements!). I will nevertheless follow his prudent advice and Cameroon will not address this aspect of the question until it has heard the intervening State.

A. The geography of the Bight of Biafra and the relevant area

10. Mr. President, Members of the Court, in the first round Nigeria tried to refashion the geography of the Bight of Biafra to suit the purposes of its argument. It thus constructed a theory of a dividing line consisting of a string of islands, disclosed the existence of two island States in the Bight and utterly confused the geographically precise notions of relevant area and areas to be delimited, in defiance of the international jurisprudence on this subject. I should like to take up these different points in turn.

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(a) ***The theory of a dividing line consisting of a string of islands in the relevant area — the non-existence of two island States in the Bight of Biafra***

11. Nigeria has discovered in the Bight of Biafra a dividing line consisting of a string of islands which divides it into "two relevant areas, with the islands having two relevant frontages, one to the east and one to the west"[13]. This diagonal line of islands, it said, constitutes an "impervious screen"[14], which Cameroon has pierced, as though it were some kind of burglar. [Projection map No. 137.]

12. What exactly are we talking about here, Mr. President? What we see is a geophysical phenomenon which, millions of years ago, gave birth to a mountain range running through Cameroon from north to south, from the Mandara Mountains in the extreme north to Mount Cameroon on the Atlantic, and continuing, underwater that is, so as to give rise to the islands of

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[13]CR 2002/13, p. 39, para. 49, Mr. Abi-Saab.

[14]*Ibid.*, p. 39, para. 53.

Bioko, Principe, Sao Tome and Anobon. The question is whether these mountains and islands form a continuous chain, unbroken however far apart its links are, which forms a kind of natural "wall" of which Nigeria claims to be the guardian.

13. Quite obviously not, Mr. President. Everything depends on how close two mountains or two islands are to each other, or how far apart, in the context of the relevant area and/or the area to be delimited. In our case, the string of islands forming the screen is claimed to consist of the island of Bioko, the islands of Principe and Sao Tome, which form the archipelagic State of Sao Tome and Principe, and, further offshore from continental Gabon, the island of Anobon, which also belongs to Equatorial Guinea.

14. The fact is, as the sketch now on the screen (tab 137 in the judges' folder) shows, the land mass of the island of Principe is at the outer limit of the relevant area defined by Cameroon, and the islands of Sao Tome and Anobon are even much further offshore than that. What this relevant area really contains for the purposes of the maritime delimitation between Cameroon and Nigeria is the island of Bioko and a small part of the maritime space belonging to the archipelagic State of Sao Tome and Principe. Between these two elements there is no unity, either geographical — since more than 200 km separates the island of Bioko from Principe — or of legal status, and only the island of Bioko significantly affects the delimitation in the Bight of Biafra. And since an island is not a string of islands, it cannot in this case form the impervious wall which
049 Nigeria is attempting to erect. That is the geography, the physical reality. The line which cuts the Bight in two is geometry — but geometry which gives the lie to the geography, geometry which refashions nature.

15. The continental plateaux and shelves of the Gulf of Guinea display no geomorphological feature which might suggest the possibility of some kind of fault line. But even if there were one, an argument of this nature based on the idea of a tectonic line would be irrelevant. Both Libya and Tunisia tried to propound arguments of this kind based on plate tectonics and the geomorphological characteristics of the continental shelf in the *Tunisia/Libya* case[15], but unsuccessfully. [End of

[15] *I.C.J. Reports 1982*, paras. 52-61, and especially p. 57, para. 66.

projection.] Once this dividing line consisting of a string of islands disappears, then equally you lose two of the three relevant areas which Nigeria claims to have identified in the Bight of Biafra.

16. But the Nigerian discoveries are not confined to the insular dividing line. They have also enabled it to focus on "two island States which are at the heart of the problem"[16].

17. I presume that Nigeria is not claiming that Equatorial Guinea is an archipelagic State. There is no way it could come into that category under the Montego Bay Convention. There is no such legal category as an "island State"; Nigeria seeks to draw legal conclusions from a non-existent concept.

18. In fact, although Equatorial Guinea possesses an island, Bioko, and an islet, Anobon, it remains a continental State. The fact that France exercises sovereignty over various islands throughout the world does not make it an archipelagic State or an island State.

Of the total area of Equatorial Guinea, which is some 28,000 km^2, Bioko accounts for 2,000 km^2 or so, representing 7 per cent of the territory. The continental part of the country alone, Rio Muni, covers 26,000 km^2, or more than 90 per cent of the total area of the country. Admittedly Bioko is a fairly substantial island with a population of approximately 100,000, but we must remember that, in the case concerning the *Delimitation of the Continental Shelf (United Kingdom/France)*, the Channel Islands had approximately 130,000 inhabitants, even though their

050 area was smaller, and yet the court of arbitration refused to attribute to them the full effect claimed by Great Britain and decided that they were an enclave lying totally within the French continental plateau.

19. The imprecise use by Nigeria of the terms "island" and "island State" and the misconceptions it gives rise to are not fortuitous. No one can believe that the distinguished counsel of the Federal Republic of Nigeria are unaware of the relevant provisions of the Montego Bay Convention on this subject. Their choice of terminology is part of an approach enabling Nigeria's counsel to draw a radical legal conclusion from the presence of Bioko in the area to be delimited, as I shall show in a moment. First, though, I should like to demonstrate the mistaken nature, both

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[16]CR 2002/12, p. 66, para. 27, Mr. Crawford.

factually and legally, of the Nigerian conception of the relevant area and the length of the relevant coastlines.

(b) ***Relevant coastlines — relevant area — area to be delimited***

20. [Projection map No. 137.] According to Nigeria, the relevant coastline for the purposes of the delimitation of the maritime boundary between Cameroon and Nigeria runs from Akasso to a point where the land boundary between the two countries ends in the estuary of the Cross River. The two Parties therefore agree on what sector of the Nigerian coast has to be taken into consideration. This is not the case with the Cameroonian coast. In the view of Nigeria, the only sector of coast relevant in the present case runs from the point where the land frontier between the two countries ends to Debundsha Point north-east of Bioko. The reason, according to Nigeria, is that beyond Debundsha Point "the course of the Cameroonian coast southwards to the boundary with Equatorial Guinea is . . . blocked by the large island of Bioko"[17]. Nigeria's criticism of Cameroon is not only that Cameroon includes this part of its coastline in what it considers to be the relevant area for the purposes of the delimitation, but "that it goes on to appropriate to itself the entire coastal façade of Equatorial Guinea, as well as a good part of the coast of Gabon"[18].

21. This description of the Cameroonian coast suggests that only a rectilinear or evenly shaped and unindented coastline can be considered to be a relevant coastline for the purposes of a
051 maritime delimitation. For, even before speaking of the blocking effect of the island of Bioko in masking the south-eastern portion of the Cameroonian coastline from the Nigerian coastline, our opponents explain that, as soon as one moves away from the rather narrow region where the two coastlines adjoin around Bakassi, "the Cameroonian coast undergoes a radical change of direction, turning sharply southwards". There certainly must be different conceptions of what constitutes a "radical change" and a "sharp turn"! What is there in common between the sharp and radical change in the Nigerian coast beyond Akasso and the curved shape of the Cameroonian coast, whose only slight convexity [indicate this on the sketch on the screen] occurs only between Debundsha Point and Nachtigal Point?

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[17]CR 2002/13, p. 33, para. 22, Mr. Abi-Saab.

[18]*Ibid.*

22. To exclude all the rest of the Cameroonian coast, facing though it does the Bight of Biafra and the relevant Nigerian coast, on the pretext that it can only be taken into account at the expense of "piercing" the Bioko screen has no convincing geographical basis. France would never have had a maritime boundary with the United Kingdom beyond the Channel Islands if that kind of argument had prevailed. Far from being a factor preventing maritime delimitation, every maritime formation situated in the vicinity of a State's coastline is a relevant circumstance to be taken into consideration in order to achieve an equitable result. Bioko is in this situation in the present case, and Cameroon has taken due account of its presence in the proposed delimitation, as I shall show in a moment [end of projection and beginning of projection of map No. 138].

23. As regards the relevant area (the map at present on the screen is at tab 138), Nigeria claims that Cameroon does not seem "sure of its position"[19], and that it first defined the area in the form of a "rectangle" in its Memorial, before moving on in its Reply to delimit it as a "triangular area"[20]. Cameroon is gratified that Nigeria has finally managed to read its Memorial, which it filed in 1995. Scanty though my knowledge of geometry may be, I know of no rectangle which has only three sides. I say this, Mr. President, in order to show that the broken line in the sketch on

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page 544 of the Memorial of Cameroon indicated the outer 200 nautical-mile limit of the exclusive economic zone, as you can see on the sketch now on the screen and shown to you very rapidly by Nigeria last Thursday [end of projection].

24. Let us, though, examine the Nigerian theory on the notion of relevant area in greater detail. Nigeria dismisses the definition of the relevant area contained in Cameroon's written pleadings[21], but without offering a credible alternative. According to Nigeria, "a relevant area is determined by, or is a function of, the relevant coasts of the parties to the delimitation; these coasts are in turn defined as 'adjacent' or 'opposite'"[22].

25. Adjacent coasts, Mr. President, are coasts of two States which have a common land boundary. But the notion of adjacency does not *per se* determine the length of the relevant coasts.

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[19] *Ibid.*, p. 36, para. 37.

[20] *Ibid.*, p. 37, para. 43.

[21] CR 2002/13, pp. 36-37, paras. 40-43.

[22] *Ibid.*, p. 38, para. 45.

In particular, it does not imply that account will only be taken of the coastlines closest to the end point of the land boundary. It is the general configuration of the coastline in the region in which the maritime delimitation is being effected which determines the length of the relevant coasts. It is Nigeria's unusual conception, to say the least of it, of the relationship between the notion of adjacency and the relevant coast which leads it to define a relevant zone "beginning in the region where the Nigerian and Cameroonian coasts adjoin each other on the horizontal leg of the triangle in the north of the Gulf of Guinea", its reason being a change in direction of the Cameroonian coast beyond Debundsha Point — or more precisely a "radical change", which, as I have just shown, does not in fact exist.

26. If it is the case that the Cameroonian coast does not radically change direction at Debundsha, nothing prevents it from being taken into account all the way to Campo. And if Cameroon's relevant coast does not stop at Debundsha Point but at the boundary with Equatorial Guinea or, as Cameroon shows, at Cap Lopez in Gabon, the relevant area defined by Nigeria — a tiny stretch to the north of Bioko — disappears automatically. The two relevant areas created by a non-existent dividing line disappear; the triangular relevant area produced by a wrongly relevant coast disappears — and there is nothing left. There is something left, though: the relevant area as defined by Cameroon in its Reply, and which it has no reason to alter [projection map No. 139].

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This area represents an area bounded by the actual coastline from Akasso/Brasse in Nigeria to Cap Lopez in Gabon, where it is closed off by a straight line running thence to Akasso in Nigeria, a line which corresponds to what one might call the natural line closing off the Bight of Biafra.

27. And the relevant area as thus defined, which appears on the sketch-map just screened, meets all the geographical criteria enabling such an area to be delimited in the light of the practice of international fora. It is, generally speaking, a geographically and hydrographically uniform area which takes account of all the factors in the area concerned which might affect or influence the proposed maritime delimitation. Its limits answer that purpose and do not always coincide with the boundaries of the States which the delimitation concerns. The Bight of Biafra has the geographical and hydrographical characteristics which I have just mentioned. The pronounced concavity of the Atlantic coast in this area makes it a homogeneous maritime space whose delimitation is natural, since a line drawn from a point situated in the vicinity of Akasso in Nigeria to one situated at the

tip of Cap Lopez in Gabon indicates the natural outer border of this area with the remainder of the Atlantic Ocean [end of projection].

28. The fact that the closing line embraces the coast of Rio Muni, i.e., the continental portion of Equatorial Guinea, and part of the coast of Gabon is not without precedent. In the *Guinea/Guinea-Bissau* case, the Arbitral Tribunal took the view that a "valid method" consists of "looking at the whole of West Africa and of seeking a solution which would take overall account of the shape of its coastline"[23]. The Tribunal went on: "This would mean no longer restricting considerations to a *short coastline* but to a *long coastline*.[24] (The emphasis given to the two terms is the Tribunal's.) And in order to construct this line, the Tribunal opted for a system consisting in drawing a straight line "joining Almadies Point (Senegal) and Cape Shilling (Sierra Leone) and would thus involve two third States"[25]. It added: "The second system is better suited to the circumstance chosen by the Tribunal, i.e., the overall configuration of the West African coastline, and the Almadies Point-Cape Shilling line reflects this circumstance more faithfully."[26]

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29. In the present case Cameroon has not attempted to extend the relevant area to the entire Gulf of Guinea, which naturally embraces Cameroon and Nigeria and extends to the waters off Benin and Togo, since the geography prevents it from going further than Akasso in the west and Cap Lopez in the south-east.

30. This relevant area must be distinguished from the area to be delimited [projection map No. 140]. The latter takes account solely of the lengths of the coasts of Cameroon and Nigeria which are relevant for the purposes of the maritime delimitation sought by Cameroon, and of those two countries alone. As Cameroon has already explained to the Court, the support lines which served for the construction of the equitable line have been reduced by the length of the coast of the continental portion of Equatorial Guinea and by that of the coast of Gabon, which are non-relevant sectors. Those sectors are represented by the broken portions of the support lines running from Akasso to Cabo San Juan and from Akasso to Cap Lopez. The transverse red line [indicated on the

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[23] Award of 14 Feb. 1985, *RGDIP*, 1985-2, p. 528, para. 108. [*ILM*, Vol. 25 (1986), p. 297.]

[24] *Ibid.*

[25] *Ibid.*, p 528-529, para. 110. [*Ibid.*, p. 298.]

[26] *Ibid.*

screen] which connects Campo and the starting points of the pertinent sectors of the support lines used in the construction of the equitable line forms the south-eastern limit of the area to be delimited, which is different from the relevant area, which is bounded on the north-west by the sector of the Nigerian coast that runs from Akasso to the endpoint of the land boundary between Cameroon and Nigeria. It is this area to be delimited which reflects the general direction of the coasts.

31. As can be seen from the sketch on the screen, the relevant coasts of the Bight of Biafra in this area to be delimited show a slight east to west orientation, which explains the general trend of the equitable line and shows, contrary to what our opponents contend, that its construction meets the technical requirements called for by a rigorous delimitation.

B. The coastal configuration of the Bight of Biafra

32. Nigeria considers that the geographical situation of the Cameroonian coastline is not "uniquely unfavourable"[27] — Nigeria's expression, because it sees a precedent in a "very similar case"[28], that of the *Continental Shelf (Tunisia/Libya)*. This overlooks the fact that the geographical data in that case and ours are different. The situation of the Cameroonian coastline in the Bight of Biafra is more akin to that of the Federal Republic of Germany in the *North Sea Continental Shelf* cases than to Tunisia's in the *Tunisia/Libya* case. From another aspect, however, the area to be delimited does bear some similarity with the *Tunisia/Libya* case. I shall re-examine these two cases in turn.

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***(a)* Continental Shelf (Tunisia/Libya)**

33. [Projection map No. 141.] In this case, *Tunisia/Libya*, the position of the land boundary between Tunisia and Libya vaguely suggests that of the land boundary between Cameroon and Nigeria, since it lies more or less in the hollow of the gulf whose closing limits are Ras Tadjoura on the east and Ras Kaboudia on the west. This, leaving aside the concavity factor of the gulf's coastline, is the only possible element of comparison with Cameroon's situation in the Gulf of Guinea. As regards the remainder, "the geographical situation of Tunisia was not [merely]

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[27]CR 2002/13, p. 48, para. 88.

[28]*Ibid.*, para. 89.

dissimilar to that of Cameroon"[29], to use the mild euphemism of Nigeria's counsel, it simply had nothing to do with the situation of Cameroon in regard to the general configuration of the coastline in the relevant area, in this case the Bight of Biafra. For whereas Tunisia and Libya "shared", so to speak, the concavity of the coastline in the region in which the delimitation of their common maritime boundary was to be effected, in our present case only the Cameroonian coastline displays any concavity.

34. Cameroon is situated at the head of the Gulf of Guinea, surrounded on the west by Nigeria and on the south-east by Equatorial Guinea. This is not the case with Tunisia, whose coastline moves sharply away from the relevant area westwards, beyond Ras Kaboudia, turns towards the Gulf of Hammamet, moves northwards to Cap Bon and turns again into the Gulf of Tunis before sloping westwards to the frontier with Algeria.

35. As you can see from the sketch on the screen, the pincer effect at the two ends of the Cameroonian coast mentioned by my distinguished colleague and friend Professor Mendelson in

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his statement in the first round does not exist here. Pincers with two arms. At most there is only one arm. What is more, the concavity concerns only part of the Tunisian coast, the part between the Gulf of Gabes and Ras Ajdir, and also its effect is attenuated by the presence of a Tunisian island, the island of Djerba. [End of projection.]

36. [Projection map No. 142.] Nigeria insists on the similarity between the geographical configurations in the two cases because, in its opinion, they display "a concave coast hemmed in by foreign islands close offshore"[30]. But where are the "foreign islands close offshore" in the area to be delimited in the *Tunisia/Libya* case? The island of Djerba and the Kerkennah Islands are indisputably Tunisian, while the Italian islands, Lampedusa and Linosa, are not just very far offshore rather than "close offshore", but lie outside the area to be delimited, on the other side of the Italo-Tunisian delimitation line. In any case, you cannot say that a string of islands forms a dividing line which cuts the coastline of the Gulf of Guinea into two large segments, and in the same breath maintain that this concave coast is "hemmed in" by that string of islands! Thus that situation bears no relation to the Bight of Biafra and Cameroon's particular position within it [end

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[29] *Ibid.*, para. 90.

[30] CR 2002/13, p. 49, para. 97.

of projection]. In fact, to some extent Cameroon's situation is more reminiscent of that of Germany in relation to the North Sea, as far as both its position in the Bight of Biafra and the configuration of its coastline are concerned.

***(b)*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)**

37. [Projection No. 143.] I now come to the two *North Sea Continental Shelf* cases. We have here the sketch appended to the Judgment handed down by the Court in this case in 1969, which has already been screened by both Parties. It shows the situation of the German coastline at the head of a bight, admittedly a smaller one than the Bight of Biafra, but exhibiting the same concavity. This coastline is trapped between the boundary separating Germany from Denmark on the north and that separating Germany from the Netherlands on the south. As is Cameroon's coastline between Nigeria to the west and Equatorial Guinea to the south. The German coastline is a recessing coast, markedly concave and situated in the centre of the hollow as is the coastline of
057 Cameroon at the head of the Gulf of Guinea, much deeper though that is than the bight between Denmark and the Netherlands in the North Sea. What Cameroon would like to make clear here is the pincer effect of the bight and not its depth — the pincer effect produced by the endpoints of the land boundaries with Denmark on one side and the Netherlands on the other which Professor Mendelson explained so well in the first round[31], an effect which has a quite striking similarity with that produced by the endpoints of the Cameroon-Nigeria land boundary in the estuary of the Cross River and the Cameroon-Equatorial Guinea boundary at Campo.

38. As my distinguished colleague explained in the first round, this particular configuration of the coastline between Denmark, Germany and the Netherlands and the concave coastline to which it gives rise led the Court to relax the grip of the pincers, which otherwise would have denied the German coastline any projection whatsoever further seawards; there, in order to take account of those "special circumstances", the Court preferred to apply an adjusted equidistance formula rather than the equidistance method pure and simple. Having noted that "the claims of several States converge, meet and intercross" the Court stated: "A study of these convergences . . .

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[31]CR 2002/6, pp. 47-49, paras. 7-11.

shows how inequitable would be the apparent simplification brought about by a delimitation which, ignoring such geographical circumstances, was based solely on the equidistance method"[32]. Contrary to what counsel for Nigeria said, loosening the straitjacket of equidistance was not a matter of "minor aesthetic surgery" aimed solely at "mitigating the effects of minor features"[33]. What took place was a genuine equidistance adjustment whereby Germany increased its maritime space by 37.5 per cent by comparison with what the strict application of the equidistance rule would have given it.

39. In the present case, the cut-off effect produced by the pincers on the projection of the coastal front of Cameroon would be even more pronounced, since the bight concerned is sharply curved and semi-circular and Cameroon is situated right in its hollow. As in the *North Sea Continental Shelf* cases, the application of the equidistance method would produce an equally

058 inequitable result. Cameroon, incidentally, is only asking for one arm of the pincers to be slackened, in order not to damage the interests of third parties. [End of projection.]

3. The equitable nature of the line claimed by Cameroon

40. I should like to show now why Cameroon maintains that the line which it proposes is equitable, by going through the various stages in its construction. I shall then address Nigeria's criticisms regarding disregard of the criterion of proximity, on the one hand, and the role of proximity on the other.

A. The construction of the line: equidistance adjusted by reference to the relevant circumstances

41. Mr. President, Nigeria explained to you the way in which it understood the law and the method applicable in regard to delimitation. In the light of that statement, Cameroon takes it that, despite the disagreements between the two Parties — in particular on the relevant area and relevant coastline, the effect of the presence of a third State in the area to be delimited, the role of the criteria of proximity and proportionality and the role of equidistance — they agree on the fact that geography must not be refashioned, that any radical amputation caused by a proposed line must be

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[32] *I.C.J. Reports 1969*, p. 49, para. 89.

[33] CR 2002/13, p. 44, para. 73.

avoided and that any delimitation must seek an equitable result; and that, in order to achieve it, the most rigorous method is to take equidistance as a starting point and adjust it in the light of the relevant circumstances.

42. Mr. President, Nigeria referred to your statement to the Sixth Committee of the United Nations General Assembly in November 2001, which showed that this two-stage method is now the Court's established practice. Cameroon was obviously aware of that important statement, but thought it right that the Judgment of 16 March 2001, which lays down the Court's jurisprudence in this matter, should speak for itself. My friend, Professor Pellet mentioned the Judgment at the beginning of Cameroon's oral pleadings[34]. I should like to demonstrate how Cameroon applied it to the actual construction of the line which it proposes.

43. [Projection No. 144.] The sketch at present on the screen (tab 144 in the judges' folder) shows, as a broken line, the pure equidistance line between Cameroon and Nigeria, drawn without
059 taking any account of Bioko. As the sketch shows, the course of this line produces a considerable narrowing of the maritime space to the west of Bioko and even more so towards the south-western part of the island. The line also lies on an axis with Sao Tome and Principe and, if prolonged, would cut in two the maritime area delimited by that country.

44. Let us now go to the starting point of the equitable line proposed by Cameroon. This is point G, determined by the Maroua agreement. From that point, the boundary moves horizontally for a short distance of barely 2 km to point H, which lies on the equidistance line proposed by the experts at the time of the negotiations which resulted in the Maroua agreement. The lateral shift from point G to point H shows that, in order to construct the equitable line, Cameroon made a point of starting from the equidistance line, in accordance with the two-stage method which I just mentioned and whose importance the President of the Court drew attention to in the address to which I have referred. This shift represents a return to the equidistance line, but as a starting point and not a fixed point, or endpoint, for the delimitation of the maritime boundary seawards. This return to the equidistance line is the first phase of the two-stage method. The second phase is the

[34]CR 2002/5, p. 44, para. 20.

adjustment of equidistance in order to take account of the relevant circumstances, and this is represented by a deflection of the line westwards as it moves further out to sea.

45. The lateral shift from G to H is therefore the *sine qua non* of the application of this method, which gives expression to the latest state of the Court's jurisprudence in regard to the delimitation of maritime boundaries, whether that delimitation takes place between States with opposing coasts or, as in the present case, between two States whose coasts are adjacent. It is the primary condition, the indispensable condition, of any equitable maritime delimitation between Cameroon and Nigeria based on that method.

46. From point H onwards, the line gradually diverges from the equidistance line as it moves towards point I, in order to take account of the presence of the island of Bioko. In order to determine point I, Cameroon took account of the length of the southern coast of that island from Punta Oscura to Punta Santiago, some 29 km; this is the coastal frontage of Bioko which is capable of projection further seawards. This length, which Cameroon considers to be the pertinent sector of the coast of Bioko for the purposes of the equitable delimitation, represents the mean of the maximum and minimum breadths of the island, which are 35 and 26 km respectively. Taken in relation to the Bonny/Campo line, this pertinent sector has the effect of pushing the equidistance line westwards to point I. If in fact, starting from point H, we rotate the first part of the equidistance line so as to make it coincide with the line H-I, the result is the displacement of its point of intersection with the Bonny/Campo line by an amount equal to the average breadth of the island of Bioko, i.e., some 30 km.

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47. This adjustment of equidistance continues from I to J, but with Bioko being given a half-effect and the configuration of the coastline a more limited effect, the result of which is that the equitable line leaves to the west the theoretical equidistance line between the western frontage of Bioko and the relevant sector of the Nigerian coast. The purpose of limiting the effect attaching to the relevant circumstances in this sector of the line is to avoid the cut-off effect which the relevant front of the Nigerian coast would suffer if those circumstances were given their full effect.

48. From point J onwards the adjustment of equidistance continues with a somewhat more marked deflection of the equitable line between J and K, which this time leaves the theoretical equidistance line to the east — not to the west, but to the east — in order to take account of the

presence of the archipelago of Sao Tome and Principe. From K onwards the line simply points oceanwards, that is to say, to the outer limit of the zones within the respective jurisdictions of the Parties to the present case. [End of projection.]

B. Role of the criteria of "proximity" and "proportionality"

49. The argument based on the criteria of "proximity" and "proportionality" has been sharply criticized by Nigeria. Argument based on these criteria is not new. In the *North Sea Continental Shelf* cases, which concerned States with adjacent coasts as in the present case, the Court examined the role played by "proximity" in determining whether part of the continental shelf belonged to one State rather than another. Having found that there was no necessary, and certainly no complete, identity between the notions of "adjacency" and "proximity", the Court added that "the question of which parts of the continental shelf 'adjacent to' a coastline bordering more than one State fall within the appurtenance of which of them, remains to this extent an open one, not to be determined on a basis exclusively of proximity". And in equally clear terms it continued:

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> "Even if proximity may afford one of the tests to be applied and an important one in the right conditions, it may not necessarily be the only, nor in all circumstances, the most appropriate one. Hence it would seem that the notion of adjacency, so constantly employed in continental shelf doctrine from the start, only implies proximity in a general sense, and does not imply any fundamental or inherent rule the ultimate effect of which would be to prohibit any State (otherwise than by agreement) from exercising continental shelf rights in respect of areas closer to the coast of another State."[35]

50. Commenting on this passage in the Judgment, the Court of Arbitration in the case concerning the *Delimitation of Continental Shelf (United Kingdom/France)* observed: "This would seem to state explicitly that under certain conditions proximity may be the appropriate test or method for delimiting the boundary of the continental shelf; but that in any case the value to be attached to proximity as a method of delimitation depends on the individual circumstances of the case"[36]. And the Court of Arbitration added: "This Court of Arbitration sees no reason to adopt a different view of the role of 'proximity' in the circumstances of the present case"[37].

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[35] *I.C.J. Reports 1969*, pp. 30-31, para. 42.

[36] Decision of 30 June 1977, para. 81.

[37] *Ibid.*

51. Accordingly, like the Court in the *North Sea Continental Shelf* cases, the Court of Arbitration did not ascribe to "proximity" a role confined to the strict application of the equidistance rule. As far as the Channel Islands were concerned, it decided against the application of equidistance in order to enclave those islands within the French continental shelf. As to the Mer d'Iroise, the Court adjusted the equidistance line by attributing only a half-effect to the Isles of Scilly. But the point is whether the geographical circumstances in the present case require that any role should be attributed to this criterion at all.

52. I should like to observe that, whatever geophysical factor is given consideration — here plate tectonics, geology or geomorphology — Bioko lies on the natural prolongation of the Cameroonian continental shelf, in the geological sense of the term, of course. That island is closer to the Cameroonian coastline than to that of any other State in the region, from whatever point on the island the distance is measured. Because of this geographical proximity, there is what one

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might term a gravitational pull exerted by the continent on its landmass. Both in terms of the superjacent waters surrounding the island and of the continental shelf bounding it in the direction of the hollow of the Gulf of Guinea, it can be seen that the Cameroonian coastline forms a kind of arc around the island. The equitable line proposed by Cameroon thus limits vis-à-vis Nigeria the rights of Cameroon in the maritime spaces adjacent to that concave coastline by taking account of the presence of Bioko.

53. To turn now to proportionality, our opponents, despite the explanations given by Cameroon in its Reply and in its oral pleadings in the first round, persist in regarding this solely as a matter of proportionality of surface areas. Nigeria admits, however, that Cameroon is right in law in failing to define the area which the equitable line would generate. Having referred to Cameroon's persistence in refraining from doing that, Nigeria's counsel adds: "And it [Cameroon] is right, for it cannot do this in the absence of Equatorial Guinea and Sao Tome and Principe"[38]. Indeed, to refrain from any approach which might damage the legal interests of absent third States

[38]CR 2002/13, p 45, para. 79.

is for Cameroon not only a matter of conviction, but also represents the strict application of a rule established by the jurisprudence of the Court[39].

54. What is more, proportionality of coastline lengths, and proportionality of surface areas are both relied on by courts in their decisions, as is abundantly demonstrated by the case law cited by Cameroon in its written pleadings, and also in its oral pleadings in the first round[40]. I should nevertheless like to draw attention on this point to the terms of the Court of Arbitration's decision in the case concerning the *Delimitation of Continental Shelf (United Kingdom/France)*, since they indicate very aptly the role played by proportionality in a delimitation operation, by pointing out that it is not a mathematical criterion of rigorous accuracy. The Court stated that it "does not consider that the course of the boundary between the United Kingdom and the French Republic in that region depends on any nice calculation of proportionality based on conjectures as to the course of a prospective boundary between the United Kingdom and the Republic of Ireland"[41]. The Court added, after a painstaking examination of the role of the criterion of proportionality:

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> "the element of 'proportionality' in the delimitation of the continental shelf does not relate to the total partition of the area of shelf among the coastal States concerned, its role being rather that of a criterion to assess the distorting effects of particular geographical features and the extent of the resulting inequity"[42].

55. This is what Cameroon has sought to do in the present case, on the basis of the proportionality ratios between the different sectors of the relevant coastlines and of the proportions involved in the adjustment of equidistance in the light of the relevant circumstances, in order to produce an equitable result.

4. Conclusion

56. Mr. President, Members of the Court, in conclusion Cameroon believes that, for all the various reasons which my colleagues and myself have put forward, the Court cannot do otherwise than dismiss the claims of Nigeria. These, in so far as we understand them, consist in requesting you to endorse throughout the "oil practice line", as Alain Pellet demonstrated at the beginning of

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[39]See in particular *Monetary Gold Removed from Rome in 1943, I.C.J. Reports 1954*, p. 32; *Continental Shelf (Libya/Malta), I.C.J. Reports 1984*, p. 431, para. 88; *East Timor, I.C.J. Reports 1995*, p. 105.

[40]CR 2002/6.

[41]Decision of 30 June 1977, para. 27.

[42]*Ibid.*, para. 250.

the morning. That position is untenable. It is devoid of meaning inshore of point G, the sector in which the boundary is delimited by a fully valid agreement, the Maroua Declaration, as Sir Ian Sinclair has so ably showed once again. The alleged oil practice line has even less meaning beyond point G, where it becomes totally unrealistic.

57. May I also remind you that Nigeria remains as ever torn between a maritime boundary commencing at the estuary of the Cross River, which already exists on the basis of valid treaties, and an impossible boundary starting at the Rio del Rey — even modified as Nigeria would wish — but one it has no faith in since it takes scant trouble to plead its cause.

58. Cameroon, for its part, proposes a line constructed, I believe, with the necessary technical rigour and with the aim of achieving a result which respects the rights of all the States
064 concerned, that is to say, an equitable result. That is the line which Cameroon respectfully requests the Court to establish as the maritime boundary between itself and Nigeria.

I thank you warmly for your attention and would ask you, Mr. President, kindly to give the floor to the Agent of the Republic of Cameroon for a short statement.

The PRESIDENT: Thank you, Dean Kamto, and I now give the floor to H.E. the Agent of the Republic of Cameroon.

Mr. ALI: Thank you, Mr. President, let me begin by saying how happy I am to take the floor this morning in the presence of Judge Oda. Let us hope that, before the end of the proceedings, we will also have the pleasure of doing so in the presence of Judge Vereshchetin.

Mr. President, Members of the Court,

1. Professor Kamto's statement brings to a close the second round of Cameroon's oral argument, subject, of course, to what we will need to add after the statement by our neighbours from Equatorial Guinea next week. Moreover, this is why I shall take advantage of the fact that you yesterday authorized the Parties to summarize the conclusions which we, at least, will draw from the five weeks of hearings bringing these long proceedings to a close.

2. However, Mr. President, I noted that you wanted these final statements to be purely summaries and not to add any new elements to the Parties' oral arguments. Wishing fully to comply with that instruction, I have therefore decided to share with you today an idea culminating

in a concrete proposal, so that Nigeria can indicate its reaction to it. In general terms, this idea concerns the land and maritime delimitation.

Mr. President,

3. As stated several times in the last two days, we welcome the fact that the Federal Republic of Nigeria now accepts the validity of the instruments relied on from the outset by Cameroon, which delimit the boundary between the two countries and which, in the view of some, are even demarcation agreements. For the boundary separating Cameroon from Nigeria is not only delimited throughout its length but, in major portions, over more than 300 km, is also precisely demarcated, notably by the Obokum Agreement of 1913, not to mention the 790 km of river boundary, which does not lend itself to demarcation.

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4. The fact remains that counsel for Nigeria have sought to demonstrate that, if not legally debatable, these treaties were imprecise, obscure, deficient. On this point, Members of the Court, we rely entirely on your decision.

5. In all sincerity we are convinced that there is a great deal of exaggeration in Nigeria's position on this. Many of the allegedly 22 border sectors which it considers have not been properly described are fully delimited, and sometimes even demarcated. Other alleged defects are matters of demarcation, thus involving technical studies on the ground, not readily replaceable by rulings *in abstracto*; we have, moreover, indicated certain of them, which may be added to those identified by our opponents and there are probably others too. But let me repeat, should you find it appropriate yourselves to settle some of the problems raised by Nigeria — artificially so in our view — we would have no objection at all. Our sole concern is for the boundary to be determined definitively, whatever meaning is given to that term, which in our view our opponents are stretching too far.

6. Moreover, Mr. President, let me be perfectly frank: we will accept any decision the Court takes and will implement it faithfully and in full. We will do so out of respect for your institution and in the name of peace. However, the Government of the Republic of Cameroon would not want to be locked into bilateral discussions with Nigeria in the context of this case. We have had too many bitter experiences on that score; we have too often felt we have been "duped"; we have nurtured too many hopes, subsequently dashed, to be ready to attempt the experience again.

7. If the Court were to find that it was not able to settle all the technical points raised by Nigeria, if its decision left some uncertainties, we are ready to comply with all such decisions as a body set up under the auspices of an impartial third party might take in carrying out the necessary demarcation of the border sectors outstanding.

066 8. That body, which we should earnestly like to see set up by the Court, or under its auspices or, failing agreement between the Parties, by the United Nations, might, for example, besides representatives of the Parties, also include representatives from Germany, France and the United Kingdom. It would have to be granted extended powers as regards demarcation, even in the broad sense, if that were to prove necessary. But at the risk of repeating myself, let me stress that, in this case, we do not believe in the virtues of bilateralism.

9. And what applies to the land boundary applies equally to the maritime delimitation beyond point "G". We well know that, between States of goodwill, maritime delimitation normally takes place by agreement. But the unfortunate thing is that, each time an agreement has been reached — by dint of painstaking effort — Nigeria has quickly repudiated it. Here too, we feel that your decision will settle the dispute fully and finally. However, if for some unforeseen reason you found you were unable to settle the dispute completely, I should like to state, in the most formal manner, that Cameroon is at your disposal for the completion of the maritime delimitation process by any peaceful means, on the twofold condition that it does not leave us face to face with Nigeria and that it provides assurances of a real result.

10. This, Members of the Court, is what I wished to clarify this morning and, as I said, I propose, with your permission, Mr. President, to take the floor again next week for some more general comments.

11. On my own behalf, as on behalf of the entire delegation of Cameroon, I thank you most sincerely, Mr. President, Members of the Court, for your kind attention. Thank you.

The PRESIDENT: Thank you, Your Excellency. This marks the end of the second round of oral argument of the Republic of Cameroon. We will meet again on Thursday, 14 March at 10.00 a.m. for the second round of oral argument of the Federal Republic of Nigeria. The sitting is closed.

The Court rose at 12.50 p.m.