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Cour internationale de Justice

LA HAYE

International Court of Justice

THE HAGUE

ANNÉE 2002

Audience publique

tenue le jeudi 14 mars 2002, à 10 heures, au Palais de la Paix,

sous la présidence de M. Guillaume, président,

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

COMPTE RENDU

YEAR 2002

Public sitting

held on Thursday 14 March 2002, at 10 a.m., at the Peace Palace,

President Guillaume presiding,

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

VERBATIM RECORD

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

M. Couvreur, greffier

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

Le Gouvernement de la République du Cameroun est représenté par :

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

comme agent;

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

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

comme coagents, conseils et avocats;

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

comme agent adjoint, conseil et avocat;

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

comme conseiller spécial et avocat;

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

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

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

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

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

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

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

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

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

comme conseils et avocats;

The Government of the Republic of Cameroon is represented by:

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

as Agent;

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

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

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

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

as Special Adviser and Advocate;

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

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

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

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

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

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

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

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

Mr. Jean-Marc Thouvenin, Professor, University of Paris X-Nanterre, *Avocat* at the Paris Bar, Lysias Law Associates,

as Counsel and Advocates;

Sir Ian Sinclair, K.C.M.G., Q.C., *Barrister-at-Law*, ancien membre de la Commission du droit international,

M. Eric Diamantis, avocat au barreau de Paris, Moquet, Bordes & Associés,

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

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

comme conseils;

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

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

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

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

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

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

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

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

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

M. Ousmane Mey, ancien gouverneur de province,

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

M[e] Marc Sassen, avocat et conseil juridique, société Petten, Tideman & Sassen (La Haye),

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

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

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

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

as Counsel;

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

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

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

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

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

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

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

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

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

Mr. Ousmane Mey, former Provincial Governor,

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

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

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

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

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

M. Robert Tanda, diplomate, ministère des relations extérieures

comme conseillers;

M. Samuel Betah Sona, ingénieur-géologue, expert consultant de l'Organisation des Nations Unies pour le droit de la mer,

M. Thomson Fitt Takang, chef de service d'administration centrale au secrétariat général de la présidence de la République,

M. Jean-Jacques Koum, directeur de l'exploration, société nationale des hydrocarbures (SNH),

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

M. Paul Moby Etia, géographe, directeur de l'Institut national de cartographie,

M. André Loudet, ingénieur cartographe,

M. André Roubertou, ingénieur général de l'armement, hydrographe,

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comme assistants de recherche;

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M. Guy Roger Eba'a,

M. Aristide Esso,

M. Nkende Forbinake,

M. Nfan Bile,

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

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

as Advisers;

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

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

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

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

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

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as Research Assistants;

Mr. Boukar Oumara,

Mr. Guy Roger Eba'a,

Mr. Aristide Esso,

Mr. Nkende Forbinake,

Mr. Nfan Bile,

M. Eithel Mbocka,

M. Olinga Nyozo'o,

comme responsables de la communication;

Mme Renée Bakker,

Mme Lawrence Polirsztok,

Mme Mireille Jung,

M. Nigel McCollum,

Mme Tete Béatrice Epeti-Kame,

comme secrétaires de la délégation.

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

S. Exc. l'honorable Musa E. Abdullahi, ministre d'Etat, ministre de la Justice du Gouvernement fédéral du Nigéria,

comme agent;

Le chef Richard Akinjide SAN, ancien *Attorney-General* de la Fédération, membre du barreau d'Angleterre et du pays de Galles, ancien membre de la Commission du droit international,

M. Alhaji Abdullahi Ibrahim SAN, CON, commissaire pour les frontières internationales, commission nationale des frontières du Nigéria, ancien *Attorney-General* de la Fédération,

comme coagents;

Mme Nella Andem-Ewa, *Attorney-General* et commissaire à la justice, Etat de Cross River,

M. Ian Brownlie, C.B.E., Q.C., membre de la Commission du droit international, membre du barreau d'Angleterre, membre de l'Institut de droit international,

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

M. James Crawford, S.C., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre des barreaux d'Angleterre et d'Australie, membre de l'Institut de droit international,

M. Georges Abi-Saab, professeur honoraire à l'Institut universitaire de hautes études internationales de Genève, membre de l'Institut de droit international,

M. Alastair Macdonald, géomètre, ancien directeur de l'*Ordnance Survey*, Grande-Bretagne,

comme conseils et avocats;

M. Timothy H. Daniel, associé, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mr. Eithel Mbocka

Mr. Olinga Nyozo'o,

as Media Officers;

Ms René Bakker,

Ms Lawrence Polirsztok,

Ms Mireille Jung,

Mr. Nigel McCollum,

Ms Tete Béatrice Epeti-Kame,

as Secretaries.

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

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

as Agent;

Chief Richard Akinjide SAN, Former Attorney-General of the Federation, Member of the Bar of England and Wales, former Member of the International Law Commission,

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

as Co-Agents;

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

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

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

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

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

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

as Counsel and Advocates;

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M. Alan Perry, associé, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. David Lerer, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. Christopher Hackford, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

Mme Charlotte Breide, *solicitor*, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. Ned Beale, stagiaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

M. Geoffrey Marston, directeur du département des études juridiques au *Sidney Sussex College*, Université de Cambridge, membre du barreau d'Angleterre et du Pays de Galles,

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

M. A. O. Cukwurah, conseil adjoint, ancien conseiller en matière de frontières (ASOP) auprès du Royaume du Lesotho, ancien commissaire pour les frontières inter-Etats, commission nationale des frontières,

M. I. Ayua, membre de l'équipe juridique du Nigéria,

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

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

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

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

comme conseils;

S. Exc. l'honorable Dubem Onyia, ministre d'Etat, ministre des affaires étrangères,

M. Alhaji Dahiru Bobbo, directeur général, commission nationale des frontières,

M. F. A. Kassim, directeur général du service cartographique de la Fédération,

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

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

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

comme conseillers;

M. Chris Carleton, C.B.E., bureau hydrographique du Royaume-Uni,

M. Dick Gent, bureau hydrographique du Royaume-Uni,

M. Clive Schofield, unité de recherche sur les frontières internationales, Université de Durham,

M. Scott B. Edmonds, directeur des opérations cartographiques, *International Mapping Associates*,

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

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

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

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

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

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

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

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

Mr. Jalal Arabi, Member, Nigerian Legal Team,

Mr. Gbola Akinola, Member, Nigerian Legal Team,

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

as Counsel;

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

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

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

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

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Mr. Dick Gent, United Kingdom Hydrographic Office,

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

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

M. Robert C. Rizzutti, cartographe principal, *International Mapping Associates*,

M. Bruce Daniel, *International Mapping Associates*,

Mme Victoria J. Taylor, *International Mapping Associates*,

Mme Stephanie Kim Clark, *International Mapping Associates*,

M. Robin Cleverly, *Exploration Manager, NPA Group*,

Mme Claire Ainsworth, *NPA Group,*

comme conseillers scientifiques et techniques;

M. Mohammed Jibrilla, expert en informatique, commission nationale des frontières,

Mme Coralie Ayad, secrétaire, cabinet D. J. Freeman, *Solicitors*, City de Londres,

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

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

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

comme personnel administratif,

M. Geoffrey Anika,

M. Mau Onowu,

M. Austeen Elewodalu,

M. Usman Magawata,

comme responsables de la communication.

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

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

comme agent et conseil;

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

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

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

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

Mr. Bruce Daniel, International Mapping Associates,

Ms Victoria J. Taylor, International Mapping Associates,

Ms Stephanie Kim Clark, International Mapping Associates,

Dr. Robin Cleverly, Exploration Manager, NPA Group,

Ms Claire Ainsworth, NPA Group,

as Scientific and Technical Advisers;

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

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

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

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

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

as Administrators,

Mr. Geoffrey Anika,

Mr. Mau Onowu,

Mr. Austeen Elewodalu,

Mr. Usman Magawata,

as Media Officers.

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

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

as Agent and Counsel;

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

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

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

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

comme conseillers;

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

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

comme conseils et avocats;

Sir Derek Bowett,

comme conseil principal,

M. Derek C. Smith, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau du district de Columbia et du barreau de l'Etat de Virginie,

comme conseil;

Mme Jannette E. Hasan, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., membre du barreau du district de Columbia et du barreau de l'Etat de Floride,

M. Hervé Blatry, membre du cabinet LeBoeuf, Lamb, Greene & MacRae, L.L.P., Paris, avocat à la Cour, membre du barreau de Paris,

comme experts juridiques;

M. Coalter G. Lathrop, *Sovereign Geographic Inc.*, Chapel Hill, Caroline du Nord,

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

comme experts techniques.

Mr. Antonio Nzambi Nlonga, Attorney-General,

as Advisers;

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

Mr. David A. Colson, LeBoeuf, Lamb, Greene & MacRae, L.L.P., Washington, D.C., member of the California State Bar and District of Columbia Bar,

as Counsel and Advocates;

Sir Derek Bowett,

as Senior Counsel;

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

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

as Legal Experts;

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

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

as Technical Experts.

Le PRESIDENT : Veuillez vous asseoir. La séance est ouverte. Nous entamons aujourd'hui le deuxième tour de plaidoiries pour la République Fédérale du Nigéria. Je donne immédiatement la parole au chef Richard Akinjide San, coagent de la République Fédérale du Nigéria.

Mr. AKINJIDE:

1. Mr. President, distinguished Members of the Court. It is again my privilege to address this honourable and august Court in opening the second round of oral presentations for the Federal Republic of Nigeria. This is a great honour for me, appearing before the most powerful and the most prestigious court in the world. I have been associated with this case from its outset in March 1994.

2. Before I proceed with my presentation I would like to acknowledge the presence in court on my left of His Majesty the Obong of Calabar and his Majesty's Queen, and his senior Etubul of Bakassi, who is also sitting on the left of Her Majesty. To give them their full title, I state as follows: His Majesty Edidem, Professor Nta Elijah Henshaw VI, the Obong of Calabar, Treaty King, Natural Ruler and Grand Patriarch of the Efiks wherever they may be, and on His Majesty's immediate left is Her Majesty Mrs. Grace Henshaw, and immediately to the left of Her Majesty is His Royal Highness Etubom, Okon Etim Okon Asuquo III, who is the Etinyin Akamba of Bakassi.

3. Mr. President, I would like to begin with a comment on some of the remarks made by Cameroon's Co-Agent in his opening of Cameroon's second round presentation. I will, if I may, summarize them in English. On the one hand, he criticizes our team for "not playing the game at the public hearings" by repeating matters contained in Nigeria's pleadings. On the other hand, he said that there were new elements which would raise eyebrows. He accused us of contradictions and of trying to ensure that the Court does not rule on Cameroon's request. He said we claimed to be consistent but were inconsistent and that our inconsistencies developed the case in such a way as to bring us closer together in certain respects.

4. Mr. President, all these remarks leave me in a state of some confusion. Nigeria believes in giving the facts to the Court in an effort to assist the Court in reaching a decision. We have tried to do this in as straightforward a way as possible and will leave to the Court the question of deciding on the validity of our submissions. Nigeria has nothing to fear from the Court's scrutiny of its case.

One striking feature of the oral procedure is that it highlights the credibility of the assertions being made by each of the Parties. By credibility, Mr. President, I do not mean relatively minor matters such as an incorrect statistic or two — such errors can always be corrected. No, what I am referring to is the good faith of the Parties. In this respect it is my sincere belief that the Court, when it analyses all that has been said and written, will not find Nigeria wanting. Time and again, however, Nigeria's advocates have had to highlight issues on which Cameroon seems either to fail to face up to the truth and invents new allegations or in some cases avoids the truth altogether. I shall refer to some of these issues in my presentation today: others will become apparent during the presentations of my colleagues.

5. It is, however, Cameroon which seeks to make out that Nigeria is a country which cannot be trusted and fails to keep her word. Nowhere was this more apparent than in the closing remarks of Cameroon's distinguished Agent on Tuesday. He made it clear that Cameroon is, in fact, unable to sit down with Nigeria in the same room without third parties being present "to see fair play". This is a remarkable assertion, Mr. President, and one which has greatly saddened the Nigerian team.

6. It will not have escaped the Court's notice that, fortunately, Nigeria's other neighbours do not seem to suffer from the same paranoia. The examples of Nigeria's treaties with Equatorial Guinea and Sao Tome and Principe give the lie to Cameroon's assertion that Nigeria is an impossible neighbour. Yet, Cameroon cannot bear to see these examples of Nigeria's willingness to encourage international co-operation. We are accused of having used threats or worse in order to bully our neighbours into submitting to these treaties.

7. Mr. President and Members of the Court, Equatorial Guinea will be able to speak for herself during the intervention round next week. Sao Tome and Principe is not before the Court — to Cameroon's apparent regret. Nigeria regrets that too. If Sao Tome and Principe had been before the Court she would have been able to tell the Court how the two countries have negotiated one of the largest joint development zones in the world in which resources will be shared on a 60/40 basis: that is, 60 per cent will go to Nigeria, with a population of 120 million at least, and 40 per cent will go to Sao Tome and Principe which has a population of approximately 120,000. Such generosity on the part of Nigeria does not send out the message of a bullying State or a bullying neighbour.

8. In addition to the treaties I have just referred to, Mr. President, Nigeria is, as has been mentioned, negotiating a maritime boundary treaty with her western neighbour, that is, the Republic of Benin. When the result of those negotiations is seen, Nigeria does not think that she will be accused of having pressurized her much smaller neighbour into an unfair or inequitable bargain.

9. As to Nigeria's other boundaries, Nigeria and Benin have a Joint Boundary Commission which meets on a regular basis and is making real progress with resolving issues on their common boundary. The same goes for Nigeria's northern neighbour, the Republic of Niger. The National Boundary Commission is tackling these boundaries with all the benefits of modern technology, including GPS and satellite imagery. Maps that are being used are at a scale of 1:50,000 and are, for the most part, maps produced by DOS and IGN. There are issues relating to villages which are "on the line", yet these issues are being resolved amicably in a constructive atmosphere unhampered by fear, despite the disparity in the sizes of the respective populations.

10. Mr. President, so where is Cameroon's problem? Instead of sitting down with Nigeria, she has felt it necessary to come before this honourable Court and involve both Parties in lengthy proceedings involving huge expenses. At the end of the day, she asks the Court to set up some kind of arbitration procedure involving third parties. Mr. President, you will be hearing more from my colleagues concerning these proposals. I would just like to place on record that Nigeria finds it extraordinary that Cameroon seems now not only to be unable to trust Nigeria but now, also, she seems unable to trust the outcome of these proceedings, at least in so far as they relate to the land and maritime boundaries.

11. Following these remarks, I would like to move on to some of the specific issues raised in these proceedings and do so not only as a member of Nigeria's legal team since the inception of the case in March 1994, but also as a former Attorney-General and Minister of Justice of the Federal Republic of Nigeria during the last civilian government, that of President Shehu Shagari, who was in power from 1979 to 1983.

12. I think it is quite true to say, Mr. President and Members of the Court, that when President Shagari came to power, our relations with our neighbour Cameroon were cordial. Negotiations on boundary issues, many of which were listed by me during the course of the hearing

on Nigeria's second preliminary objection, were proceeding much as they had always done. There were joint committees of technical experts, political meetings and joint confidence-building measures. Progress may have been relatively slow, but this stemmed in part from the fact that there was no hint of any real trouble along our extensive common land boundary.

Bakassi

13. All this changed dramatically in May 1981. The incident of 16 May 1981 has been referred to right from the start of these proceedings. Nigeria, I believe, demonstrated beyond any reasonable doubt that Cameroon was the aggressor, yet Cameroon still attempts to paint the incident in different colours. What I can be sure about, Mr. President, and Members of the Court, is the effect it had on President Shagari's Government. That Government was galvanized. Out of the blue Nigeria had a neighbour, whom she had previously regarded as friendly, ambushing and killing members of her armed forces. The outrage in Nigeria was huge: President Shagari's Cabinet met in urgent session. It was a clear act of provocation on the part of Cameroon which might have had very serious consequences. But, in the event, Nigeria was not provoked. We decided to give Cameroon the chance to apologize. Cameroon, sensibly, took that chance. But a marker had been laid down. In my own case, as Minister of Justice and the Attorney-General, I resolved to probe more deeply into the legal situation regarding our common boundary. I caused extensive research to be undertaken. That research was still continuing when President Shehu Shagari's Government was overthrown by the military at the end of 1983.

14. In conducting that research, I came, in particular, to realize that Cameroon had a potential claim to Bakassi based on the 1913 Treaty. At the same time, however, I knew that there was something radically wrong here. Bakassi was, and so far as I was aware, had always been, regarded by Nigerians as being part of Nigeria. It was inhabited by Nigerians and it was governed by Nigerians forming part of the local government area in that region. There had not, so far as I was aware, been a Cameroonian claim to Bakassi as such. Over the years that followed, and in particular during the course of the preparation of Nigeria's written pleadings, I have become aware of the existence of one or two Protest Notes but I can honestly say that, at the time I was in office as Attorney-General, Bakassi had not, until May 1981, been regarded as a problem.

15. Mr. President, in retrospect this seems the more amazing when one considers the prominence which Cameroon has given to the 1975 Maroua Declaration in these proceedings.

16. I would like, if I may, to give my own perception of Maroua. In doing so, I should say that it is, I believe, a perception which is shared by many Nigerians. The Maroua Declaration was made on the 1 June 1975. Less than two months later, to be exact in July 1975, General Yakubu Gowon was overthrown in a bloodless military coup.

17. It was not long before Nigerians began to question the validity of the Maroua Declaration and, in particular, General Gowon's ability under the Constitution to have bound Nigeria to it. You will hear more on the constitutional position later in our presentations. What is quite clear, however, is that in 1978, in the Nigerian city of Jos, Nigeria had made it absolutely clear to Cameroon that she did not regard Maroua as being binding upon her. Cameroon has accepted that this was the position.

18. Mr. President and Members of the Court, I have to say that there were many practical reasons for Nigeria not to regard Maroua as a binding instrument, quite apart from the constitutional issues. One glance at the map on the screen and at tab 1 of the judges' folder will show the causes of Nigeria's concerns. [Graphic 1: map of Cross River/Calabar estuary.]

19. Mr. President, the Court has been shown variations of this map many times during the course of these proceedings. There are four major rivers which drain into the Cross River estuary. There is the Cross River itself, there is the Calabar River, the Kwa River and there is the Akwa Yafe River. The estuary gives access to Calabar, a large Nigerian city which was very nearly made the capital of Nigeria, but Lagos was chosen instead. At Calabar Nigeria has a major naval base. Nigerian navy vessels proceed up and down the estuary on a daily basis. The estuary is approximately 20 km wide. Any vessel passing up and down the estuary is well within gunshot of either bank of the estuary.

20. The implications are obvious, Mr. President. Can Nigeria seriously contemplate having a major part of her fleet passing up and down a narrow stretch of water on a regular basis beneath the guns of Cameroon? It is just not credible from a practical, military point of view.

21. Yet this would be the practical result if the Maroua Declaration were to be regarded as conferring sovereignty over Bakassi on Cameroon.

22. Nigeria admits that there is, for Cameroon, an access problem as far as the Akwa Yafe is concerned. This watercourse forms, for most of its length, a major land boundary. It would seem obvious that both Nigeria and Cameroon should have equal access to the river which divides them. In reality, however, the majority of Cameroonian traffic which comes up the Cross River estuary is bound for Calabar. Very little Cameroonian traffic, in fact, goes up the Akwa Yafe which is, in any event, only navigable for about 50 km before reaching the first set of rapids. This is probably because there is not much need for it to do so as Calabar, with all its markets, is the major local commercial centre.

23. Nigeria would have had no objection in principle to access to the Akwa Yafe being granted to the normal river traffic of Cameroon or indeed boats of any other nationality, subject to proper controls. I understand that the Court in the recent case of *Kasikili/Sedudu Island* between Namibia and Botswana recognized, of its own volition, access to the Botswanan southern channel of the Chobe River by Namibian tourist boats. Nigeria would have no difficulty with a similar arrangement granting access to the Akwa Yafe.

24. I said earlier that I commissioned research into the legal status of the Nigeria-Cameroon boundary. As a result of my efforts a considerable body of documentary evidence was amassed. I was, as I said, never able to take the matter very much further forward because of the downfall of the Government. I think however it is worth making two points here. The first is that, even at that early stage, I did have cause to look at the earlier Treaties of Protection and I was struck by the same thought that has been articulated so effectively by Sir Arthur Watts. As a common-law lawyer, I was unable to "trace title" from the Kings and Chiefs to Germany via Great Britain. The Roman doctrine *"nemo dat quod non habet"* is a basic concept in every legal system, as far as I know. The second point I would like to make is that, with all due respect to my learned predecessor in office as Attorney General, Dr. T. O. Elias, and his stature as a public international lawyer, I have no means of knowing what materials he had at his disposal when he wrote that opinion. A lawyer's opinion is only as good as his briefing.

25. Following the military coup at the end of 1983, I had effectively to live abroad for the next ten years or so. Whilst I thought from time to time about the Bakassi situation, I was not aware of outward change. Nigerian citizens continued to live in peace on Bakassi as far as I was

aware. No doubt there continued to be occasional harassment by Cameroon gendarmes but, in a way, there was nothing new in that. It was well known that Cameroon gendarmes were poorly paid and that the Nigerians living in Bakassi and, indeed, in other border regions, were hard working and, relatively speaking, prosperous.

26. Mr. President, one has only to look at the fishing fleet sailing from West Atabong to see that these are serious fishermen — we counted nearly 100 large canoes on our field trip in 1997. If you visit mainland Atabong you will see not only large open ferry boats transferring people to and from the mainland to the Atabongs on Bakassi — that is West Atabong and East Atabong — but also huge quantities of fish being landed and loaded into refrigerated trucks to be transported inland. Fish is, and has always been, an important staple in the Nigerian diet.

27. By contrast, as I know from having spoken to the Nigerian fishermen on our field trips, there is no great activity by Cameroon fishermen along the coast. At West Atabong we have fishermen from as far afield as Ghana, Benin and Togo, fishing freely alongside Nigerians in the waters in and around Bakassi. Seldom, if ever, do Cameroon fishermen appear. When they do appear Nigeria does not shoot them. Regrettably, that has not been the case with our neighbours, as Nigeria's counter-claims have shown, and by that "neighbour" we mean Cameroon. In any event, the existence of a peaceful, well organized and relatively prosperous community living near the borders of Nigeria has, over the years, been an irresistible target for Cameroonian officials intent on traditional methods of supplementing their no doubt meagre personal income.

28. The Court has seen the photographs of Bakassi provided by Nigeria. It has also seen the short video. The Court will therefore have some understanding of the topography of the area. Cameroon's counsel called into question the descriptions of Bakassi vegetation given by Nigeria in various pleadings and in her first round speeches. He also called into question the ability of the area to support the population claimed by Nigeria.

29. It is regrettable, but perhaps unsurprising, that Cameroon, although she claims to administer the territory, has not been able to produce any visual evidence of her activity on Bakassi, either present or past. Had Cameroon been able to see for itself how the population on Bakassi is distributed, it would not have made the comments that it did.

30. Cameroon's counsel did a rough calculation of the area of Bakassi and came up with entertaining analogies between Bakassi, the Netherlands and Manhattan. Interestingly, he was probably closer to the mark with his Manhattan analogy than with the Netherlands, which he described as Europe's most densely populated country. One does not have to go very far out of The Hague, or even within The Hague itself, to see that houses occupy large sites, many have gardens and in the country they are frequently surrounded by acres of glasshouses and tulip fields.

31. Mr. President and Members of the Court, Bakassi is not like that. The houses, many of which are built of light materials such as cane and palm leaves, are literally cheek by jowl. It is difficult often to tell where one house ends and the next house begins. The scarcity of land makes it necessary to utilize every available square metre. If you look at the settlements comprising houses on stilts, you can see those houses stretching for perhaps 1 km or more along the riverside with serried ranks of houses behind. A small example of this type of village is shown on screen now and at tab 2 in the judges' folder [graphic 2: stilt village]. Each house will contain a fisherman, his wife or wives and children, grandparents and perhaps members of the extended family as well, in the African tradition. Even on Manhattan they do not pack people in like that, do they?

32. Mr. President and Members of the Court, the same is true of the land utilization on dry land at places like the Atabongs — that is West Atabong and East Atabong — and at Abana. Those are settlements which are built on low-lying sandy promontories. The streets are so narrow that if you stretched out both arms you would touch the buildings on the other side. This is the reality of the villages nestling in the mangrove areas.

33. Of course, as one moves north, as the Court has seen from the map of Bakassi which has been shown so frequently, towns like Archibong are no longer in the mangrove belt and that is why one saw extensive areas of green open spaces near the schools in the video presentation.

34. By the time I returned to Nigeria in late 1993, the situation in Bakassi had clearly deteriorated considerably. In fact, so much had it gone bad that the Government felt it necessary, as we know, to send in army detachments in order to protect the local population and in order to quell unrest that had arisen as the result of the competing claims of Cross River and Akwa Ibom states — both of them in Nigeria. In no sense could that be termed an invasion, as Cameroon is so

fond of describing it. There had always been Nigerian troops in the area, as the incident of 1981 demonstrates. The resources were increased at the end of 1993 because of perceived threats to Nigerian sovereignty over the Bakassi Peninsula.

35. Cameroon's claims to the substantial Nigerian population which lives on Bakassi are just incomprehensible to Nigeria. Mr. President, as Cameroon has been fond of saying in these proceedings, she always "offers hospitality" to a substantial Nigerian population in Cameroon. Why does she want more Nigerians to join the party? In particular, why should she want a large group of Nigerians who clearly feel very strongly about their nationality and ties to Nigeria? It seems to me that Cameroon would only be storing up trouble for herself with the people of Bakassi if she were to succeed in her claims.

36. Mr. President and Members of the Court, Cameroon, at one point, characterized Nigeria's so-called "occupation" of Bakassi as being motivated by greed for its mineral resources. This analysis ignores the tremendous good fortune Nigeria enjoys of the rich hydrocarbon resources to be found in the Niger delta area and out to sea where the seabed once formed part of the same delta structure. Nigeria really has no need, and commercial companies certainly have no desire, to exploit areas on the margin of Mount Cameroon basalt ridge where oil and gas are relatively scarce and, what is more, expensive to extract. The harsh fact is that Bakassi is not, and has never been, an area of high prospectivity.

37. We have seen from the figures produced by Cameroon in its final round of pleadings, the tremendous imbalance in oil reserves between Cameroon and Nigeria. This is clearly unfortunate for Cameroon. However, even if any reserves which might lie under Bakassi were one day deemed to be commercially viable, it is hard to imagine that they would make any significant difference to Cameroon reserves. Any theoretical gain has to be set against the potential disruption of the lives of many thousands of Nigerians in this generation and for generations to come.

38. Mr. President, that brings to an end my submissions relating specifically to Bakassi. I would like, however, if I may, to move on briefly to Lake Chad.

Lake Chad

39. Mr. President and distinguished Members of the Court, Cameroon's claims to the former bed of Lake Chad and certain islands in what currently remains of the lake follow a similar pattern to the claims she has made over Bakassi. As Mr. Brownlie, Q.C., has so clearly and brilliantly explained, this is an area over which title has yet to be determined. It is, in the areas claimed by Nigeria, inhabited by a population of farmers and fishermen who come mainly from Nigeria and not at all from Cameroon. When the legal team visited Darak in 1997 we could not fail to be impressed by the fact that we were surrounded not by just a few Nigerians but literally by hundreds as we walked towards the main settlement on the island. As you can see from the photograph now on screen and at tab 3 in the judges' folder, the Darak crowds could be seen; all of them Nigerians. [Graphic: Darak crowds.]

40. Darak is a major population centre and it looks to the Nigerian Government, both local and federal, as well as the State Government, for its governance. This is true of all the villages which we visited on our trip across the Lake bed. Any visitor to the area will readily see that every village owes its allegiance to Nigeria and, as our account of the administration of the area has shown, it is Nigeria that looks after the population in terms of security, health care and education, as well as collecting tax.

41. Once again, Mr. President and Members of Court, Nigeria never had any cause to doubt her own sovereignty over this area until it was characterized as territory which had been "illegally occupied" in Cameroon's protest Note of 11 April 1994. There had, again, been sporadic attempts by local Cameroonian forces to raise taxes and even an attempted military occupation. This military action by Cameroon does not appear to have been preceded by any diplomatic moves. If central government in Cameroon had really been concerned about what it now claims to be illegal occupation, one would have expected to see protests, or, at the very least, the matter being raised by the Cameroon representatives in the LCBC. Nigeria's legal team has scoured the minutes of LCBC meetings since the inception of the Commission and those minutes are lodged at the Court for all to see. Nowhere in them does Cameroon raise the issue of illegal occupation. On the contrary, Cameroon's security forces patrol with the Nigerian forces in an evident show of solidarity in the area.

42. Once again, as with Bakassi, one is at a loss to understand why Cameroon wishes to absorb this large Nigerian population which is currently being successfully administered from Nigeria at no cost to Cameroon. There is, not even, so far as is presently known, the lure of oil in this particular area of Lake Chad.

43. One is forced also to take note of what is said in the report of the Special Rapporteur submitted to the United Nations Commission on Human Rights in November 1999. This document has been lodged with the Court by Nigeria. The Court may have noted in particular the report of the lawless situation the Special Rapporteur found especially in Northern Cameroon. Mr. President, Members of the Court, I venture to say that private armies operating under local chiefs are not an attractive prospect for the maintenance of law and order amongst the Nigerian population in Darak and in the surrounding villages.

Other matters

44. I shall now move on very briefly to the other aspects of this case. Nigeria's eminent counsel have demonstrated in a clear, calm way, how Cameroon's claims in this case are based on bluster and unfounded assertion. They have shown how Cameroon, even in these proceedings, has had to back off when she comes up against the harsh reality of the facts. In the memorable words of Sir Arthur Watts, Q.C., on the final day of Nigeria's first round presentation:

> "Cameroon having abandoned its claim to Tipsan, and having abandoned individual responsibility claims, and having tried to abandon its request to have the land boundary specified definitively, and having abandoned a succession of its earlier maritime boundary lines, the remnants of Cameroon's case are looking rather tattered" (CR 2002/14, p. 31, para. 26).

45. The proposals made by Cameroon's distinguished Agent on Tuesday referred to by me at the beginning of my speech seem rather to confirm Sir Arthur's view of Cameroon's claims.

Land boundary

46. I need not remind the Court that the whole land boundary issue came before the Court, despite Nigeria's fifth preliminary objection, largely on the basis that there was alleged to be a dispute over the border at Tipsan, which now turns out not to be so.

47. On our 1997 field trip we also visited some locations on the land boundary. We had hoped to visit Tipsan ourselves but the length of the journey from Yola proved to be such that we were only able to get as far as Toungo, which is about 24 miles short of Tipsan. The state of the roads was so that further progress would only have resulted in our arriving at night. We were thus not able, on that occasion, to take photographs, unlike counsel for Cameroon. However, as the Court knows from the preliminary objections, we did visit Lip and were mistaken by our opponents for having been a Nigerian raiding party. We took photographs of the hills surrounding Lip and it is possible from those photographs to see what complex and remote terrain this is. As you can see from the photograph on screen, and at tab 4 in the judges' folder, this is rough country. And the graphic is now being shown, of the hills beyond Lip [graphic 4: Hills beyond Lip]. Mr. President, it was a two-day journey to Lip and two days back. All I can say as a lay person is that, having seen some of these locations, I would hate to see a boundary commission carrying out a demarcation without having clear guidance from the delimitation treaty as to where I should start and finish my demarcation exercise.

State responsibility

48. Mr. President and Members of the Court, time and again Cameroon has asserted that incidents have taken place on the border which, on further investigation, turn out to be little more than what might be termed "cattle rustling". Nigeria comprehensively demolished the State responsibility claims made by Cameroon in its Memorial and Observations on Nigeria's Preliminary Objections. She has comprehensively demolished the further claims made in Cameroon's Reply and she has comprehensively demolished the later claims that Cameroon has made by correspondence and other means.

49. Mr. President, I talked about credibility at the beginning of this speech. I do with respect submit that Cameroon has a serious credibility problem with regard to these claims.

Maritime boundary

50. I do not claim to be a maritime boundary expert. During my period in office as Attorney-General and the Minister of Justice, I sat for four years as the leader of the Nigerian delegation to the Law of the Sea Convention negotiating sessions and I signed that treaty as well as

the Final Act at Montego Bay on behalf of Nigeria. My understanding of Cameroon's claims is that, as presently expressed, they would cut into well-established Nigerian offshore oilfields. Were this to be permitted, Mr. President and Members of the Court, Nigeria would presumably face compensation claims from oil operators running into billions of dollars. This is not something Nigeria can face with equanimity. However, we also saw from Professor Crawford's presentations that Cameroon's claims do not accord with any known precept of international maritime boundary law, so it may be that Nigerian fears on this account are unfounded.

Conclusion

51. Mr. President and Members of the Court, before I conclude my presentation and inform the Court how Nigeria proposes to spend the remaining time in this second round, I would like, with respect, to mention that His Majesty the Obong of Calabar, whom I introduced at the beginning of this presentation, will be assisting the Nigerian team with answers to some of the questions posed by Judge Kooijmans. The Obong is the Grand Patriarch of the Efiks. The loss of Bakassi would be a serious matter for Nigeria: the loss for the Obong of Calabar would be, proportionately, of an even greater magnitude.

52. Following my presentation, Ian Brownlie, Q.C., will be dealing with Bakassi from independence. That will complete the morning session.

53. This afternoon, Alastair Macdonald will speak again on the land boundary and he will be followed by Sir Arthur Watts, Q.C., also speaking on the land boundary and on Bakassi pre1960. The afternoon session will finish with Ian Brownlie, Q.C., speaking on Lake Chad.

54. Mr. President and Members of the Court, tomorrow Professor Georges Abi-Saab will open on State responsibility. That subject will again be taken up by Sir Arthur Watts, Q.C., and he will be followed by Professor James Crawford, S.C., on counter-claims. Professors Abi-Saab and Crawford will then address the maritime boundary, and our presentations will be brought to a close by Nigeria's Agent.

Mr. President and Members of the Court, thank you for your attention, and I would, with respect, ask you to call upon Mr. Brownlie. Thank you very much.

The PRESIDENT: Thank you very much. Je passe maintenant la parole au professeur Ian Brownlie.

Mr. BROWNLIE: Thank you, Mr. President.

POST-INDEPENDENCE BAKASSI

1. Mr. President, distinguished Members of the Court, it is again a privilege to address the Court in the second round. Mr. President, I have been counsel in more than 30 cases before this Court. No doubt some cases have more importance than others. The more important cases involve major oil resources, or the use of force, for example. The present case is among the more important on any scale, and the principal reason is that it concerns the people — the people — of Bakassi.

2. As the distinguished Agent of Nigeria pointed out in the first round, this case is seen by Nigeria as the Bakassi case. Whatever value Bakassi may have in resource terms, Bakassi is the historic homeland of the Efik and Effiat people and is the permanent home — the permanent home — of 156,000 Nigerians. The connection with Nigeria forms part of the identity of the Efik and Effiat peoples and their culture.

3. Against this background any change of the status quo which would leave the population of Bakassi, as Nigerian nationals of Efik culture, in an alien setting, would be fundamentally unjust, and would be deeply resented.

4. Mr. President, this case is unique in the Court's caseload in that it concerns territory connected with a particular ethnic group, and it is therefore as much about a community as it is about territory as such. And this essential factor plays a leading role in the basis of title relied upon by Nigeria.

5. As I shall demonstrate, the Nigerian basis of title, historical consolidation, is particularly apt in its reflection of the human factor in this case.

The Nigerian position: propositions

6. Mr. President, it will be helpful to the Court if I re-present the key Nigerian position in a series of propositions.

7. First, the claim of Cameroon is treaty-based, exclusively. Cameroon relies upon the Treaty of 1913.

8. Second, in the view of Nigeria the Treaty of 1913 has not been implemented in respect of Bakassi, and was ineffective to achieve the purported transfer of sovereignty to Germany.

9. Third, in accordance with this view, Nigeria retained an original title in respect of Bakassi, and the title also invoked by Nigeria, historical consolidation of title, has the role of providing a confirmation of that original title.

10. Fourth, but Nigeria is also arguing in the alternative. Thus, even if it be supposed that the Treaty of 1913 were effective in relation to Bakassi, in any event, Nigeria has title on the basis of historical consolidation of title as a process which has effected a lawful change in the treaty-based title.

11. And fifth, it is well recognized that a treaty-based title may be modified or displaced by lawful means. This proposition would seem to be obvious, but in any case it is confirmed by a series of respectable authorities.

12. In an article published in 1957 Sir Gerald Fitzmaurice stated that the revision of a treaty could result from practice or conduct: I refer to the *British Year Book*, Vol. 33 ((1957), p. 203) at page 225.

13. In a draft article, Article 68, agreed in 1964, the International Law Commission recognized that the modification of a treaty could result from subsequent practice. The same draft article appeared as Article 38 in the final draft articles of 1966.

14. In the first round I quoted the opinion of Michel Virally to the effect that historical consolidation of title could produce a lawful effect even if this prevailed over a prior treaty-based title (*Recueil des Cours*, Vol. 183 (1983-V), pp. 147-148).

15. The opinion of Virally reflects the Award of Judge Huber in the *Island of Palmas* case (*RIAA*, II, pp. 845 *et seq.*). A key passage in the Award reads as follows:

> "If on the other hand the view is adopted that discovery does not create a definitive title of sovereignty, but only an 'inchoate' title, such a title exists, it is true, without external manifestation. However, according to the view that has prevailed at any rate since the 19th century, an inchoate title of discovery must be completed within a reasonable period by the effective occupation of the region claimed to be discovered. This principle must be applied in the present case, for the reasons given

> above in regard to the rules determining which of successive legal systems is to be applied (the so-called intertemporal law). Now, no act of occupation nor, except as to a recent period, any exercise of sovereignty at Palmas by Spain has been alleged. But even admitting that the Spanish title still existed as inchoate in 1898 and must be considered as included in the cession under Article III of the Treaty of Paris, an inchoate title could not prevail over the continuous and peaceful display of authority by another State; for such display may prevail even over a prior, definitive title put forward by another State." (At p. 846.)

16. In this same general context a title inherited on the basis of *uti possidetis juris* can be modified or displaced by lawful means, such as acquiescence. I pointed out before that this was the emphatic view of the Chamber of the Court in the *Land, Island and Maritime Frontier* case. The pertinent passages will be indicated in the transcript (paras. 67, 80, 81, 169, 176, 280, 284, 341, 345, 364 and 368).

17. Thus, Mr. President, Members of the Court, even if, for the sake of argument, the Treaty of 1913 were taken as valid and fully implemented, Nigeria would still have lawful title on the basis of historical consolidation of title, with particular reference to the post-independence period. In other words, Nigeria's title does not necessarily depend on the legal status of the Treaty of 1913.

18. I take pains to emphasize the freestanding character of the title by historical consolidation since the independence of Nigeria because counsel for Cameroon misreported the position of Nigeria in the second round.

19. Thus Professor Shaw stated that the Nigerian title relates exclusively to the original title of the Kings and Chiefs of Old Calabar (CR 2002/16). This is not the position of Nigeria and this has been spelled out on three occasions: in the Counter-Memorial, in the Rejoinder, and again in my presentation in the first round.

20. Professor Shaw also asserted that the case for historical consolidation rests exclusively upon the Treaty of 1884, but again this is not the position of Nigeria. The title based upon historical consolidation in the post-independence period is freestanding and self-sufficient.

The legal origins of the concept of historical consolidation of title

21. At this stage it is necessary to recall the precise legal origins of the concept of historical consolidation of title. Nigeria has given a detailed account of the origins of historical consolidation of title in the Counter-Memorial, at pages 221 to 223, and in the Rejoinder, at pages 85 to 90. Its position in the doctrine is well-established. The concept has been expounded most thoroughly in

the writings of Charles De Visscher, including the following: *Théories et Realités en Droit International Public*, first edition, 1953. The fourth French edition was published in 1970. In 1957 an English edition of the first French edition was published, in a translation by Professor Corbett. The second book is the study entitled *Problèmes d'Interprétation Judiciaire en Droit International Public*, published in 1967. And thirdly, there was the monograph entitled *Les Effectivités du Droit International Public*, published in 1967. And it was, of course, Charles De Visscher who did much to make the term *effectivité* current.

22. At this point it is worth emphasizing that the concept does not consist of a new doctrinal invention, even in 1953. Rather it has taken the form of a reflection in the doctrine of the various aspects of the classical decisions, the well-known jurisprudence, on acquisition of title to territory. What Charles De Visscher and others were doing in formulating the concept of historical consolidation was to produce a more precise and more sophisticated analysis of the process of adjudication in such cases, than had previously emerged from the doctrine.

23. Thus the concept does not involve a sudden break in the developments of the law or a casting aside of useful experience. At the same time, the concept does involve a certain evolution in legal thinking. This has been recognized by a former President of this Court. In his monograph on *The Acquisition of Territory in International Law*, published in 1963, Sir Robert Jennings had this to say:

> "But the idea of historical consolidation is something more than a terminological reform. It opens the door to a mode of acquiring title that is, or at least may become, subtly different from what is found in the old learning about occupation and prescription. Prescription, as we have seen, is based upon a peaceable, effective possession — a possession as of a sovereign extending over a considerable period. But such a possession may not be self-evident in a disputed case. It must, therefore, be proved, and for the purpose of this demonstration, a great variety of evidences may be relevant — particularly the attitude of third States, because repute is always an important factor in any question concerning rights over land. But the notion of consolidation introduces something over and above the notion of *evidences* of sovereign possession; for these factors of repute, acknowledgement and so on then become, if I have understood this aright, not merely *evidences* of a situation apt for prescription but become *themselves* decisive ingredients in the process of creating title. Let me remind you again of the words [says Jennings] of Professor de Visscher. Proven use 'is its foundation', but this merely represents a complex of interests and relations *which in themselves have the effect of attaching a territory or an expanse of sea to a given State* (italics supplied). And again, 'it is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in*

concreto on the existence or non-existence of a consolidation by historic title'." (Emphasis in the original unless otherwise stated; footnotes omitted.) (At p. 25.)

24. The key point is that "proven use" "merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State". This aspect of the matter is also given prominence by Jennings in his General Course at the Hague Academy in 1967 (*Recueil des Cours*, Vol. II (1967), p. 421).

25. The acceptance by Sir Robert Jennings of the concept and its implications is also evidenced by the text of the ninth edition of *Oppenheim* in 1992, edited by Sir Robert and Sir Arthur Watts. In a passage which confirms the evolutionary aspect of the concept of historical consolidation, the editors observe:

> "**Consolidation of historic titles.** Yet continuous and peaceful display is a complex notion when applied to the flexible and many-sided relationship of a state to its territory and in relation to other states. The many and varied factors which it may comprise were felicitously subsumed by Charles De Visscher under the convenient rubric of 'consolidation by historic titles'; of which he says:
>
> > 'Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in concreto* on the existence or non-existence of a consolidation by historic titles.'
>
> In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following: recognition, acquiescence and preclusion; possession and administration; affiliations of inhabitants of disputed territory; geographical considerations; economic considerations; historical considerations. Of these several factors it has been said that: 'Recognition is the primary way in which the international community has sought to reconcile illegality or doubt with political reality and the need for certainty.'" (Footnotes omitted.) (9th ed., Vol. I, by Sir Robert Jennings and Sir Arthur Watts, 1992, pp. 709-710, para. 272.)

26. And so, Mr. President, historical consolidation of title is the legal basis of Nigeria's claim to Bakassi. The concept has been familiar to international lawyers for most of 50 years, and has attracted the approval of former Members of this Court. Indeed, its leading progenitor, Charles De Visscher, was of course a Member of the Court.

27. In face of the Nigerian claim counsel for Cameroon have shown a remarkable reluctance to discuss the concept or to give a clear indication as to whether they accept it. In the Reply, however, the applicant State did actually question whether the principle of historical consolidation

exists, and Nigeria duly responded in the Rejoinder at pages 85 to 90, citing leading authorities and also the First Award in the *Arbitration between Eritrea and Yemen* (1998) (*ILR*, Vol. 114, p. 117, paras. 450-451).

28. Mr. President, Members of the Court, it has to be asked why Cameroon is so nervous in face of a well-established concept. Is it because Cameroon cannot produce the necessary proof? Why is it that Cameroon has failed to respond adequately to the evidence, as Professor Mendelson would put it, "piled up" in the Nigerian Rejoinder?

29. Counsel for Cameroon have sought to solve the problem in three ways. The first way was to ignore historical consolidation and to discuss prescription, which has not been relied upon at any point in the Nigerian pleadings. The second method, and the most popular, was simply to refuse to respond to Nigeria's evidence. Unfortunately, the Nigerian delegation will leave The Hague in due course still without knowing what the Cameroonian response to the evidence might be.

30. The third attempt to solve the problem was to suggest that counsel for Nigeria does not approve of the concept. Thus, Professor Cot quoted the fifth edition of my textbook as follows: "it is probably confusing to overemphasize, and to lump together, this penumbra of equities by discovering the concept of consolidation" (CR 2002/15, pp. 33-34, para. 12).

31. This selective quotation will not do. What the book, *Principles of Public International Law*, does is to give a full and appropriate significance to the concept. Thus, under the heading "Historical Consolidation of Title", there is first a reference to the Anglo-Norwegian *Fisheries* case, which is the origin of the doctrine. The text then continues as follows:

> "Charles De Visscher has explained the decision on these lines, and has proceeded to take the decision as an example of the 'fundamental interest of the stability of territorial situations from the point of view of order and peace', which 'explains the place that consolidation by historic titles holds in international law'. He [Charles De Visscher, that is] continues:
>
> > 'This consolidation, which may have practical importance for territories not yet finally organized under a State regime as well as for certain stretches of sea-like bays, is not subject to the conditions specifically required in other modes of acquiring territory. Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State.'"

And the text of my book continues:

> "'Consolidation' differs from prescription, occupation, and recognition, in De Visscher's doctrine. It is certain that the elements which he calls 'consolidation' are influential. In the preceding section such elements were examined in relation to the problems of relative title and the principle of effectiveness. The essence of the matter is peaceful holding and acquiescence or toleration by other States (but De Visscher has his own notion of acquiescence). Moreover, special factors, including economic interests, may be entertained by a court faced with rather equivocal facts. However, it is probably confusing to overemphasize, and to lump together, this penumbra of equities by discovering the concept of consolidation." And the last sentence reads: "Apart from the concept of consolidation, the role of social, economic and other 'non-legal' considerations in the application by tribunals of the more orthodox legal principles is not to be denied." (Footnotes omitted.) (*Principles*, 5th ed., 1998, pp. 162-163.)

32. This account is identical with the account given in the first edition of the book, published in 1966, at pages 154 to 156. Moreover, I regret to tell the delegation on the other side that the book's treatment of the subject has not discouraged foreign publishers and these views on historical consolidation are presently available in Portuguese, Russian and Japanese, and will soon be available in Chinese and Korean.

33. One other aspect of the matter calls for comment. In so far as counsel for Cameroon choose to face the music, the view is projected that historical consolidation of title is confined to *effectivités*. This is not the case. As Nigeria's previous pleadings have made clear, the concept has various legal elements as follows:

(i) The original title of the City States of Old Calabar.

(ii) The attitude and ethnic affiliations of the population of the Bakassi Peninsula.

(iii) The Efik and Effiat toponymy of the Bakassi towns and villages.

(iv) The administration of Bakassi as part of Nigeria in the period 1913 to the date of independence.

(v) The exercise of authority over the towns and clans of Bakassi by traditional rulers either based in Calabar or otherwise owing allegiance to Nigeria.

(vi) The exercise of jurisdiction by customary law courts by virtue of Nigerian legislation.

(vii) The long-established settlement of nationals of Nigeria in the region; and lastly

(viii) Manifestations of sovereignty by Nigeria after independence in 1960.

These elements are examined in detail in the Nigerian Rejoinder, at pages 90 to 175, and a proportion of these elements were discussed in my first round speech. Mr. President, with your agreement, that would be a convenient moment to take the *pause café*.

The PRESIDENT: Thank you very much, Professor Brownlie. La Cour suspend sa séance pour une dizaine de minutes.

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

Le PRESIDENT: Veuillez vous asseoir. La séance est reprise et je redonne la parole au professeur Ian Brownlie.

Mr. BROWNLIE : Thank you very much.

The state of the evidence

34. Mr. President, distinguished Members of the Court, because Cameroon frequently avoids joining issue in these proceedings, the state of the evidence involves various anomalies. Thus Cameroon has not troubled to respond adequately to the substantial evidence of *effectivités* presented in the Rejoinder and again, in the first round. In the second round Professor Mendelson boldly contended that Nigeria had failed to deal with certain peripheral issues which he had raised in the first round. These issues will be dealt with in the appropriate place, but Professor Mendelson's complaint is in the context astonishing because, in his second round speech, he failed to deal with a very high proportion of Nigeria's first round presentation.

35. In particular, Professor Mendelson did not reply to the following:

(a) The demonstration of the absence of evidence of the peaceful possession of Cameroon and the critique of the Cameroonian pleadings.

(b) The detailed evidence relating to the system of public order in Bakassi.

(c) The evidence of the affiliations of the population of Bakassi.

(d) The detailed evidence relating to public education.

(e) The detailed evidence relating to taxation.

(f) The detailed evidence relating to public health.

36. Mr. President, this list could easily be extended.

Further evidence confirming the title of Nigeria in relation to the Bakassi Peninsula

37. My next task is to offer further evidence confirming the title of Nigeria in relation to the Bakassi Peninsula. The first category of further evidence is the ethnic relationship between the people of the Bakassi villages and the Nigerian mainland.

38. In the context of historical consolidation, the editors of *Oppenheim* refer to the relevance of the "affiliations of inhabitants of disputed territory" (Vol. I, pp. 709-710, para. 272).

39. As an aspect of the application of the concept of historical consolidation of title to the social and ethnic circumstances of the Bakassi Peninsula, it is necessary to examine the history of the settlements of the indigenous peoples of South-Eastern Nigeria in the region. This will assist in understanding the role of the Efik and Effiat tribes in the pattern of settlement and also the pattern of development of local government administration in Bakassi.

40. The chief tribes in the region of Old Calabar in the period after 1700 were, and still are, the Efiks and the Effiat (judges' folder, tab 5). The ethnic map produced in the Rejoinder at figure 3.1, now on the screen, shows the areas inhabited by these two tribes. Historically the predominant people in the area north of Bakassi, in terms of numbers and influence, were, and still are, the Efiks, while to the west of the peninsula, the Effiats predominate.

41. There are extensive oral traditions as to the early migrations of the Efik people before they came to Old Calabar, and these are discussed in some detail in A. K. Hart, *Report of the Enquiry into the Dispute over the Obongship of Calabar*, published in 1964. The Efiks gradually established themselves on the coast and became active fishermen and traders, ultimately setting up something of a seaborne empire, with City States up and down the Guinea Coast from the Niger delta to the Rio del Rey, and settlements even beyond.

42. Many of their towns — Duke Town, Creek Town, Henshaw Town, Obutong Town — were clustered together in the heart of the area which became known as Old Calabar. This area included other Efik settlements such as Arsibon's Town, now Archibong, near the northern edge of the Bakassi Peninsula. The modern Tom Shot Island, on the western side of the Cross River estuary, and Jamestown are traditionally Effiat. Jamestown is situated just to the north of Tom Shot and was formerly known as Tom Shot Town. The Chief of the town was James Bassey and hence the town became known as Jamestown.

43. The Efiks of this unique polity were governed by a patriarchal "House" system, under which each of the above communities was headed by its own King or Chief, elected by that House. The ruling oligarchy was united by the highly organized society already referred to in these proceedings, the Ekpe Society, which played an important part in the religious and civil life of the Efik polity and is still important today. The local activities of the Ekpe Society centre on the Palaver House. All the major towns of the area have a shrine known as the Palaver House, including Calabar, Jamestown, Ikot Nakanda, Archibong, Abana and West Atabong (judges' folder, tab 6).

44. The Effiat people have certain cultural and social traits in common with the Efiks. In particular, both tribes use Ekpe as a means of social administration. The main Effiat Ekpe Palaver House, and seat of the Effiat clan head, is at Jamestown in Akwa Ibom State. The people of the southern Bakassi villages regard this as their ancestral centre and there is still much interaction between the people living on both sides of the Cross River estuary. The Effiats are nonetheless distinct from the Efiks. They originally inhabited the riverine areas to the west of the Cross River estuary. Becoming principally fishermen, they migrated across the estuary to set up fishing settlements on the creeks of Bakassi, which over the last 100 years have increased in number and become permanent. These settlements include Abana and East and West Atabong.

45. As the population on mainland Nigeria grew, fishermen and farmers from the area south of Calabar, around Ikang and Ikot Nakanda, moved across the Akpa Yafe in increasing numbers. They settled in the existing villages of Archibong and Akwa, and created new settlements such as Ine Akpa Ikang, Mbenmong and Nwanyo. Villages were named after the founders or after the place of origin of the first settlers. The word "Ine" in Efik means fishing settlement. Hence Ine Akpa Ikang and Ine Ikang were both fishing villages named after settlers from Ikang, and Ine Effiom is a fishing village founded by the head of the Effiom family (judges' folder, tab 7).

46. The earliest Efik settlements in the region were sited for the most part at the northern end of Bakassi. Arsibon's Town, now Archibong, was referred to as early as 1786 in Antera Duke's diary. It was repopulated by Prince Asibong Edem III, a descendant of Duke Ephraim of Calabar, as his own family colony, in the early part of the nineteenth century.

47. The southern part of Bakassi, on the other hand, was mainly settled by the inhabitants of villages west of the Cross River estuary who crossed from their traditional homeland around Eket, Oron and Jamestown and founded settlements on Bakassi as bases for seasonal fishing activity. Abana, for instance, was situated on land which was given by King Orok Bassey Duke to his two brothers-in-law, Ntuen Umo and Ebe, who migrated from Esuk Mba (present-day Akwa Ibom), over 100 years ago. Abana became the main centre of what colonialists referred to as the Fish Towns. The colonial authorities tried to establish a native court in Abana, but this was rejected by the people who pointed out that they already had a native court in Jamestown. The practice grew up of naming these newly-founded settlements on Bakassi after the Effiat families who used them as a fishing base, such as Ine Atayo, which was named after the Atayo family who founded the village. Sometimes the founder's name was used, sometimes the name of the town from which he came.

48. West Atabong derives its name from the substantial settlement of Atabong Beach on the mainland. Atabong in Effiat means "place of cane" and the village of West Atabong on Bakassi was built with cane grown in and around Atabong Beach on the mainland. Atabong Beach has a thriving fish market at which Bakassi fishermen sell some of their catch. It is a roadhead from which Bakassi fish is transported all over Nigeria. As another example, Utan means "sand"; thus Ine Utan means fishing village built on sand. It is this pattern of settlement and naming of villages which accounts for the fact that place names on Bakassi are linked with the names of settlements lying further to the west and north-west, but not to the east or south-east. A list of settlements on Bakassi together with a translation of their names and details of their founders appears in the tables at the end of Chapter 3 of the Counter-Memorial.

49. Set out at page 98 of the Rejoinder is a table of specifically Effiat villages in Mbo Local Government Area, in Akwa Ibom state, and their affiliated villages on Bakassi. It also states the names of the founding fathers of these affiliated villages. This information was provided by the current Effiat clan head, Obong Okon Effiong Etifit, and the Vice-Chairman of Mbo Local Government Area, Asuquo Okon Bassey.

50. The names and affiliations listed clearly do not derive from any settlement, family or other association with Cameroon.

51. It is clear that the settlement of the villages on Bakassi by Nigerian nationals of the Efik and Effiat tribes has been a steady process over the course of the last century. This pattern of settlement has been reflected in the ever increasing level of administration over the villages and their populations.

Internal Nigerian state rivalry in respect of Bakassi

52. Further evidence of the affiliations of the inhabitants of the Bakassi Peninsula with the peoples and political constituencies of the Nigerian mainland is to be found in a recent episode of internal rivalry between two of the federal states of Nigeria in respect of Bakassi.

53. The background is as follows. The northern villages on Bakassi have always been administered by a different local authority to those in the south, but both were within the same subregion of Nigeria. After the division of Cross River state into two smaller states, Akwa Ibom and Cross River in 1987, the villages were administered by different local authorities in two separate Nigerian states. Akpabuyo Local Government Area in Cross River state administered those villages situated in the north of the peninsula and Effiat/Mbo Local Government Area and Okobo Local Government Area in Akwa Ibom state administered those villages situated in the south of the peninsula. I refer now to tab 8 in the judges' folder.

54. As a result of this division of authority, there arose some confusion over which local authority should administer the Bakassi Peninsula as a whole. Both states claimed that the Bakassi Peninsula was within its sphere of administration for a number of traditional, cultural and economic reasons. The military administrators of the two states were both increasingly involved in promoting the Nigerian presence on Bakassi through state administrative activities.

55. The rivalry between the states continued through to 1996, when the States (Creation and Transitional Provisions) Decree 1996 (Counter-Memorial of Nigeria, Ann. NC-M 202) was promulgated. This Decree created Bakassi Local Government Area, with its headquarters at Abana, as part of Cross River state. This has gone some way towards resolving the internal Nigerian confusion as to which state has the rightful authority over the whole of the Bakassi Peninsula.

56. In 1999 the issues outstanding between Cross River state and Akwa Ibom state became the subject of proceedings in the Supreme Court of Nigeria (Suit No. SC/124/1999) between Attorney-General of Cross River state and the Attorney-General of Akwa Ibom state and five others. This major litigation can only serve to emphasize the depth of concern relating to the region of Bakassi on the part of important Nigerian political constituencies. Recently a Presidential Commission has been established to examine the issue and has delivered a first report.

57. These political developments within Nigeria inevitably highlight the link between the affairs of the Bakassi Peninsula and the internal politics of the neighbouring areas of Nigeria.

The enhancement of public order within the Bakassi region by Nigerian security forces in December 1993

58. The administration of the Bakassi Peninsula faced several major challenges in the late 1980s and early 1990s and it is necessary to examine the responses of Nigeria as a part of the evidence of Nigerian exercise of administrative authority and sovereignty in the region.

59. The Government of Nigeria has already affirmed that there has always been a Nigerian military presence in the Bakassi Peninsula. In addition, the Nigerian navy has a base at Jamestown, on the mainland, from which patrols are sent to the creeks and coasts of the Bakassi Peninsula. In spite of the presence of Nigerian forces, incursions by Cameroonian agents occurred from time to time which went undetected because of the relatively remote character of the region and the cover provided by the mangrove swamps and creeks. These incursions were the subject of repeated complaint by Nigerian communities, and some of these are referred to in the first round. By 1993, a further threat to public order had emerged in the form of a territorial rivalry between the two Nigerian states in respect of the peninsula, to which I have just referred.

60. On 31 December 1993, the Government of Nigeria sent security forces to the Nigerian villages of Abana and Atabong on the Bakassi Peninsula. The purpose of this operation was described in the letter dated 4 March 1994 from the Nigerian Government to the President of the Security Council, thus:

> "I wish, on the instructions of my Government to refer to the letter dated 28 February 1994, addressed to you by the Permanent Representative of Cameroon (S/1994/228), and to convey to you the following information. On 31 December 1993, Nigerian troops were dispatched to the Nigerian fishing villages

> of Abana and Atabong on the Nigerian Bakassi Peninsula in order to avert a violent clash between those who lay claim to the settlements from two Nigerian States, namely the Akwa Ibom State and the Cross River State. The pre-emptive action had the desired effect. However, following the concern expressed by the Cameroonian Government on the Nigerian troops' movement, I visited Yaoundé on the instructions of my Head of State, Gen. Sani Abacha, to explain to President Paul Biya the reason for the Nigerian move. Early in 1994, the Cameroonian Foreign Minister also visited Abuja with a message to the Nigerian Head of State from President Biya. Both sides pledged to resolve the issues peacefully." (Counter-Memorial of Nigeria, Ann. NC-M 347.)

61. The same concern was expressed in a letter dated 20 April from the Nigerian High Commission in London to the Foreign and Commonwealth Office and to all the diplomatic missions accredited to the Court of St. James and to all international organizations with headquarters in London (Rejoinder of Nigeria, Ann. NR 29, also Preliminary Objections of Nigeria, Ann. NPO 80).

62. The background to these statements of a special security problem is provided by the internal rivalry between the two states of the Federal Republic of Nigeria in respect of Bakassi, and I have already examined this aspect.

63. However, there was another serious source of concern lying behind the measures taken. The Clan Chiefs of the groups of villages in the Bakassi Peninsula confirm that during and after the civil war, from 1970 onwards, the Cameroonian gendarmes consistently carried out acts of harassment in the Bakassi region. The particulars of these acts of harassment are set forth in Nigerian Counter-Memorial at pages 267 to 269 (paras. 10.157-10.161).

64. This harassment continued episodically until 1993. In a Note dated 26 April 1993 the Government of Nigeria protested in the following terms:

> "The Embassy of the Federal Republic of Nigeria presents its compliments to the Ministry of External Relations of the Republic of Cameroon and has the honour to bring to the attention of the esteemed Ministry, reports received that Cameroonian Gendarmes have been harassing Nigerian citizens living in the disputed areas of Bakassi Peninsula. On the 26th February 1993 at Abana in Mbo Local Government Area of Akwa Ibom State, about one hundred gendarmes invaded the Fishing settlements in the area and harassed and terrorised the Nigerian inhabitants. The Embassy wishes to point out that these incessant harassments do not augur well for our bilateral relations and would like the Ministry to call the relevant host government law enforcement agents to order. This matter is creating great anxiety and concern in Nigeria and the Embassy will therefore want the Ministry to take necessary steps to arrest the situation for the mutual benefits of both countries." (Ann. NC-M 356.)

65. This pattern of harassment and the atrocities committed by Cameroonian gendarmes and soldiers were the subject of complaint in the letter of the Nigerian Government to the President of

the Security Council dated 4 March to which I have already referred (Ann. NC-M 347). This letter refers to six serious recorded incidents in 1991, six in 1992, and 13 up to September 1993. References to acts of harassment, plunder and murder also appear in the letter dated 20 April 1994 from the Nigerian High Commission in London (see Ann. NR 29).

66. The pattern of repression which developed after the end of the Nigerian civil war can be understood by reference to the report presented to the Governor of Cross River state dated 15 April 1988 (Ann. NR 30). Entitled "Report of Persistent Molestations and Intimidation of Atabong People by Cameroun Gendarmes", the document includes the following passages:

> "1. During Nigerian Civil War, the 3rd Marine Command Division led by Brigadier Benjamin Adekunle established a Military base at Atabong Commanded by the late Major Isaac Adaka Boro and Cameroun Gendarmes dared not trespass into Nigerian territory. After the withdrawal of Major Boro and his men from Atabong on the 10th March 1968, Cameroun Gendarmes arrived Atabong on the 19th March 1968. Since then Atabong people and indeed the entire residents of Bakassi Peninsula have had no peace.
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> . . . . . .
>
> [See judges' folder, tab 9.]
>
> 3. *ECONOMIC BLOCKAGE*: Cameroun Gendarmes are now forcing indigenese of Atabong, Abana, Edem Abasi, Ine Odiong, Ine Atayo and Ine Akpak, all residents of Bakassi Peninsula to stop coming to Nigeria to sell their fish, crayfish and shrimps but rather to take them to the Cameroun and sell them thereby strangulating Nigeria economically. They also do everything possible to intimidate our people from trading with our legal tender, the naira notes in preference to the CFA Franc. They even go to the extent of seizing naira notes from our people and burning them in fire. All these actions of Cameroun Gendarmes amount to economic blockade and strangulation, hence the scarcity of fish and crayfish in our markets.
>
> . . . . . .
>
> 5. *MOLESTATIONS, BEATINGS, RAPINGS AND KILLINGS:* Cameroun Gendarmes have a field day molesting, beating, raping and killing our people. One Mr. Etim Adem Okon of Atabong was beaten to death by Cameroun Gendarmes in 1969. On 16th January 1973, one Mr. Mbuk Sereke was beaten to the point of death by Cameroun Gendarmes and was unconscious for three days. Recently, one Mr. Etim Effiong Ekop was severely beaten by Cameroun Gendarmes to the point of death. As at the time of writing this report, Mr. Etim Effiong Ekop was in a state of coma. Five Nigerian soldiers were brutally murdered by Cameroun Gendarmes in the same area. Two fishermen were cold-bloodedly murdered in that same area by Cameroun Gendarmes.
>
> We, the people of the area, have consistently protested vehemently against Cameroun atrocities and vandalism to the Federal Government of Nigeria."

And then there is a conclusion.

> "6. *CONCLUSION:* Nigerians in Bakassi Peninsula and indeed the Atabongs have suffered untold hardship in the hands of Cameroun Gendarmes and the hardship is weighing very heavily on us. We do not want to be governed by the repressive and despotic Cameroun Government which rules with high-handedness. There is absolutely no freedom of speech, freedom of expression, freedom of association nor freedom of movement which we enjoy in Nigeria. We are therefore appealing to you, Sir, to prevail on the President and the Armed Forces Ruling Council to intervene and redeem us from these Cameroun vandals."

67. This report is in fact an appeal to the Governor of Cross River state from the traditional leader of the community, Chief Okon Etim Okon Asuquo, a member of the Council of Etuboms in Calabar, and head of the Atai Ema clan of West Atabong. The initiatives taken by the Nigerian forces in 1993 were a response to such appeals. Petitions from communities on Bakassi have been made on various occasions since May 1968: and some of these were examined in my first round speech.

68. It is relevant to remind the Court that Nigerian police and security forces had been involved on various occasions since independence in the maintenance of public order in Bakassi (see Counter-Memorial of Nigeria, paras. 10.59 *et seq.*, and paras. 25.8 *et seq.*). It has been necessary for the Nigerian armed forces to respond, on the basis of self-defence, to incursions by Cameroon armed forces. This has been recognized by the Cameroon Government, for example, in its internal information bulletin in relation to incidents in 1984 — I refer to Annex MC 269 (p. 2223) of the Memorial of Cameroon. Internal Cameroonian documents also refer to the presence of Nigerian marines at Abana in 1990 and in 1993 (see Ann. MC 332).

The Cameroonian view of the administrative status quo

69. Further confirmation of the weakness of the Cameroonian title based upon an alleged possession of Bakassi since the time of Independence can be found in Cameroonian official sources.

70. By the 1980s Cameroon's attempts to displace the Nigerian status quo in the region had produced very exiguous results. The evidence of this appears in the official archives of Cameroon. The Court may recall that in my first round speech I referred to the Prefectoral Order of 1975 by which Cameroon sought to replace the existing Efik place names (CR 2002/9).

71. Eleven years later a Cameroonian official makes the following complaint in a letter dated 4 November 1986:

"As it concerns your District, many of the fishing settlements have been given new names but scarcely are the new names being used by the Aliens and even some Cameroonians settling therein.

It would also appear that some new settlements have been made or discovered that have not been given new names yet, for example, *Ine Akariba*, reference your letter of 11 October 1983 (letter No. G.40.05.I/ID/45/293).

This endorsement is therefore for your information and necessary action. Please, render to this office an account of your action." (Ann. N-CM 224.)

72. I move on to examine a report of a development committee which met on 15 October 1988 to examine issues relating to parts of Bakassi (Ann. RC 180). The preface to the Minutes record that the delay in holding the session "was due to the absence of maritime transport . . ."

73. The minutes of the meeting include a briefing by a Cameroonian official on the considerable inadequacies of the infrastructure in relation to housing, social services, health and other matters.

74. That, Mr. President, was in 1988. My third example is an official Cameroonian document of 1992 (Ann. NC-M 186). The document is dated 21 January 1992 and reads as follows:

"By a radio message under the above reference, the Head of the Provincial Service of the National Security Organisation in the South-West, at BUEA, reports to you on the situation at the JABANE fishery.

According to this message, the Community School, opened and directed by the Local of JABANE (Cameroun), receives subventions from AKPABUYO LOCAL GOVERNMENT, the State Commune of AKWA-BOM IN NIGERIA. Initially it was built of temporary materials and then in the process of NIGERIA. The situation remains as follows:

The Post considers that this situation should be brought to the attention of MINEDUC of MINAT and of the Secretary General at the Presidency of the Republic."

75. This document speaks for itself. It calls for comparison with document RC 180, which refers in 1988 to the "poor enrolment in the lone primary school at Idabato". Mr. President, the 1992 document confirms the general picture which is that, 30 years after the independence of Cameroon and the alleged transition to Cameroonian sovereignty, the system of public education was dominated by Nigerian public authorities.

The nationality of the inhabitants of Bakassi as an element in title by historical consolidation of title

76. As Nigeria pointed out in the Counter-Memorial, in the formation of title by a process of historical consolidation there can be no doubt that the existence of long-established settlements of the nationals of the claimant State plays a significant role. It is helpful in this respect to recall the views of Sir Gerald Fitzmaurice expressed in his Hague lectures in 1957:

> "The element of racial or national affinity between the population of the claimant State and the inhabitants of the territory claimed, can never in itself be a legal ground of title. As with historical factors, it might assist in supporting a claim based on other grounds, or as an evidential factor — for instance it might assist in showing that certain acts were carried out *animo occupandi* with the intention of asserting sovereignty, but, especially if the territory is, or has passed into the effective control of another State, affinities of race or country can never be a substitute for effective control, or for continuity, or in themselves give title." And Fitzmaurice continues: "*Different considerations arise where it is not merely a question of racial or national affinity, but of actual nationals of the claimant State, for, if settlers in a territory have a certain nationality, that may be an element (though not necessarily a conclusive one) in showing the existence of effective control by their parent State.*" (*Recueil des Cours*, Hague Academy, Vol. 92 (1957, II), p. 149; emphasis added.)

77. The settlement of nationals has been treated as relevant, though by no means decisive, in the jurisprudence of international tribunals. In the *Guatemala-Honduras Boundary Arbitration* the Special Tribunal was required to determine the line based on the *uti possidetis* of 1821. The Tribunal was expressly authorized to modify the *uti possidetis* line to take into account "interests" acquired by either party beyond that line. The Tribunal consequently assumed an implied power to take account of interests derived from actual possession, including settlement. In the words of the Tribunal:

> "The criteria to be applied by the Tribunal in the exercise of this authority are plainly indicated. It is not the function of the Tribunal to fix territorial limits in view of what might be an appropriate division of the territory merely with reference to geographical features or potential advantages of a military or economic character, apart from the historical facts of development. The Treaty cannot be construed as authorising the Tribunal to establish a definitive boundary according to an idealistic conception, *without regard to the settlement of the territory and existing equities created by the enterprise of the respective Parties.* So far as may be found to be consistent with these equities, the geographical features of the territory indicating natural boundaries may be considered." (Guatemala–Honduras Boundary Arbitration (1933); *ILR*, Vol. 7, p. 122; emphasis added.)

78. I turn now to the *Land, Island and Maritime Frontier Dispute.* The following passage from the Judgment of the Chamber is illustrative of the acceptance by the Chamber of the relevance of evidence of settlement:

> "Turning now to the evidence of *effectivités* submitted by Honduras, there is first some evidence of diplomatic correspondence . . . [and then there is some irrelevant material and then it goes on]. Secondly, *considerable material was presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are 'human settlements' of Honduran nationals in the disputed areas in all six sectors*, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas." (*I.C.J. Reports 1992*, p. 471, para. 180; emphasis added.)

79. A similar formulation appears later in the Judgment (*I.C.J. Reports 1992*, p. 516, para. 265).

80. In the context of historical consolidation, the existence of long-established settlements of nationals must have considerable probative value.

The role of acquiescence and recognition in relation to historical consolidation of title

81. At this point, Mr. President, it is necessary to turn to the questions of acquiescence and recognition in the context of historical consolidation of title. The argument of Professor Mendelson in the first round was based upon the assertion that the conduct of the Consuls-General of Nigeria constituted acceptance or recognition of Cameroonian title (CR 2002/5, pp. 20-24, paras. 9-16).

82. Professor Mendelson insists that Cameroon "has not argued that the consuls had the power to grant recognition of Cameroonian title to territory" (CR 2002/5, p. 24, para. 16). Counsel for Cameroon then repeats the same argument thinly disguised as an alleged "administrative practice" arising from the conduct of officials of both States. But, Mr. President, the reformulation simply restates the problem.

83. As a matter of international law the Cameroonian argument lacks foundations. The activities relied upon involved the actions of a low-ranking official which were unrelated to the issue of sovereignty. Consular officials are not mandated to deal with issues of title to territory. The general character of the duties of consular officers is described in a passage from the classic Hall approved by Dr. Clive Parry, the distinguished editor of the *British Digest of International Law*, as follows:

> "Consuls are persons appointed by a state to reside in foreign countries, and permitted by the Government of the latter to reside, for the purpose partly of watching over the interests of the subjects of the state by which they are appointed, and partly of doing certain acts on its behalf which are important to it or to its subjects, but to which the foreign country is indifferent, it being either unaffected by them, or affected only

in a remote and indirect manner. Most of the duties of consuls are of the latter kind." (Hall, *International Law* (4th ed., 1895), pp. 330-331.)

84. The authoritative treatise by Patrick Daillier and Alain Pellet describes consular duties in essentially similar terms (*Droit International Public*, 6th ed., 1999, pp. 737-738). As these authors point out: *"Les consuls et les postes consulaires ne sont pas chargés d'un rôle de représentation politique. Leurs fonctions revêtent un caractère purement administratif."*

85. This formulation by Professors Daillier and Pellet places emphasis on the purely administrative nature of consular functions. The functions of the Consul-General consist only of routine administrative acts which are completely divorced from the issues of boundaries. In the present case the consular officers had no authority, express or implied, to make assessments of questions of sovereignty.

86. The Cameroon Reply (p. 319, para. 5.264) refers to a visit by the Nigerian Ambassador to West Atabong in 1986. The only document cited in this respect (Ann. RC 149) is an itinerary for the tour prepared by the staff of the Consul-General in Buea. There is no evidence that a visit to West Atabong actually took place and no indication of the source of the itinerary.

87. But, Mr. President, at this point it is necessary to step back from the Cameroonian argument relating to the Consuls-General. As we have seen, it is an argument based upon the concept of recognition by conduct. As such, it must be placed within the general context of the title invoked by Nigeria, that is, historical consolidation of title. In Nigeria's submission such title cannot be short-circuited by reference to specific episodes of inconsistent conduct, and this more especially when the overall evidential picture contradicts the inconsistent conduct. Counsel for Cameroon invoked the *Temple of Preah Vihear* case (see CR 2002/5, p. 19, para. 16) and the principle of recognition by conduct.

88. In relation to the argument related to Consuls-General, resort to principles analogous to recognition or estoppel should in principle be treated with extreme caution. It is one thing to determine the title to the uninhabited site of an historic temple, when the evidence of State activity in that case was exiguous, on the basis of recognition or acceptance, but quite another to apply such a principle to an area with a permanent population, and a long-established ethnic identity, more especially when there is considerable evidence of State activities.

89. It was Charles De Visscher who pointed to the modified role which recognition plays in the context of historical consolidation. I refer to the English edition of his classical work, published in 1957, at pages 200 to 201:

> "Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide *in concreto* on the existence or non-existence of a consolidation by historic titles.
>
> In this respect such consolidation differs from acquisitive prescription properly so called, as also in the fact that it can apply to territories that could not be proved to have belonged formerly to another State. It differs from occupation in that it can be admitted in relation to certain parts of the sea as well as on land. Finally, it is distinguished from international recognition — and this is the point of most practical importance — by the fact that it can be held to be accomplished not only by acquiescence properly so called, acquiescence in which the time factor can have no part, but more easily by a sufficiently prolonged absence of opposition either, in the case of land, on the part of States interested in disputing possession or, in maritime waters, on the part of the generality of States." (*Theory and Reality in Public International Law*, 1957, pp. 200-201; footnotes omitted.)

90. In the present case the alleged effect of the actions of the Consuls-General must be set off against the general pattern of Cameroonian acquiescence, the evidence for which I presented in the first round.

Alternative formulations of the claim to title to Bakassi

91. Nigeria's claim has been based upon historical consolidation of title as a generally recognized legal principle. At the same time the claim could be given other legal forms which would have similar if not identical legal effects to those of historical consolidation.

92. A fairly obvious alternative formulation would be the continuous and peaceful display of Nigerian sovereignty, together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula. This is essentially the basis of the decision of Judge Huber in the *Island of Palmas* case (*RIAA*, II, p. 831).

93. In a number of well-known cases, the Court concerned has had to balance up the "manifestations of sovereignty" and produce a determination based upon the competing activities of the claimant States. This was essentially the approach of the Court in the *Minquiers and Ecrehos* case (*I.C.J. Reports 1953*, p. 47). In this Judgment the Court expressed the

opinion that: "What is of decisive importance, in the opinion of the Court, is . . . the evidence which relates directly to the possession of the Ecrehos and Minquiers groups." (*Ibid.*, p. 57.)

94. And in the same Judgment the Court stated that its task was "to appraise the relative strength of the opposing claims [of the Parties] over the Ecrehos . . ." (*ibid.*, p. 67).

Some specific rebuttals

95. Mr. President, distinguished Members of the Court, my next task is to respond to certain specific assertions made on behalf of Cameroon in the second round.

96. In his second round speech Professor Mendelson made a series of assertions relating to an alleged Nigerian acknowledgment of Cameroon's title (CR 2002/16, pp. 38 *et seq.*). In an exercise in forensic optimism Professor Mendelson, in the first paragraph of his argument, reveals its weak legal foundations.

97. In the first place counsel uses acknowledgment to include recognition and acquiescence. But, Mr. President, there is no such legal category as acknowledgment. Secondly, recognition is a public process and Cameroon relies upon several episodes involving internal documents.

98. Counsel for Cameroon also asserts that any acknowledgment by Nigeria would definitively rule out any question of Nigerian title. This reasoning lacks any legal underpinnings. There is no attempt to establish the legal context, which is, the Nigerian claim on the basis of historical consolidation of title. Nigeria does not claim on the basis of *effectivités* in isolation from all the other evidence.

99. In any event, if we are to trade in real, publicly made, acknowledgments, the Court will no doubt take note of Professor Mendelson's acknowledgment in the first round that Nigeria had produced more evidence of possession and title than Cameroon. It is there in the record, it was made in face of the Court, and it was made by counsel having the requisite authority, with the Agent of Cameroon sitting beside him.

100. I turn now to the more specific points made by Professor Mendelson. His first reference to an alleged acknowledgment involves Nigeria's diplomatic Note of 27 March 1962. This episode will be examined by my friend Professor Crawford tomorrow morning, and I shall not deal with it.

101. Professor Crawford will also deal with Professor Mendelson's reference to the granting of hydrocarbon licences (CR 2002/16, pp. 39-40, paras. 17-18).

102. The next item invoked by counsel for Cameroon was the actions of the Nigerian Consuls-General (CR 2002/16, pp. 40-41, para. 19). I have already examined this subject in this speech.

103. However, there is one additional point. In the *Gulf of Maine* case the Court expressed views on the legal aspects of activities by low-level officials. The Court said:

> "The Chamber considers that the terms of the 'Hoffman letter' cannot be invoked against the United States Government. It is true that Mr. Hoffman's reservation, that he was not authorized to commit the United States, only concerned the location of a median line; the use of a median line as a method of delimitation did not seem to be in issue, but there is nothing to show that that method had been adopted at government level. Mr. Hoffman, like his Canadian counterpart, was acting within the limits of his technical responsibilities and did not seem aware that the question of principle which the subject of the correspondence might imply had not been settled, and that the technical arrangements he was to make with his Canadian correspondents should not prejudge his country's position in subsequent negotiations between governments. This situation, however, being a matter of United States internal administration, does not authorize Canada to rely on the contents of a letter from an official of the Bureau of Land Management of the Department of the Interior, which concerns a technical matter, as though it were an official declaration of the United States Government on that country's international maritime boundaries." (*I.C.J. Reports 1984*, p. 307, para. 139.)

104. In my submission there is a strong analogy with the activities of the Consuls-General carrying out their administrative tasks without any awareness that their actions could prejudice major issues of principle pending between the two Governments.

105. I come now to the Elias letter, which was invoked by Professor Mendelson in his first round speech (CR 2002/5, pp. 24-25, paras. 17-20). In the second round counsel for Cameroon told the Court that the Elias letter was of "the greatest significance" (CR 2002/16, p. 41, para. 20).

106. Mr. President, I knew President Elias well and he was a good friend of President Waldock who was my mentor. Chief Richard Akinjide paid tribute to Elias this morning. It is not President Elias's reputation which is in issue. The issue is the evidential significance of his letter. Counsel for Cameroon considers that it "speaks for itself". And so it does. It was a piece of confidential advice, forming part of the Nigerian Government process. It was leaked to the press, or fell into the hands of the press, and thus appears now in the Cameroonian pleadings.

107. Counsel for Cameroon now produces this as evidence of recognition and acquiescence. But the letter did not form part of any public transaction or of any correspondence with Cameroon. It cannot qualify as evidence of recognition and acquiescence.

108. Mr. President, as Chief Richard Akinjide has pointed out, the context and legal value of such a document must be related to the totality of the evidence and legal argument presently available. It would be inappropriate, indeed, it would be grotesque, if such an internal opinion were to be held to preclude the public position of Nigeria or the position of the Court in these proceedings.

109. And in this general context, it is not surprising that the distinguished Tribunal in the First Phase of the *Red Sea Islands Arbitration*, refused to accept evidence in the form of internal documents. In the words of the Tribunal:

> "The former interest in these islands of Great Britain, Italy and to a lesser extent of France and the Netherlands, is an important element of the historical materials presented to the Court by the Parties, not least because they have had access to the archives of the time, and especially to early papers of the British Governments of the time. Much of this material is interesting and helpful. One general caveat needs, however, to be made. Some of this material is in the form of internal memoranda, from within the archives of the British Foreign Office, as it then was, and also sometimes of the Italian Foreign Office.
>
> The Tribunal has been mindful that these internal memoranda do not necessarily represent the view or policy of any government, and may be no more than the personal view that one civil servant felt moved to express to another particular civil servant at that moment: it is not always easy to disentangle the personality elements from what were, after all, internal, private and confidential memoranda at the time they were made." (Award, 9 October 1998, para. 94.)

110. In conclusion, I would emphasize the legal absurdity, the forensic distortion, which would result in according any legal significance to the Elias letter alongside the substantial evidence of Nigerian title which is now available to the Court.

111. I move now to the letter from Mr. K. B. Olukolu, of the Nigerian Ministry of Justice, dated 6 June 1985, invoked by Professor Mendelson in the second round (CR 2002/16, pp. 41-42, paras. 21-25).

112. This letter appears to have been prepared by a low-level official in the Ministry of Justice at a time when there was no Attorney-General in office. Mr. Olukolu was an Assistant

Director in the International and Comparative Law Department of the Ministry of Justice. In any event the actual provenance of the document remains unknown.

113. Mr. President, all the legal considerations which applied to the Elias letter apply to the Olukolu letter. The fact that Mr. Olukolu was more junior than President Elias can make no difference to the legal appreciation which is called for.

114. And, of course, the same considerations apply to the other document apparently emanating from the Ministry of Justice invoked by Professor Mendelson, which is dated 6 June 1986 (Memorial of Cameroon, Ann. MC 279). The provenance of this document is also unknown.

115. In conclusion, on the legal significance of these three internal documents relied on by Cameroon, I would once more recall the view expressed by the Chamber of the Court in the *Gulf of Maine* case. If the Chamber did not consider that the Hoffman letter could be invoked against the United States Government in the context of a correspondence between the United States and Canada, how can Cameroon expect the Court to give any legal effect to documents which were internal and, by their very nature, confidential.

116. It is also to be borne in mind that such Ministry documents are subject to State immunity.

117. The next subject referred to by Professor Mendelson was map evidence. In his second round speech, counsel was responding to passages in my first round speech (CR 2002/9, pp. 47-49, paras. 143-154). Professor Mendelson was careful, first of all, to pick out only a small proportion of the points which I had made. Secondly, he avoided comment on all the points of legal substance (CR 2002/16, pp. 43-44, para. 26). As a result counsel for Cameroon failed to comment on the following issues:

— first, the relation of maps to the actual basis of title relied upon by Nigeria, namely, historical consolidation of title;

— second, the relation between maps and the administrative and social status quo on the ground;

— third, the relevance of judicial precedents concerning map evidence, some of them emanating from this Court;

— fourth, the significance of compiled maps;

— fifth, the expert provenance or otherwise of the maps; and lastly,

— the legal significance of the entries in the *Gazetteer* published by the Nigerian Director of Federal Surveys in 1965.

118. Mr. President, counsel for Cameroon has not replied to the legal substance of my assessment of the relevance of the evidence in these proceedings. In particular, like his colleagues, he finds it impossible to relate his observations to the actual basis of title relied on by Nigeria.

The population of the Bakassi Peninsula

119. Our distinguished opponents do not have a very precise knowledge of the geography of the Bakassi region, as Nigeria demonstrated to the Court in the first round. The figure for the population of Bakassi offered by Cameroon is 4,046 persons (CR 2002/15, p. 26, para. 28).

120. Nigeria does not find this figure credible. In any event, it is not always easy to produce figures which relate exactly to the area of Bakassi and do not either include other areas or, alternatively, exclude areas of Bakassi. At the time when the Rejoinder was prepared Nigeria produced an approximate and interim figure of approximately 100,000.

121. In the period leading up to the oral hearings the Nigerian team made a calculation based upon data provided by the National Population Commission of Nigeria. These figures relate to a detailed list of villages and the assessments of which clan areas fell within Bakassi. The total figure which emerged from the data was 156,000, the figure presented to the Court in these proceedings.

122. After a further check on the figures relating to clan areas, Nigeria is confident that the figure of 156,000 is reliable. This figure is based upon the six clans areas on Bakassi and these are referred to in the Rejoinder.

123. It is ironical that Cameroon has seen fit to make such an issue of the population. On the basis of Nigeria's knowledge of Bakassi, which is extensive, the Cameroonian figure of 4,046 appears ludicrous. Mr. President, the figures are one thing, the legally relevant factors are quite another. The legally relevant factors are as follows: Firstly, the population is substantial and it is Nigerian, not Cameroonian. Counsel for Cameroon have conceded this. Secondly, the population is permanent. And thirdly, the clan and ethnic links are with the Nigerian mainland.

The treatment of *effectivités* by Cameroon

124. Mr. President, as I near the end of my speech, I find it necessary to return to the question of *effectivités*. It is, of course, the prerogative of the applicant State to decide on her strategy and tactics. But, there are certain limits to this prerogative, and one such limit is the duty to provide assistance to the Court.

125. Cameroon, in the person of its counsel, has essentially refused to examine the evidence of *effectivités*. This evidence was admitted to be substantial. It was the product of a great deal of hard work by distinguished Nigerian officials, including Alhaji Dahiru Bobbo, Director-General of the National Boundary Commission and Mrs. Nella Andem-Ewa, the Attorney-General of Cross River state. The Nigerian Government received the assistance of a distinguished firm of London solicitors, D. J. Freeman, who are experienced in boundary matters and helped the winning side in the last boundary case in which they were involved.

126. The results of the effort made by Nigeria to assist the Court by providing evidence were impressive. And what was the response of Cameroon? The response was in three forms. The first form was an unattractive dismissiveness and a flippancy which was wholly inappropriate.

127. The second response was to find technical excuses for not dealing with the *effectivités*. Thus, in the first round Professor Mendelson argued that because Cameroon had title on the basis of *uti possidetis juris*, therefore *effectivités* could only have a confirmatory role (CR 2002/4, p. 35, para. 1). This does not follow, because *uti possidetis* does not block the Nigerian position based upon lawful change. In the same speech other excuses are produced, such as the curious argument that the *effectivités* would not qualify in case of prescription, which has not been invoked by Nigeria.

128. And, Mr. President, if Cameroon is relying on *uti possidetis* or the 1913 Treaty, why could not Cameroon rely upon evidence of *effectivités* in the mode of confirmation of title? This would have been the natural response. Why was this not done? Was it because the evidence of the requisite *effectivités* was simply not available?

129. The third form of response was to ignore the evidence of *effectivités*. The evidence of Nigerian presence was ignored in the Cameroon Reply, and in the first round speeches and, finally

by Professor Mendelson in the second round. Can I remind the Court what he said in the first round:

> "Nevertheless, in its Rejoinder, Nigeria has persisted in ignoring the very real legal objections which Cameroon has made to its approach, and has insisted on piling up examples of its alleged *effectivités* in order to bolster its spurious claim to sovereignty over the Bakassi Peninsula by means of its so-called 'historic consolidation of title'. I shall therefore submit to you that the legal framework within which Nigeria seeks to situate its *effectivités* (and those of Cameroon) is tendentious and misleading; and further, that the facts relied upon by Nigeria do not have the significance which it seeks to attach to them. The reliability of at least some of the evidence adduced by Nigeria is also open to question, but it is unnecessary to go into that further now, even if time allowed."

And later on in his speech, he says:

> "and, we further submit that these Cameroonian *effectivités* are more than sufficient to counter our opponents' claim that Cameroon acquiesced in the exercise of sovereign authority by Nigeria. I shall not repeat the evidence of Cameroonian *effectivités* in exhaustive detail [he says] in the limited time I have: many instances are found in the Memorial, and especially in the Reply." (CR 2002/4, p. 36, para. 2.)

Well, he did have further time in the second round. But nothing much happened.

130. All reference to specifics was still avoided. Nigeria had presented a detailed critique of the Cameroonian evidence in the first round (CR 2002/9). Did Professor Mendelson find time to deal with specifics in the second round? Unfortunately not. Thus, no examination of the evidence was attempted either in the first or the second round (CR 2002/16, pp. 45-51).

The predominance of the evidence of Nigerian title on the Basis of historical consolidation of title

131. Mr. President, my argument relates to the evidence of Nigerian presence in Bakassi since independence. If I can remind the Court, the elements which constitute the process of historical consolidation of title in relation to the Bakassi Peninsula are as follows:

(i) The original title of the City States of Old Calabar.

(ii) The attitude and ethnic affiliations of the population of the Bakassi Peninsula.

(iii) The Efik and Effiat toponymy of the Bakassi towns and villages.

(iv) The administration of Bakassi as part of Nigeria in the period 1913 to the date of independence.

(v) The exercise of authority over the towns and clans of Bakassi by traditional Rulers either based in Calabar or otherwise owing allegiance to Nigeria.

(vi) The exercise of jurisdiction by customary law courts by virtue of Nigerian legislation.

(vii) The long-established settlement of nationals of Nigeria in the region; and lastly

(viii) Manifestations of sovereignty by Nigeria after independence in 1960.

132. The original title of the City States of Old Calabar is not a necessary condition of title but it has a confirmatory role. And the same applies to the evidence concerning the position in the period 1913 until independence.

133. Cameroon has not challenged the evidence produced by Nigeria in respect of the different elements presented above. The evidence of *effectivités* has not been effectively challenged and it will not help Cameroon to argue that this evidence is to be set aside, simply because Cameroon does not care to recognize the legal status of title on the basis of historical consolidation. This standing aside from Nigeria's basis of claim is a forensic risk which Cameroon has chosen to take.

134. In relation to *effectivités* the pleadings of Cameroon in fact show a radical change of legal approach. In the Memorial, and also in the Reply, the Government of Cameroon recognized the legal relevance of *effectivités*. However, subsequent to the appearance of the Nigerian Rejoinder, the policy underwent a major change. Accordingly, in the oral hearings counsel for Cameroon contended, albeit in somewhat obscure language, that for various reasons the evidence of Nigerian *effectivités* was legally irrelevant.

135. The evidence overall produces a predominance of Nigerian administration in the region, coupled with evidence of the ethnic and social connections with the mainland of Nigeria and the existence after independence of a Nigerian administrative and social status quo which eventually Cameroon sought to disturb by various means, including the use of force.

136. Mr. President, what is important is the predominance of evidence favourable to Nigeria and the failure of Cameroon to challenge the legal status of the various categories of evidence.

137. It is significant that Cameroon relies upon items of evidence which are not only problematical in themselves, but, in evidential terms, peripheral. The necessary result is the validation of the title by historical consolidation on the basis of the predominant evidence.

138. And Mr. President, even if, *arguendo*, the issues relied on heavily by Cameroon, such as Maroua, or the map evidence, were to be resolved, as isolated issues, in favour of Cameroon, the

predominant evidence would still stand in support of Nigerian title. It would be illogical in the extreme to circumvent the major elements of the evidence by reference to issues which are both peripheral and which, in the case of Maroua, are legally problematical.

Conclusions

139. In conclusion it is submitted that Nigeria has title over Bakassi on the basis of historical consolidation of title in the period since the independence of Nigeria, either on the assumption that the 1913 Treaty was not implemented or, in the alternative, that the Treaty was implemented but was subject to a process of lawful change constituted by the process of historical consolidation of title. Mr. President, that concludes my presentation this morning. I would like to thank you and your colleagues once again for your patience.

The PRESIDENT: Thank you very much, Professor Brownlie. Ceci met un terme effectivement à la séance de ce matin. La Cour reprendra ses travaux cet après-midi à 15 heures. La séance est levée.

L'audience est levée à 13 heures.