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Mardi 19 mars 2002 à 10 heures

Tuesday 19 March 2002 at 10 a.m.

018 The PRESIDENT: Please be seated. The sitting is open, and I am going to give the floor to the Republic of Cameroon to present its observations on the subject-matter of Equatorial Guinea's observations in this case. I give the floor to Professor Alain Pellet.

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

1. INTRODUCTION — THE EFFECTS OF THE INTERVENTION

1. The situation is clear. If anyone had been in doubt, the statements yesterday by our friends from Equatorial Guinea have removed all ambiguity: Equatorial Guinea is intervening in this case at Nigeria's side; it is in the same interest, regardless, moreover, of the excellent relations between Cameroon and the intervening State. As stated by the Agent of Equatorial Guinea, its "concern" relates — and appears to relate exclusively — to the line claimed by Cameroon (CR 2002/21, pp. 18-19, para. 4). On the Nigerian side, it is more than happy, if I may say so, with the treaty it concluded on 23 September 2000.

2. Admittedly, Equatorial Guinea is fully aware that this treaty is more advantageous to Nigeria than to itself: it departs from the equidistance line in favour of Nigeria and endorses the oil practice which, itself, tended to favour Nigeria (CR 2002/21, pp. 32-33, para. 10, Mr. Colson). Essentially, Equatorial Guinea is exchanging territory (or what it considers to be such) for security (or what it hopes is such). And it may, Members of the Court, regard this as "equitable", even if it is an apparently unequal equity since, after all, the law of the sea does not require an equal apportionment of maritime areas, any more than, in general, it gives full effect to an island, regardless of which one it is.

3. The real problem is not the inequality resulting from the line on which Equatorial Guinea and Nigeria have agreed — to paraphrase counsel of Equatorial Guinea, if that was all it was, it would not concern us. Unfortunately, it does concern us, as this exclusively "bilateral" line takes no account of Cameroon's rights. Equatorial Guinea has agreed with Nigeria to confine Cameroon within an exiguous maritime area, which cannot pass as equitable in the eyes of an impartial observer, regardless of the parameters used.

019 4. What we are asking above all, Members of the Court, is for "equity to be given a chance". [Start of projection of sketch-map No. 145 — "the height of iniquity".] This would not be the case

if you allowed yourselves to become obsessed by the "little yellow line", on which Equatorial Guinea sought to focus attention yesterday. You are not in the position of Bergotte in front of "the little piece of yellow wall" in the View of Delft in *Time Regained* by Marcel Proust. The little yellow line must not make you lose sight of the blue line, the one of the treaty between Equatorial Guinea and Nigeria, or the red line, the equitable line, which Cameroon is proposing to you, and which the intervening State would like you to reject. Imagine, Mr. President, if the Court acceded to the implicit demands of Equatorial Guinea and, implicitly or explicitly, fixed the tripoint at the western end of the yellow line on which our opponents sought to focus attention yesterday. The sketch-map which is projected behind me, and which is No. 145 in the judges' folder, shows what the situation would be on the assumption — which nevertheless I take the liberty of making — that Bakassi belonged to Cameroon. A mere glance at this map shows that it would be the height of iniquity.

5. Mr. President, we are going to cover these aspects in greater details in the following order:

— Jean-Pierre Cot will deal with the relevant geographical and diplomatic context;

— Maurice Kamto will then show why the method used by Cameroon to draw the equitable line does not merit the accusations levelled at it by Equatorial Guinea;

— Lastly, Maurice Mendelson will demonstrate that it is certainly not your task to fix the tripoint but that, if you did so, it — or rather they (as there would be two) — would certainly not be situated on the little yellow line. [End of projection.]

6. Before that, I shall respond to my friend Pierre-Marie Dupuy on the effects of the intervention by Equatorial Guinea and, consequently, the Court's task in this case. And I shall do so following the three-point plan which he himself adopted yesterday.

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1. The alleged contradictions in Cameroon's conception of intervention

7. Equatorial Guinea opts to begin by denouncing the "contradictions" which it allegedly finds in what it terms "Cameroon's conception of intervention" (CR 2002/21, pp. 54-56, paras. 9-14).

8. Cameroon's position is well known: in our view, to make a complete determination in a maritime delimitation case, in which a legal interest appertaining to a third party is at issue, the

Court cannot rule unless that third party intervenes. On the other hand, we consider that if this is the case, in other words if this third party intervenes, the Court, fully informed of this interest by that third party, may make a complete determination on the submissions of the parties, duly taking account of the legal interest in question (see Written Observations of Cameroon on the Application by Equatorial Guinea for permission to intervene (OCGE), pp. 16-21, paras. 50-64; and CR 2002/6, pp. 65-67, paras. 29-35).

9. My opponent sees "rhetorical cunning" (CR 2002/21, p. 54, para. 10) in this nevertheless "reasonable" (a word the intervener is fond of) position for, he tells us, if that were so, the third party "would no longer be a third State!" (*ibid.*, para. 11). In other words, we would be asking you, Members of the Court, to make a complete determination "by propounding a claim which denies the third State's rights" (*dixit* counsel of Equatorial Guinea).

10. I fear our opponent may have misread or misunderstood our oral arguments over the past weeks, and in particular the one I devoted to the preservation of the rights of third parties on 25 February. In that oral argument I gave the clearest possible indication — and it is embarrassing for me to quote myself — that "[n]o one is more convinced than the Republic of Cameroon of the need to preserve carefully the rights of third parties in any maritime delimitation, including where such delimitation, for lack of an agreement, is effected through contentious proceedings"(CR 2002/6, p. 41, para. 3), and I also said that the "final, complete and equitable solution which your Judgment will impose on the Parties and on them alone" must be arrived at "on the basis of full respect for the rights of third parties, including, of course, those of Equatorial Guinea" (*ibid.*, p. 57, para. 51). This obviously means that, when determining the maritime boundary between Cameroon and Nigeria (not between either of the Parties and Equatorial Guinea), the Court will have to take account of the legal interest which Equatorial Guinea has

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persuaded the Court may be affected. Furthermore, in that case, and in the unlikely event that, despite what Cameroon has already said — to which my colleagues will revert this morning — the Court were to consider that the equitable line prejudices that interest, it would have to modify that line, or, perhaps even to that extent refrain from making a ruling — but only to that extent.

11. There is no *trompe-l'œil* in this argument, which is both reasonable and in line with your settled case law — to which there is perhaps no need to revert; a lot has already been said about it

(see OCGE, pp. 17-19, paras. 52-59 or CR 2002/6, pp. 66-67, paras. 31-32). On the other hand, let me in a friendly way (in a friendly but firm way) say to Professor Dupuy that he is engaging in veritable sleight of hand when claiming that, if the Court did not stop well short of all of the claims of Equatorial Guinea, as Guinea itself defines them that "sovereign State [would] witness the delimitation of its own territory without its consent" (CR 2002/21, p. 56, para. 14 (2)). This is wrong on two counts. Firstly, the Court would be in no way delimiting the territory of the intervening State, which would not be bound by the judgment. Secondly this argument assumes in principle that Equatorial Guinea is "at home" where *it says* it is at home; that *"its territory"* is such *as it* defines it *itself.* In so doing, it empties intervention under Article 62 of all substance. And this leads me to the second point addressed yesterday by my learned friend (CR 2002/21, pp. 56-60, paras. 15-18), namely:

2. The scope of intervention proceedings under Article 62 of the Statute

12. One only lends to the rich, Mr. President — and I am not sure that Cameroon is as rich as all that! — but, in any case, Equatorial Guinea lends us a great deal (on paper), no doubt all the better to deprive us of our wealth *in concreto.* Professor Dupuy thus set out no less than four propositions — false ones according to him — to describe, it would appear, what is alleged to be our conception of intervention under Article 62, and he refutes them in the following terms:

> "Intervention is not a procedural means for instituting new proceedings; nor is it a form of joinder; nor is it a miracle answer to the so-called 'indispensable party' argument; lastly, intervention does not constitute an exception to the principle of the consensual basis of the Court's jurisdiction." (CR 2002/21, p. 56, para. 15).

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We have now moved from Proust to Cervantés, as my learned friend is here tilting at windmills: we agree with all that. It is the conclusions he draws, here and there, from these very sensible propositions that we disagree with.

13. Mr. Dupuy tells us:

> "[w]here *the rights* of C are liable to be affected by the legal solution of a dispute between A and B, it is true that intervention will enable the Court to deliver its judgment in full knowledge of the facts and without risking damage to the rights of the third State through lack of information" (CR2002/21, p. 58, para. 15.2; emphasis added).

Quite. But *the rights* of C (here Equatorial Guinea) must still be capable of being affected. And thanks to the intervention of Equatorial Guinea, the Court is in a position fully to appreciate this, in full knowledge of the facts. As I said a moment ago, if, after the very exhaustive information supplied to you by the intervening State on what it considers to be its rights, you were to consider, Members of the Court, that those rights are threatened by the claims of either of the Parties, you could either adopt a different solution, which preserves them, or refrain from ruling on the point or points which strike you as problematical. Whichever of these solutions you adopted, you would not be adjudicating in any shape or from on the rights of Equatorial Guinea; you would only be noting that those rights have not been affected.

14. It is thus hardly necessary to address the question whether intervention might represent a solution to the absence of the "indispensable party" (always assuming that this theory has practical significance). Some authors deny that this could be so; others think it could. But, in any event, there is no question of the Court *ruling* on the rights of Equatorial Guinea; it only has to rule (or even refrain from ruling) having regard to those rights.

15. Mr. Dupuy makes great issue — and rightly so — of the approach to intervention taken by the Court "since," he says, "its Judgment of 1990" (CR 2002/21, pp. 58-59, para. 15 (3)). I am not sure that this approach marks a new departure by comparison with that previously prevailing, which the Court adopted in the cases involving the interventions of Malta and Italy in 1981 and 1984. But let us consider the Judgment of 1990 on the intervention of Nicaragua in the case between *El Salvador and Honduras*. What did the Chamber of the Court decide? That Nicaragua was authorized to intervene to the extent that it might be affected "by . . . [the Chamber's] decision

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on the legal régime of the waters of the Gulf of Fonseca" (Judgment of 13 September 1990, *I.C.J. Reports 1990*, p. 137, para. 105); and in its Judgment of 1992, it found that Nicaragua had, in fact, rights of "joint sovereignty" over the waters of the Gulf on the same basis as the other two Parties (*I.C.J. Reports 1992*, p. 601, para. 404; see also pp. 616-617, para. 432.1). The Chamber did not therefore in any way allow itself to be impeded by the idea that, in so doing, it was ruling on or settling the rights of Nicaragua.

16. And moreover, in its first Judgment, that of 1990, the Court again asked whether Nicaragua's legal interest in this case constituted "the very subject-matter" of the decision it was

called upon to make, "in the sense in which that phrase was used in the case concerning *Monetary Gold Removed from Rome in 1943* to describe the interests of Albania" (*I.C.J. Reports 1990*, p. 122, para. 73). And it concluded in the negative, pointing out that, while finding that there was no *condominium* or "community of interests" between the three States, "such a decision would . . . evidently affect an interest of a legal nature of Nicaragua", though it would not prevent it from taking a decision *(ibid.)*. The same applies here: whether the Court concludes that the equitable line encroaches, or does not encroach, or risks encroaching, on the rights of Equatorial Guinea, the legal interests of that country will necessarily be affected, but not in such a way as to prevent the Court from passing judgment. And still less because Equatorial Guinea has intervened than if it had not intervened. For intervening must have some significance.

17. For this, Mr. President, is the paradox of the position of our friends from Equatorial Guinea: they are intervening not, as they claim, in order to enable you to pass judgment, but on the contrary, to try and prevent you from doing so. And this leads me to my consideration of the third step in the argument set out yesterday by Pierre-Marie Dupuy: what are

3. The conclusions to be drawn from the intervention in this case?

18. To inform the Court, the intervening State tells us. There is no doubt that this is correct and Cameroon never considered that it was not appropriate. But what is this information for? Equatorial Guinea's reply: so that you will *not* make a complete ruling on the dispute before you.

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19. But if that was all, Members of the Court, you would have no need of Equatorial Guinea: the Court has shown us, in the "Libyan" cases, that it was fully able not to rule on the claims of the Parties when such a ruling risked violating the rights of a State absent from the case (see the decisions referred to and commented upon by Cameroon in the Written Observations of Cameroon on the Application by Equatorial Guinea for permission to intervene (OCGE, pp. 17-21, paras. 52-62). But if the Court displayed such prudence, as clearly indicated by sketch-map 10 E reproduced in Equatorial Guinea's judges' folder of yesterday, it is *because* the interventions of Malta and Italy were not allowed. Cameroon has also discussed this at length (*ibid.*; see also CR 2002/6, pp. 66-67, paras. 31-33); I shall not go over this again, but it is particularly important; and, wisely, my opponent did not dwell on it.

20. Moreover, in the passage from your Judgment of 11 June 1998, to which Professor Dupuy also alluded in passing, but without quoting it (CR 2002/21, pp. 60-61, para. 21), it was clearly this situation you were referring to when stating that "[w]hether such third States [Equatorial Guinea and Sao Tome and Principe in the event], would choose to exercise their rights to intervene in these proceedings pursuant to this Statute remains to be seen", which would have justified Nigeria's eighth preliminary objection having to be "upheld at least in part" (*I.C.J. Reports 1998*, p. 324, para. 116) and which would therefore have justified the Court's declaring Cameroon's claim beyond point G inadmissible, at least partly so (see the text of the eighth preliminary objection, *ibid.*, p. 289).

21. But, Mr. President, Equatorial Guinea, in its concern to fully inform you of its position, *has* intervened. Where it is concerned in any case, the question therefore no longer arises: you may rule on Cameroon's claim, completely, while preserving the rights of Equatorial Guinea, also completely. It being understood that:

(1) you will need to assess the substance of the rights claimed by Equatorial Guinea, and not just "prima facie", as Professor Dupuy seems to think (CR 2002/21, p. 62, para. 27), since for this latter purpose, intervention is absolutely useless; on the other hand,

(2) you need only make this assessment in order to determine whether, yes or no, the solution proposed to you by the Parties — in the event, Cameroon's equitable line, since Equatorial Guinea is in the same interest as Nigeria — whether, then, the equitable line affects the rights of the intervening State; not to settle a dispute between the intervening State and Cameroon, which is not before you;

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(3) since Equatorial Guinea is not an intervening party, it will not be legally bound by this assessment, even though there is no doubt that, as a law-abiding State, it will take the greatest possible account of the reasoning underlying your decision — but, I repeat, it would remain wholly protected by Article 59 in this respect and would, as it were, find itself in the situation of the State which is the object of an advisory opinion for example, not in the situation of a party bound by the judgment to be delivered;

(4) I do not claim that, should you find the argument presented to you by Equatorial Guinea partly or totally groundless, this would not create problems for it, notably in its relations with certain

oil companies; but this would merely be the consequence of the legal situation objectively assessed by an impartial third party (without the matter being adjudicated) and, above all, it is the "risk of the law", that Equatorial Guinea has taken by intervening; in exchange for which, it has been able to provide you with a complete and detailed exposition of the situation from its own perspective and it has the assurance that you will not allow anyone to encroach upon its rights; on the other hand, and lastly,

(5) if you were to conclude that the equitable line in some way affects the rights of Equatorial Guinea — which I am only assuming for the sake of argument — it would be your duty to preserve the rights of the intervening State *in toto*, while adopting an equitable solution compatible with those rights.

22. On that hypothesis, Equatorial Guinea sees only one solution: not to establish a line (CR 2002/21, p. 61, para. 22). My learned and skilful friend — I am still speaking of Professor Dupuy — then goes on to tell us that: "international decisions have always been made not merely 'subject to the rights of the third State', but have refrained from encroaching on those rights" (*ibid*., p. 61, para. 24; see also pp. 38-41, paras. 26-35, Mr. Colson). He backs up this assertion by quoting your decisions in the *Frontier Dispute (Burkina Faso/Republic of Mali)* and *Libya/Malta* cases:

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— in the former case, the Chamber of the Court stated that: "a court dealing with a request for the delimitation of a continental shelf must decline, even if so authorized by *the disputant parties*, to rule upon rights relating to areas in which third States have . . . claims" (*I.C.J. Reports 1986*, p. 578, para. 47; emphasis added);

— in the latter case, you declared that "the Court has not been endowed with jurisdiction to determine . . . whether the claims of the Parties . . . prevail over the claims of those third States in the region" (*I.C.J. Reports 1985*, p. 26, para. 21).

23. All this is perfectly correct, but merely confirms something which Cameroon — as we have written, said and said again — has never disputed: the Court cannot *rule* on the rights of third States. But this tells us nothing about the scope of an intervention (in those two Judgments, the Court adopts its customary stance, that where the interested third States do not intervene), nor about how the rights of interveners must and can be protected.

24. Whatever Equatorial Guinea may say, as I showed on 25 February (CR 2002/6, pp. 68-72, paras. 38-48), there is not just *one* single way of protecting these rights, there are several. To begin with, of course — and you will not be surprised that this is undoubtedly the solution we favour — the Court may quite simply find, as we also see it, that the equitable line in no way affects the rights of Equatorial Guinea which, therefore, do not need to be specially preserved. If this was not the case, you could, Members of the Court, for example:

— move the line taking full account of those rights; or

— refrain from ruling on the delimitation requested by the Parties in the area in which there seemed to you to be a problem (this is the "white square" solution); or

— rule that the maritime boundary between Cameroon and Nigeria is a discontinuous one, a possibility I referred to in passing without actually wanting you to avail yourselves of it, but which is not precluded by any legal principle (*ibid.*, p. 71, paras. 45-46); or

— from whatever point you regard as appropriate, you could confine yourselves to indicating the direction of the boundary without ruling on a terminal point.

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25. All these possibilities, to which Professor Mendelson will to some extent revert presently, preserve the rights of Equatorial Guinea *in toto*. It seems to us that the choice you have to make as between them must be based on two considerations. First, you will have to try, Members of the Court, to provide as complete a solution as possible to the dispute between the litigants and you are in a position to adopt a complete solution thanks, among other things, to the intervention of Equatorial Guinea and, second, this solution must be equitable for all concerned.

26. On the other hand, two things are impossible for you. First, as Maurice Mendelson will also show, you cannot fix a tripoint, of any kind, among other things because Equatorial Guinea has declined to become an intervening party. Secondly, and more broadly, you cannot settle any dispute between Cameroon and Equatorial Guinea since, as so excellently put by Pierre-Marie Dupuy, to whom I leave the last word:

> "Quite clearly, the delimitation between the maritime areas of Cameroon and those of Equatorial Guinea must be negotiated *between them* with a view to achieving an equitable solution, and only if those negotiations led to an impasse could those two States, if need be, decide to come back to the Court to settle their dispute. But that would be another case." (CR 2002/21, p. 60, para. 18.)

27. For the moment, it is a dispute between Cameroon and Nigeria which it is your task to settle, Members of the Court; and you must find an equitable solution to it, one respecting the rights of all parties; of Equatorial Guinea, of course; of Nigeria, of course; but also, let us not forget, of Cameroon.

Thank you most sincerely for your attention. May I ask you, Mr. President, to give the floor to Jean-Pierre Cot.

The PRESIDENT: Thank you, Mr. Pellet. I now give the floor to Mr. Jean-Pierre Cot.

028 Mr. COT: Mr. President, I am being accorded a title that I once bore for just a few months, and certainly did not deserve.

II. THE GEOGRAPHICAL AND DIPLOMATIC CONTEXT

1. Mr. President, Members of the Court, I have to explain to you the geographical and diplomatic context of Equatorial Guinea's intervention.

2. What I am seeking to do is to persuade you to give equity a chance. We are in a situation which clearly calls, over and above strict equidistance, for the intervention of considerations of equity. Geography suggests it; positive law requires it.

3. Equatorial Guinea has intervened in order to ask you to see that its rights are not jeopardized. That is a principle with which you are bound to comply, and we ask nothing else. But I would like to expand upon its terms. It is your task, Mr. President, to ensure that you do not prejudge a dispute of which you are not seised. You recalled this recently in regard to the Application for permission to intervene by the Philippines in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*[1]. You have to take care not to prejudice the rights of the parties in such a case. That clearly applies to the rights of Equatorial Guinea. It applies also to the rights of Cameroon, to the extent that they are concerned by a delimitation with a third State, here Equatorial Guinea.

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[1]Judgment of 23 October 2001, paras. 53 and 54.

Some legal geography

4. I now come to the legal geography, and I will be brief. A few words, though. The geographical situation of the Gulf of Guinea, as fashioned by history, has accumulated a whole series of handicaps which operate to the detriment of Cameroon. It is practically a textbook case. As you can see from this outline map, which you may perhaps recognize. [Start projection — tab 146.]

5. The marked concavity of the Cameroonian coastline is comparable to that of Germany in the *North Sea Continental Shelf case*. In that case, the Court introduced considerations of equity in order, as you will recall, significantly to modify the delimitation which would have resulted from strict application of the equidistance line. That is the first clear handicap.

6. The second, Cameroon's enclavement, precluding it from access to a continental shelf which nonetheless represents the natural prolongation of its land mass. That enclavement is to some extent reminiscent of the *Saint-Pierre-et-Miquelon* case. In that case, the Arbitral Tribunal found a solution which gave Saint-Pierre equitable access to the continental shelf without involving any break in continuity.

7. Finally, the third and major handicap, the presence of a large island off its coast, blocking the seaward projection of the land and interrupting the course of the lines of maritime delimitation; a similar situation lay at the heart of the dispute over the *Mer d'Iroise*. Despite the presence of the heavily populated Channel Islands (130,000 inhabitants, as against around 100,000 for the island of Bioko[2]), the Court of Arbitration in that case reduced the island's effect for purposes of the maritime delimitation between the two parties, so as to allow for considerations of equity. [End of projection.]

8. However, as I well appreciate, Mr. President, no one maritime delimitation case is truly comparable with another. I note, nonetheless, that in each of those cases presenting an element of resemblance with the present case, the Court was able to take account of the circumstances of the case in order to introduce a measure of equity into the solution adopted.

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[2]Written statement of Equatorial Guinea, p. 9, para. 21.

9. In our relations with Equatorial Guinea, we are not asking the Court to take account of equity. More modestly, we are asking it not to exclude it. I am now done with these considerations, which I have called legal geography, and turn next to the diplomatic context.

The diplomatic context

10. Equatorial Guinea's counsel has painted the specific diplomatic background to our case with a somewhat broad brush. He has given you to understand that Cameroon made a firm commitment to a delimitation based on equidistance and on the definition of a tripoint, before abruptly changing tack and putting forward its own equitable line. That, Mr. Colson, is to argue

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without taking account of the uncertainties and vacillations of the parties to the negotiations. It is above all to disregard the changes in the general diplomatic and legal context over the period in question.

11. You yourselves, Mr. President, Members of the Court, recalled in your Judgment on the Preliminary Objections[3], that the negotiations between Cameroon and Nigeria related to the whole maritime delimitation between the two countries. Those negotiations failed, since the parties could not agree on the effect of the Maroua Agreement and hence on the starting point for the maritime delimitation proper. In those circumstances, the various discussions and reports resulting from the negotiations provide interesting indications in regard to the state of mind of the Parties. They cannot, however, be cited as evidence against one Party, unless they embody an international agreement, which would be quite another matter. For the rest, international jurisprudence is clear. In these circumstances, the communiqués summarizing the terms of the discussions merely represent interim reports, no more than that.

12. The bilateral discussions, both by Cameroon with Nigeria and by Cameroon with Equatorial Guinea, manifest a certain hesitation, an ambiguity, which are reflected in the terms of the communiqués. The Montego Bay negotiations were in progress during the first stage of negotiations between Cameroon and Nigeria in the 1970s. The status of the parties in terms of the relevant Conventions, the question whether the Montego Bay Convention or of the Geneva Conventions applied, depended on the parties' respective ratification procedures. Thus Equatorial

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[3] *I.C.J. Reports 1998*, p. 322, para. 110.

Guinea ratified the Montego Bay Convention on 21 July 1997, three years after the last contact between the delegations of Cameroon and Equatorial Guinea in regard to the maritime delimitation. In these circumstances the uncertainty of the negotiators is readily understandable. Which was the instrument applicable between the two parties at the time? Geneva? Montego Bay? What did customary law have to say on the matter? It was evolving rapidly, as you will recall. Seen from Yaoundé, or from Malabo, the answers were by no means clear.

13. With reference more particularly to the negotiations between Equatorial Guinea and Cameroon, these were begun at a late stage and were limited to discussions in 1993. They resulted
031 in the communiqué of 3 August 1993, which Mr. Colson included in the judges' folder — you will find an extract at tab 147 in our folder — but which he did not read to you. I will add to his statement on two points. First, Cameroon agreed at that time to give the co-ordinates of the baselines by reference to which the maritime delimitation was to be carried out. Those co-ordinates were transmitted to Equatorial Guinea[4]. Secondly, the parties agreed to finalize at a later date, at Malabo, this outline maritime delimitation. For they lacked one essential piece of information, the definition of the starting point of the proposed delimitation. In these circumstances, the 1993 communiqué does not represent a delimitation agreement, but at most a "programmatic" pre-agreement, to cite a term already used here by Nigeria.

14. I would add that, by referring to the Montego Bay principles, which nowhere provide, as you know, for recourse to equidistance in order to delimit the continental shelf or the exclusive economic zone, the Cameroon-Equatorial Guinea negotiators had introduced into the language of the communiqué an ambiguity which required to be removed before an agreement could be reached.

15. And it is against this background, Mr. President, Members of the Court, that the question of the tripoint has to be viewed. Contrary to what Equatorial Guinea's counsel told you, Cameroon does not exclude a tripoint. As things currently stand, the sketch-maps presented by Cameroon even show two, which you can see on the map currently projected on the screen. These are points H" and I', which you will also find in the judges' folder at tab 148. You will note that

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[4]Written statement of Equatorial Guinea, Ann. EGSW 4, p. A-27.

points H" and I' lie a very long way from the yellow banana which so appeals to Mr. Colson. Mr. President, you would need all the powers of imagination of Alain Pellet at 3 o'clock in the morning to discern here the tiny sliver of yellow wall so dear to Vermeer and to Proust. To me, it looks more like a Magritte, which might be called: "This is Not a Tripoint". In any event, the problem of the tripoint only concerns the Court in so far as it represents a limit beyond which the rights of third parties could be affected.

16. Suffice it to note at this point, Mr. President, that the reference to a tripoint in the Cameroon-Equatorial Guinea Joint Communiqué of 3 August 1993 links the determination of the

032 tripoint to the Montego Bay Convention [end projection]: "Both parties have proceeded . . . to adopt a methodology that would allow for the determination of the boundary point called the 'tripoint' (Cameroon, Nigeria and Equatorial Guinea) according to the Montego Bay Convention on the Law of the Sea of 1982."

17. The methodology for the determination of the tripoint, to quote the expression used in the Communiqué, was thus intended, in the minds of its signatories, to enable them "to achieve an equitable solution" — that is the language of Articles 74 and 83 of the Montego Bay Convention on the Law of the Sea. Moreover, as we know, there could be no question of fixing that tripoint, given the current uncertainty in regard to the course of the delimitation between Nigeria and Cameroon.

18. Equatorial Guinea notes that Cameroon did not protest when Equatorial Guinea adopted its Act of 12 November 1984, which provided for application of the equidistance principle in the definition of maritime areas under Equatorial Guinean sovereignty, nor against the Decree Law of 6 April 1999 implementing the 1984 Act. I would remind my learned friends from Equatorial Guinea that neither did they protest in 1974, when Cameroon adopted its statute extending its own territorial waters to 50 miles from its coastline, before ultimately accepting the 12-mile rule laid down by the Montego Bay Convention.

The truth is, Mr. President, that African States rarely issue protests about their neighbours' domestic legislation, fearing that that would be regarded as an unfriendly act. Moreover, Equatorial Guinea's legislation did not prevent the Malabo authorities from concluding an

international agreement with Nigeria fixing the maritime boundary between the two States a long way inside the median line.

19. I now come, Mr. President, to those international maritime delimitation agreements which have been signed in respect of areas within the Gulf of Guinea. In no way do they confirm an equidistance practice. Quite the contrary. Nigeria prides itself on the agreements it has signed, on the basis of neighbourly relations, with the other States of the Gulf[5]. We feel that this rush to enter into such agreements, just months from the decision on the merits that you will be rendering, is not an appropriate policy. Some might see in it an attempt to force your hand, to present you

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with a fait accompli. Whatever the truth of the matter, what I would ask you to note is that those agreements are far from being based on the equidistance principle, they are far from respecting the median line.

20. I would remind you that Nigeria is responsible for the vast majority — I was going to say the lion's share — both of production and of reserves of crude in the Gulf of Guinea, as you can see from the table in your folder at tab 149, which we already produced in our earlier statements.

21. I come now to the agreements. First and foremost [projection 150] the Treaty of 23 September 2000 between Nigeria and Equatorial Guinea. This Treaty increases Nigeria's territory by some 1,750 km^2 in comparison with the median line. That is the area coloured mauve on the map. Malabo was no doubt perfectly entitled to give up that maritime area which would have accrued to it if the equidistance doctrine had been applied. Under the Treaty, Equatorial Guinea renounces any claim of sovereignty beyond the Treaty line. That is to say, a long way short of the equidistance line. I quote Article 4:

> "North and west of the maritime boundary established by this Treaty, the Republic of Equatorial Guinea shall not claim or exercise sovereign rights or jurisdiction over the waters or seabed and subsoil."

22. Equatorial Guinea's written pleadings provide two further items of information which enlarge on the text of the Treaty. First, we learn that Nigeria had designs on the oil deposits, and in particular the Zafiro field, situated on Equatorial Guinea's side of the median line[6]. It finally saw fit to abandon those claims at a late stage in the negotiations. In part, at least, since it retained, as I

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[5]CR 2002/13, p. 28, para. 40 (Mr. Crawford)

[6]*Financial Times*, 26 Sept. 2000, quoted by Nigeria, Rejoinder of Nigeria, Ann. 175, vol. VIII, p. 1511

would remind you, the Ekanga quadrilateral. Second, Nigeria took the view that, in the equidistance calculation, the length of its coastline should be weighted by reference to its population. Equatorial Guinea accepted the Nigerian calculation, but rejected the reasons for it. As far as Equatorial Guinea was concerned, this was a simple political agreement[7]. A point of which I would ask you to take note. [End projection.]

23. I now come to the preliminary agreement signed between Nigeria and Sao Tome and Principe on 28 August 2000, on the occasion of the visit of President Obasanjo. That preliminary

034 agreement departs still further from the median line. The Final Communiqué states (you will find it at tab 152 in your folders) — there are two relevant paragraphs:

> "5. Concerning the negotiations on the delimitation of the Maritime boundary between the two countries, the two Presidents agreed on an appropriate formula of one third (1/3) line effect, that is, between the equidistance and proportionality lines. This is without prejudice to subsequent negotiations on a final delimitation of the maritime boundary between both countries.
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> 6. They also agreed on the establishment of a Joint-Development Zone between the 1/3 effect and equidistance lines, to be managed by a Joint Development Commission on the basis of sixty percent (60%) to Nigeria and forty percent (40%) to Sao Tome and Principe. This zone will be jointly exploited, protected and defended by both countries."

24. Thus, according to the communiqué and to the preliminary agreement, the whole of the Joint Development Zone is to be incorporated into Nigerian territory under the preliminary delimitation agreement and as a result of the application of the 1/3 line effect between the equidistance and proportionality lines. [Begin projection.] And you now see on the screen — you will find this in your folder at tab 153 — the Zone in question. True, under an interim agreement, a Treaty of 21 February 2001, Nigeria consents to the formal embodiment of the overlapping territorial claims and to the implementation of the Joint Development Zone[8]. All fine and dandy! But Sao Tome should beware: perhaps the day of reckoning has simply been postponed. Nigeria has not given up the idea of grabbing for itself some 38,000 km^2 lying beyond the median line. [End projection.]

25. Mr. President, Equatorial Guinea objected to the use of the word "threat" in relation to Nigeria's attitude to its neighbours. The word is perhaps excessive, I freely admit it. But, I do not

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[7]Written Statement of Equatorial Guinea, p. 15, note 28.

[8]Observations of Nigeria, p. 1, Note 2, Text deposited with the Registry.

know why, I cannot help thinking of the fable of the lion dividing the kill into four parts. You may recall it, perhaps, Mr. President. He gives himself the first share: "because I am called Lion". He gets the second share because he is the strongest. "As the fiercest, I claim the third share. And anyone who touches the fourth share, I shall strangle them."[9] Mr. President, I trust you will not see any similarity between the beasts in the fable and the States of the Gulf of Guinea.

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26. To return to the diplomatic practice, it should be noted that not one of the maritime delimitation agreements concluded in respect of the Gulf of Guinea espouses the median line. Why should Cameroon, no doubt the least blessed by geography of the Gulf's States, be obliged to follow a precept which appeals to no one else there? I see nothing unreasonable or extravagant in Cameroon's position on this.

27. Mr. President, Members of the Court, thank you for your kind attention. Mr. President, I should be grateful if you would kindly call Professor Maurice Kamto to the podium. I do not know if you want to take a break at this point or if you would rather hear Maurice Kamto first. It is, of course, entirely a matter for you; and I thank you.

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

Mr. KAMTO :

III. THE DELIMITATION METHOD — THE EQUITABLE LINE AND THE RIGHTS OF EQUATORIAL GUINEA

1. Mr. President, Members of the Court, Cameroon welcomes the intervention of Equatorial Guinea, which will enable a better informed Court to rule on our claim in full awareness of the facts. But I must dispel some misunderstandings and, if possible, reassure Equatorial Guinea that its rights in the area will be taken into consideration. Indeed, a great many things were said yesterday about the inequitable and excessive nature of the line proposed by Cameroon, about the threat it would pose to the interests of Equatorial Guinea or about the extravagance of its claims[10].

2. In order to do so, I shall first explain how the delimitation method followed by Cameroon takes Bioko Island into account and makes it possible to honour Equatorial Guinea's rights in the

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[9]La Fontaine, "*The Partnership between the Heifer, the Goat, the Sheep and the Lion.*"

[10]CR 2002/21, p. 21, para. 12 (N'Fube).

zone to be delimited; secondly, I shall show why, in view of the geographical circumstances of the area, an equitable result must be sought.

036 **1. Delimitation method and effect of Bioko Island**

(a) ***Non-existence of a customary boundary based on equidistance***

3. According to Equatorial Guinea, the boundary relationship between Cameroon and itself is *"based on a median line"*[11] so firmly established that Cameroon *"is no longer entitled to challenge"* it[12]. In short, a customary boundary based on equidistance is said to have been established between these two countries.

4. This idea is incorrect, and I shall first show this by placing the significance of Cameroon's reference to equidistance in the proper perspective, and then by showing the relative importance of oil practice in the area.

(1) Equidistance

5. My friend and eminent colleague, Professor Cot, reminded us a moment ago of the context in which the joint communiqué of 1993 was produced, in particular of the doubts which still characterized the Parties' approach and their choice of a delimitation method at that time. Allow me, if you will, Mr. President, to add the following remarks to those observations.

Cameroon does not seek to rule out the equidistance method in principle. Where the two States — Equatorial Guinea and Cameroon, I mean — consider during the coming phases of their negotiations that equidistance makes for an equitable result, there will be nothing to prevent them from adopting it as the delimitation method in the sector concerned; but where an equitable result can only be achieved by adjusting equidistance, they will have to forgo the automatic and unbending application of equidistance. Hence, this method cannot be applied across the board in the delimitation of the maritime boundary between Equatorial Guinea and Cameroon, just as it cannot be in the delimitation of the boundary with Nigeria, for reasons which Cameroon has explained at length in connection with the principal case. Here, equidistance must be adjusted to

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[11] CR 2002/21, p. 28, para. 32 (N'Fube).

[12] *Ibid.*, p. 27, para. 29 (N'Fube).

take account of the particular geographical context of the area where the delimitation is to take place.

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6. Moreover, Equatorial Guinea itself accepts that the application of pure equidistance would be malapropos in the geographical context concerned, probably because it is aware that it would produce a disastrous result. Indeed, one of Equatorial Guinea's advocates, Professor Pierre-Marie Dupuy, concluded his statement yesterday[13] by referring to your Judgment in the *Qatar* v. *Bahrain* case, pointing out, quoting the Court, that "it is in accord with precedents to begin with the median line as a provisional line and then to ask whether 'special circumstances' . . . require any adjustment or shifting of that line".

7. However, he does not draw any practical conclusion from this for the present case. Indeed, it is as though Equatorial Guinea were stuck in the first phase of the method, namely, provisional application of equidistance, completely forgetting the second phase, adjustment of equidistance in the light of the relevant circumstances. Is there a geographical situation which, more than that of the Gulf of Biafra, requires that relevant circumstances such as the concavity of the coasts and their general orientation should be taken into account and that, as a result, pure equidistance should be abandoned, or at any rate adjusted?

(2) The oil concessions practice

8. On behalf of the intervening State, Mr. Colson yesterday stressed the role of oil practice in the area for delimitation as proof of the existence of an established line based on equidistance. In this connection, he claimed that, on 22 February last, Cameroon, speaking through me, concluded that "the oil practice of Cameroon and Nigeria in the area confirms that delimitation"[14].

9. I should point out that these remarks were made in the context of Cameroon's oral argument on the delimitation of the maritime boundary in the first sector, the sector delimited by treaty and which, in Cameroon's view, is not based on oil concession practice. Furthermore, my distinguished colleague clearly forgot also to refer to the indent which, in the text of my statement, precedes what he quoted, and where it is stated that "the 'fait accompli' of the oil concessions has

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[13]CR 2002/21, p. 63, para. 29.

[14]CR 2002/5, p. 70, para. 52, quoted by Mr. Colson, CR 2002/21, p. 49, para. 58.

no effect on this conventional delimitation"[15]. I don't think one could more clearly state the role which, in Cameroon's view, should be assigned to oil concessions in this case. In any event, Cameroon has never advocated the concessions line, Mr. President; it has merely indicated to the Court that the line Nigeria was claiming in the sector coincided with the maritime boundary which was fixed by the Maroua Agreement and, in this case, confirmed by the oil practice of the two Parties.

10. But the intervening State goes further on this question of oil concessions. Noting the reference made last Tuesday by Professor Pellet to the lack of time for preparing the maps showing the overlapping oil concessions of Cameroon, Nigeria and Equatorial Guinea in the area concerned, Equatorial Guinea's advocate sententiously threw in: "Maybe there was no time, but in all events the effort would have failed."[16]

11. Our colleague was rather careless here for, as I am going to show you, there are indeed areas of overlap in this zone between Cameroon and Equatorial Guinea.

[Projection No. 154.] The projection now on the screen shows a sketch-map of a Cameroonian oil concession called Moudi. It was granted to Total and Mobil in 1981 and has been exploited since 1993 by Kelt, which later became Perenco. This sketch-map, prepared on the basis of a document produced by Perenco, shows two things on the southern boundary of the concession:

— firstly, this southern edge of the concession did not respect the median line or the course which would result from the application of the Equatorial Guinean decree law of January 1999; the result is a clear overlap between that concession and the Equatorial Guinean concession where United Meridian operated in the past;

— secondly, the Tsavorita-1 and 2 wells sunk in 1997 by United Meridian pursuant to Equatorial Guinean permits were drilled in an area belonging to Cameroon. I should point out that the two wells hit liquid hydrocarbons and produce 1,800 barrels/day during production tests. [End of projection.]

12. [Projection No. 155.] The second sketch-map on the screen, which you will easily recognize since it was shown yesterday by Equatorial Guinea, identifies the Tsavorita-1 and 2 wells

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[15]CR 2002/5, p. 69, para. 52.

[16]CR 2002/21, p. 48, para. 57.

039 on Cameroon's concession map and shows the overlaps produced by application of the concession co-ordinates provided by Nigeria. The intervening State nevertheless showed this sketch-map as irrefutable evidence of the existence of a concessions line coinciding with the median line and, as it were, constituting a "customary boundary". You have already heard this sanctuary notion invoked so often over the last few weeks, a notion which, moreover, does not always refer to the same reality. Here, this customary boundary simply has no basis in established local custom.

13. Two conclusions may be drawn from this: firstly, there is indeed overlap between Cameroon's concessions and Equatorial Guinea's; secondly, the practice of the two countries does not strictly respect the median line, the limit of "oil" operations, which is a technical limit, being different from a maritime boundary. Consequently, there is no customary boundary between Cameroon and Equatorial Guinea, just as equidistance does not represent as between them a codified legal rule, adopted once and for all and applicable independently of the geographical circumstances.

(b) ***Status of Bioko and its influence on the delimitation***

14. Mr. President, the intervening State has pointed out on several occasions that Bioko Island is the site of the capital of Equatorial Guinea, as though this could have any impact at all on the island's effect on the delimitation sought by Cameroon or on the rights pertaining to the island. Bioko is not an island State but an island dependency of Equatorial Guinea. Turning around the Court's reasoning in the *Libya/Malta* case[17], I would say that the relation between the coast of Bioko and those of its neighbours is not the same as if Bioko were an independent State. As Professor Lucchini wrote in a course which he gave next door, at the Academy of International Law in 2000: "The delimitation régime is not identical for an island State and for a dependent, isolated island falling under the sovereignty of a State."[18]

15. As an island dependency of Equatorial Guinea, Bioko cannot claim the full effect of its
040 projection in all directions of all its coastal fronts. It is not entitled to the benefit of a radial projection of them. In its Observations on the Written Statement of Equatorial Guinea[19], Cameroon

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[17] *I.C.J. Reports 1985*, p. 42, para. 53.

[18] *RCADI*, 2000, Vol. 285, p. 329.

[19] Written Observations of Cameroon, 4 July 2001, pp. 21-22, paras. 91-92.

stated that, in the absence of any jurisprudential guidance on this question, the position of Judges Ruda, Bedjaoui and Jiménez de Aréchaga in their joint opinion appended to the Judgment of 3 June 1985 in the case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* could indicate a doctrinal trend in this area.

Bioko cannot be considered in the abstract and be attributed a radical, absolute effect which takes no account of the real situation in the Gulf of Biafra. It is in relation to the respective rights of the Parties, as recognized in positive law, that any delimitation must be effected and that the claims of all Parties must be considered.

16. Even supposing that, in this case, the western coast of Bioko were to be considered as *a new coastal front* interrupting the "tête-à-tête" between Cameroon and Nigeria, this cannot produce a new "tête-à-tête" between Nigeria and Equatorial Guinea by appropriation of the rights of Cameroon. Cameroon maintains that, by fixing the maritime boundary between itself and Nigeria, the Court will indicate where Nigeria's eastward and south-eastward claims and Cameroon's westward and north-westward claims stop and will thus enable that country to negotiate with Equatorial Guinea the extent of the maritime area to which it is entitled.

17. According to Equatorial Guinea in its Written Statement of 4 April 2001, "Equatorial Guinea's entitlement to maritime space is the same as Cameroon's or Nigeria's"[20]. Cameroon agrees with this. In the area to be delimited, every State involved on one count or another in this case, namely Cameroon and Nigeria, but also the intervening third State, has "claims", but only claims, and contrary to Equatorial Guinea's assertion, the criterion of distance or proximity cannot alone establish the rights of Equatorial Guinea and Nigeria in the area to be delimited and justify the disregard or appropriation of the rights of Cameroon. To echo the exact words of the Court in the *North Sea Continental Shelf* cases, "it happens that the claims of several States converge, meet and intercross in localities where, despite their distance from the coast, the bed of the sea still unquestionably consists of continental shelf"[21]. These claims will become established rights between Cameroon and Nigeria only upon the maritime delimitation which Cameroon respectfully asks the Court to make, and between Cameroon and Equatorial Guinea only upon conclusion of the

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[20]Written Statement of the Republic of Equatorial Guinea, p. 16, para. 39.

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

negotiations which Cameroon and that country have embarked upon together and which will certainly be completed by the end of the present proceedings.

18. Moreover, Cameroon notes, not without some surprise, that Equatorial Guinea makes no reference to this prospect of bilateral negotiations with Cameroon, a prospect on which it laid particular stress in the first round of its oral argument[22] in the case between it and Nigeria. Hence, not only does the intervening State omit to take note of Cameroon's willingness to negotiate and finalize with it the delimitation of their joint maritime boundary by agreement, but it asserts that the maritime areas situated to the east of the equitable line claimed by Cameroon would fall entirely to the latter[23] if the Court were to decide in favour of the line proposed by the Applicant. And then the Agent of Equatorial Guinea asks: "What happens to Equatorial Guinea's interest?" Then he adds: "Cameroon has not yet answered that question in either its oral arguments or its written pleadings in this case."[24]

19. Mr. President, if the line proposed by Cameroon has one good point, it is that it seeks to take into account the interests of all the States concerned: to avoid a marked cut-off of Nigeria's relevant coastal front, to avoid entering or even interfering with the maritime area claimed by Sao Tome and Principe and to preserve the rights of Equatorial Guinea east of the equitable line by leaving the outcome entirely up to the negotiations with a view to a delimitation by an agreement with that country. Cameroon wishes to resume the negotiations with Equatorial Guinea suspended since the Yaoundé meeting in August 1993, because the two countries have always negotiated in good faith, in mutual respect and with a view to a fruitful result. It is not with all its neighbours that it finds it difficult to negotiate in an atmosphere of calm and mutual trust.

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20. But Cameroon may perhaps not have been sufficiently clear on this subject. So I hope you will allow me to reiterate its position vis-à-vis Equatorial Guinea: the equitable line proposed by Cameroon seeks to establish the limit of Nigeria's legal interests eastwards off its coasts facing the Gulf of Guinea, and Cameroon's interests westwards of the zone concerned, with a view subsequently to enabling the two States situated in the middle of the Gulf, in the event Cameroon,

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[22]CR 2002/7, p. 31, para. 42 (Kamto).

[23]CR 2002/21, p. 37, para. 24 (Colson).

[24]*Ibid.*, p. 24, para. 24 (N'Fube).

owing to its coastal presence in the hollow of the Gulf, and Equatorial Guinea, owing to the position of Bioko Island, to negotiate their respective maritime areas.

(c) ***Construction of the line and taking Bioko into account***

21. Mr. President, Cameroon implemented the two stages of the method at two different times in the construction of the equitable line, taking care to give an effect to Bioko to adjust the equidistance, contrary to what the Agent of the intervening State has said. This line is not "drawn as if . . . Bioko Island simply did not exist"[25]. Quite the contrary! [Projection No. 156.] To claim that Cameroon has constructed its equitable line as though Bioko did not exist undoubtedly shows ignorance of what a pure equidistance line between Cameroon and Nigeria would have provided. As shown by the sketch-map being projected, the course of this line would have reduced the maritime area off the north-west coast of Bioko. Indeed, we see a major reduction in the maritime area on the western flank of the island, which increases as the equidistance line moves towards its south-western part.

22. Bioko's effect on the construction of the equitable line was reflected in technical terms at the time of the determination of point I. Indeed, to determine this point, which also influences the orientation of segments I/H and I/J, Cameroon, as we discussed last Tuesday, took into account the length of the southern coast of the island from Punta Oscura to Punta Siantago, in other words some 29 km. As Cameroon explained during its oral argument in the case between itself and

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Nigeria[26], this coastal stretch was not chosen arbitrarily; it is the coastal front of Bioko capable of being projected furthest seawards. Secondly, it corresponds to the average of the greatest and smallest width of the island, which are, respectively, 35 and 26 km. Thirdly, this length is not very different from that of the northern coast of Bioko Island, which measures some 25 km between the point marked FL (M25) and Islote Horacio.

23. As the relevant coast of Bioko, Cameroon could have taken its western coast from Punta Oscura to FL (M25) through Cabo Rodondo, Punta Argelegos and Punta Achada, 73 km in

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[25]CR 2002/21, p. 20, para. 10 (N'Fube).

[26]CR 2002/17, pp. 59-60, para. 46 (Kamto).

length, but the cut-off effect on the projection of Nigeria's relevant coast would have been radical and the result inequitable.

24. I should like to point out, Mr. President, that there is no standard method or single, perfect technique of maritime delimitation; it is all a matter of circumstances and of the desired result. As the Court said in its Judgment of 20 February 1969, when equity excludes the use of the equidistance method, "no objection need be felt to the idea of effecting a delimitation of adjoining continental self areas by the concurrent use of various methods"[27].

25. In this case, whether the method of the proportionality of the coastal lengths is used or that of adjusted equidistance, the result is the same, namely, that giving half effect to Bioko Island makes it possible to arrive at an equitable line. This result, achieved by a combination of the two methods, merely bears out the technical rigor employed in constructing this line.

26. If Equatorial Guinea adheres to this two-phase delimitation method enshrined by the Court, as manifestly it does adhere to it, it will easily be able to agree with Cameroon that an equitable solution should be given a chance — as my colleagues have already said — a solution which would not result in the total deprivation of the rights of one of the States concerned in the area for delimitation but would only limit their geographical scope in order to take account of the rights of the other States.

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2. Pursuing an equitable result

27. To achieve a result in any delimitation in the Gulf of Biafra, Cameroon considers that two principles which are widely supported by case law must be respected. First, the principle of non-encroachment, which aims to avoid the cut-off effect, and second, the need to take account of the competing rights resulting from the overlap of reciprocal claims. I shall examine these two principles in turn.

(1) The principle of non-encroachment

28. The principle of non-encroachment, laid down by the Court in its 1969 Judgment in the *North Sea Continental Shelf* cases[28] and reiterated *inter alia* in its 1985 Judgment in the

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[27] *I.C.J. Reports 1969*, p. 49, para. 90.

[28] *I.C.J. Reports 1969*, p. 53, para. 101.

Libya/Malta case[29], signifies, as noted in 1992 by the Court of Arbitration in the case concerning the *Delimitation of Maritime Areas between Canada and the French Republic*,

> "that the delimitation must leave to a State the areas that constitute the natural prolongation or seaward extension of its coasts, so that the delimitation must avoid any cut-off effect of those prolongations or seaward extensions"[30].

A certain cut-off of the projection of the respective coasts of the States concerned in the area to be delimited is inherent in any delimitation in an area of competing claims. In the present case, such an effect is inherent in the mere presence of Bioko Island, as was the case for Canada owing to the presence of the islands close to the Newfoundland coast[31], or for France owing to the presence of the Channel Islands close to its Channel coasts. In the Gulf of Biafra, there is one single continental shelf. It cannot be regarded as exclusively belonging to Cameroon, or as exclusively belonging to Equatorial Guinea or Nigeria. Cameroon is aware that even an equitable solution will inevitably cut off part of what would have been the rights of the various States if the geographical configuration had been different. But the geographical configuration is what it is, and leads to a natural limitation of each State's rights. [Projection No. 157.] What Cameroon wishes to avoid, yet without prejudging the outcome of its negotiations with Equatorial Guinea, is a radical and absolute cut-off of the projection of its coastal front, as shown by the sketch-map now being projected, even where this projection is possible while respecting the competing rights of the other States. This maritime projection of Cameroon's coast is possible in this case in the part situated north-east of Bioko far out to sea.

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29. The systematic application of equidistance in this case would result for Cameroon in the dreaded cut-off effect. The cut-off would be crippling and not partial or limited in scope.

(2) A situation of overlapping competing rights

30. Involving, moreover, an area where there are overlapping claims and rights, the effect of the application of equidistance would be to "cause areas which are the natural prolongation or

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[29] *I.C.J. Reports 1985*, pp. 39 and 46.

[30] Award of 10 June 1992, *in RGDIP*, 1992-1993, p. 696, para. 58; English translation appearing in *International Legal Materials (ILM)*, Vol. 31, 1992, p. 1167, para. 58.

[31] *Ibid.*

extension of the territory of one State to be attributed to another"[32], to borrow the terms used by the Court in its 1969 Judgment. In Cameroon's case, it would attribute all these areas to other States, in contravention of the established rules of maritime delimitation law and State practice. Never in the maritime delimitation cases they have had to deal with, have the Court and international tribunals agreed to confine a coastal State so narrowly within the limits of its territorial sea or scarcely beyond them. Nor have they ever applied pure equidistance.

31. Cameroon is asking the Court in this case to determine the limit of the respective rights of the two Parties to the case and to allow it to delimit, with the intervening State, their joint maritime boundary through negotiation. In this way, Nigeria will know the maritime space attributed to it within the maritime area for delimitation and Cameroon and Equatorial Guinea will have to determine by agreement their respective areas in the remainder. By doing this, the Court will settle the dispute submitted to it without prejudicing the legal interests of Equatorial Guinea. Any other approach, notably acceding to the wishes of the intervening State and the opposing Party, which are urging the Court not to delimit, or better still to apply equidistance, would be tantamount to the Court abandoning its mission to administer international justice in the interests of
046 peace or applying an inequitable method in this case. For it is not the geography which is "unfavourable" in this case, but the mechanical application of pure equidistance. [End of the projection.]

Thank you, Mr. President, Members of the Court, for your attention. May I ask you to call Professor Mendelson to the Bar, after a short break perhaps. Thank you, Mr. President.

The PRESIDENT: Thank you, Professor Kamto. The sitting is suspended for ten minutes.

The Court adjourned from 11.35 a.m. to 11.45 a.m.

Le PRESIDENT : Veuillez vous asseoir. La séance est reprise, et je donne maintenant la parole à M. Maurice Mendelson.

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[32] *I.C.J. Reports 1969*, p. 31, para. 44.

M. MENDELSON :

IV. CONSIDÉRATIONS SUR LE TRIPOINT

1. Introduction

1. Monsieur le président, Madame et Messieurs de la Cour, j'aurai l'honneur de traiter devant vous deux thèmes. Mes collègues les ont déjà évoqués jusqu'à un certain point, mais je pense que les éventuelles «zones de chevauchement» vous sembleront mineures.

2. Mon premier argument est que la Cour n'est pas compétente pour fixer un tripoint ou une quelconque «zone du point triple». Le deuxième est que, pour des raisons que je vais exposer, la Cour est tout à fait en mesure de donner effet à la ligne du Cameroun sans porter atteinte aux droits ou intérêts de la Guinée équatoriale.

3. Bien que liés dans une certaine mesure, mes deux arguments sont cependant distincts. Car même si la Cour faisait droit au premier — selon lequel elle n'est pas compétente pour déterminer un tripoint ou une zone du point triple —, elle pourrait néanmoins décider, en théorie, que le risque subsiste que notre ligne empiète sur des eaux relevant, ou susceptibles de relever, de la Guinée équatoriale. Je montrerai donc également que *a)* la «zone du point triple» de la Guinée équatoriale, telle qu'elle est représentée sur les cartes 2 à 9 que cette dernière a jointes au dossier d'hier, n'a pratiquement rien à voir avec la ligne que le Cameroun propose comme frontière maritime avec le

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Nigéria, et que *b)* la plus grande partie de la ligne équitable traverse en fait des eaux que la Guinée équatoriale ne revendique pas. Pour ce qui est de la zone, limitée, dans laquelle il pourrait y avoir conflit entre les revendications du Cameroun et celles de la Guinée équatoriale, nous affirmons que cette dernière est suffisamment protégée par le fait qu'aucune décision que cette Cour rendra en l'espèce ne pourra lui porter atteinte et que, de surcroît, si la Cour devait estimer que la Guinée équatoriale ne jouit pas d'une protection suffisante, les moyens existent de lui accorder toute la protection que celle-ci pourrait raisonnablement exiger.

2. La Cour n'est pas compétente pour fixer un tripoint

4. En premier lieu, donc, nous estimons que la Cour n'est pas compétente pour fixer un tripoint. Il s'ensuit qu'elle ne peut arrêter la ligne frontière — la frontière entre le Cameroun et le Nigéria — à un tripoint, puisqu'elle ne peut fixer ledit tripoint. Bien entendu, nous n'allons pas

jusqu'à dire que, dans l'absolu, la Cour ne devrait pas tenir compte de l'existence d'un éventuel tripoint lorsqu'elle détermine une ligne : c'est là un procédé courant qui a été utilisé tant par la Cour que par les tribunaux d'arbitrage, et dans un grand nombre d'affaires. M. Colson vous en a cité quelques exemples hier[33]. Le Cameroun en conclut toutefois que la Cour n'a pas compétence pour fixer un tripoint (elle peut en tenir compte, s'il existe, mais pas le fixer), car c'est là une conséquence inéluctable des dispositions du Statut et du Règlement de la Cour — telle est en tout cas l'interprétation constante que celle-ci en a donné dans sa propre jurisprudence. La doctrine appuie cette conclusion et la Guinée équatoriale le reconnaît elle-même. Permettez-moi de m'expliquer.

5. Monsieur le président, quelles que soient les possibilités initialement ouvertes par l'article 62 du Statut, la jurisprudence de la Cour est désormais claire : un Etat autorisé à intervenir n'est en aucun cas lié par l'arrêt qui sera finalement rendu s'il n'intervient pas en qualité de partie à l'instance. La Guinée équatoriale s'est pleinement prévalue de son droit d'intervenir en tant que non partie, tant dans ses pièces écrites que lors de ses plaidoiries[34]. M. Dupuy a particulièrement insisté sur le fait que «l'arrêt de la Cour ne sera de toute façon pas opposable à la Guinée équatoriale; en application de l'article 59 de votre Statut, cet arrêt ne saurait avoir d'effet qu'entre les parties à l'instance». Il a d'ailleurs insisté de nouveau sur ce point au paragraphe 15, affirmant notamment que «l'intervention ne constitue pas une exception au principe du fondement

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consensuel de la compétence de la Cour»[35]. Nombre de ses propos vont d'ailleurs dans le même sens. Il a souligné que la Guinée équatoriale ne demandait pas à la Cour de déterminer sa frontière maritime avec le Cameroun — ce qu'elle pouvait faire elle-même, a-t-il dit, par voie de négociation[36].

6. Le Cameroun est entièrement d'accord avec la Guinée équatoriale : le fondement de la compétence de la Cour est essentiellement consensuel. Tel est ce qui ressort du paragraphe 1 de l'article 36 du Statut; tel est ce qui ressort du paragraphe 2 de l'article 36 du Statut. Je doute,

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[33] CR 2002/21, p. 38-40, par.27-33.

[34] Voir, par exemple, *ibid.*, p. 27, par. 29; p. 37-38 et 40-41, par. 25 et 35; p.52-53, par. 3 et 4.

[35] *Ibid.*, p. 56, par. 15.

[36] *Ibid.*, p. 61, par. 24.

d'ailleurs, qu'il faille rappeler à la Cour qu'elle s'est toujours opposée à ce que des tierces parties soient impliquées malgré elles dans une instance sans y avoir consenti, ne serait-ce qu'indirectement : voir par exemple l'affaire de *l'Or monétaire*[37], et même l'affaire de la *Carélie orientale*[38], dans laquelle la Cour permanente de Justice internationale était appelée à exercer ses attributions consultatives. C'est parce qu'il craignait de porter atteinte aux intérêts de la Guinée équatoriale que le Cameroun s'est abstenu de formuler une revendication contre cet Etat, qu'il s'est abstenu de préciser l'étendue totale de ses espaces maritimes (car il aurait ce faisant préjugé un éventuel différend avec la Guinée équatoriale), et qu'il a demandé à la Cour de ne pas procéder à une réaffectation globale des espaces maritimes, mais simplement de déplacer la branche nigériane de la pince, pour ainsi dire — en d'autres termes, il a demandé à la Cour de tracer une ligne qui, compte tenu de la situation géographique d'ensemble dans le golfe de Guinée et la baie de Bonny, offre une solution équitable au Cameroun et au Nigéria, et uniquement à ces deux Etats.

7. Mais c'est là, Monsieur le président, un argument à double tranchant. Si la Cour n'est pas compétente pour rendre, sur la frontière entre le Cameroun et la Guinée équatoriale une décision qui soit contraignante pour cette dernière, alors elle ne l'est pas non plus pour rendre une décision sur cette même frontière qui obligerait le Cameroun vis-à-vis de la Guinée équatoriale. C'est pourtant exactement ce qui se produirait si elle jugeait qu'il existe un tripoint entre les trois Etats, et à fortiori dans ce qu'on appelle la «zone du point triple», à laquelle la Guinée équatoriale s'est constamment référée hier, verbalement et sur les diagrammes qu'elle a présentés. Ce qu'elle a commodément appelé «la banane jaune». Car un tripoint c'est, bien entendu, le point où trois frontières coïncident et convergent. Une frontière — entre la Guinée équatoriale et le Nigéria — a déjà été presque intégralement convenue dans ce secteur, pour autant que cela puisse nous

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intéresser en l'affaire. La deuxième frontière — entre le Cameroun et le Nigéria — est l'objet même de la présente instance et doit encore être déterminée par vos soins, bien entendu. La troisième frontière est celle qui sépare le Cameroun et la Guinée équatoriale, et le conseil de la Guinée équatoriale n'a eu de cesse de répéter qu'elle ne vous intéressait en rien : les deux Etats

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[37] *C.I.J. Recueil 1954*, p. 19.

[38] *C.P.J.I. série B n° 5* (1923).

devront la déterminer par eux-mêmes, par voie de négociation, a dit le conseil — et je me réfère en particulier à la déclaration de mon ami M. Dupuy, au paragraphe 24 (CR 2002/21). Ce qu'il vous a dit en substance — mais de manière bien plus élégante, cela va sans dire —, c'est que cette troisième frontière ne vous regardait absolument pas. Cependant, si tel est le cas — et malheureusement c'est bien le cas, étant donné que la Guinée équatoriale a choisi d'intervenir sans pour autant devenir partie à l'instance —, alors Madame et Messieurs de la Cour, vous ne pouvez ni fixer un tripoint précis, ni même juger qu'il existe une zone où un tripoint doit exister, parce que cela reviendrait à considérer une frontière qui sort du cadre de votre compétence.

8. Voilà un point, selon nous, très important, et sur lequel nous ne saurions trop insister. Il ne s'agit pas d'un simple *ipse dixit* du Cameroun. C'est une conséquence inéluctable tant des conclusions de la Guinée équatoriale que du droit en matière d'intervention tel que la Cour l'a développé. Il s'ensuit que la Guinée équatoriale n'a pas le droit de demander à la Cour de faire descendre la ligne à partir du point H jusqu'à ce qu'elle appelle la «zone du point triple», ni de s'abstenir de statuer sur la ligne équitable du Cameroun dans cette région par crainte qu'il soit porté atteinte aux droits de la Guinée équatoriale.

3. Les zones revendiquées (ou non) par la Guinée équatoriale

9. Ce qui me mène à notre seconde conclusion, qui est que, pour les raisons que je développerai dans un instant, la Cour est en mesure de confirmer la ligne revendiquée par le Cameroun sans porter atteinte aux droits ni aux intérêts de la Guinée équatoriale.

10. Commençons par signaler que, pour l'essentiel, la ligne du Cameroun ne traverse pas les eaux revendiquées par la Guinée équatoriale. [Début de la projection.] Vous voyez apparaître devant vous un diagramme qui illustre mes conclusions, diagramme qui figure également à l'onglet 158 de votre dossier. A vrai dire, ce diagramme a déjà été projeté ce matin. Je ferai bien de préciser qu'il a été établi à partir du graphique qui porte le n° 7 dans le dossier d'audience que vous a communiqué hier la Guinée équatoriale. Des chiffres et des lettres ont simplement été
0 5 0 ajoutés afin de présenter un tableau plus complet. Les points représentés par des chiffres romains allant de i à x sont ceux indiqués à l'article 2 du traité de délimitation maritime conclu

le 23 septembre 2000 entre le Nigéria et la Guinée équatoriale[39]. Les lettres sont celles du croquis figurant à l'onglet 100 du dossier d'audience présenté par le Cameroun dans le cadre du différend qui l'oppose au Nigéria, à ceci près que nous en avons ajouté trois — et je vous prierai de m'excuser pour cette complication, encore que j'ose espérer que cette démarche se révèlera utile. «A» représente l'extrémité orientale de ce que la Guinée équatoriale appelle la «zone du point triple»; «B» son extrémité occidentale; et «C» le point où la ligne médiane entre la Guinée équatoriale et le Nigéria croise la ligne conventionnelle établie entre la Guinée équatoriale et Sao Tomé-et-Principe.

11. Puis-je tout d'abord attirer votre attention sur les zones représentées par des lignes verticales vertes ? Je pense qu'elles apparaissent relativement clairement sur cette carte, et peut-être plus clairement encore, du moins je l'espère, dans votre dossier. Vous verrez que ces zones sont au nombre de deux, une à chaque extrémité, si je puis m'exprimer ainsi. L'une d'elles — celle située en haut à droite, au nord-est — a pour base la ligne médiane; elle est délimitée par les points A-G-H-H'-B-A. [Montrer zone.] L'autre — au sud-ouest, ou à l'extrémité située en bas à gauche — a également pour base la ligne médiane. Déterminer son étendue exacte vers l'ouest et le sud n'est pas chose aisée, en partie en raison du changement d'angle au point C entre la ligne médiane et la ligne conventionnelle entre la Guinée équatoriale et Sao Tomé-et-Principe; mais aux fins qui nous occupent actuellement peu nous importe sa délimitation exacte, et l'on peut dire de ladite zone qu'elle est, *grosso modo*, circonscrite par les points I''-C-K-J-I''. [Montrer zone.]

12. Ce qu'ont en commun ces deux zones, c'est donc d'être situées au nord de la ligne médiane. La Guinée équatoriale vous a déjà confirmé que ses prétentions s'arrêtent à la ligne médiane : c'est ce que prévoit sa propre législation. Il s'ensuit que la ligne équitable du Cameroun, indiquée en rouge, traverse, dans ces deux zones, des eaux qui ne sont aucunement revendiquées par la Guinée équatoriale. Vous constaterez notamment que le point H est fort éloigné de la ligne médiane, mais également de la zone dite du point triple, surlignée en jaune. Autrement dit, les zones portant des lignes verticales vertes ne sont nullement, je le répète, revendiquées par la Guinée équatoriale. Et c'est là un point qui ne semble pas être contesté.

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[39] DN, vol. VIII, annexe DN 174, p. 1501.

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13. J'en viens maintenant aux zones portant des rayures vertes horizontales. Il s'agit de zones situées au sud de la ligne médiane. Que la Guinée équatoriale ne continue pas pour autant à revendiquer. Car, vous le savez, la Guinée équatoriale a conclu en 2000 un accord de délimitation avec le Nigéria. Comme l'a relevé mon ami M. Cot, le passage pertinent de l'article 4 de ce traité dispose : «Au nord et à l'ouest de la frontière maritime établie par le présent traité, la République de Guinée équatoriale ne revendiquera ni n'exercera de droits souverains ou son autorité sur les eaux ni sur les fonds marins et le sous-sol.» *[Traduction du Greffe.]* Autrement dit, au nord de la ligne bleu foncé — la ligne conventionnelle — la Guinée équatoriale a renoncé à ses droits. Hier, mon ami M. Dupuy a tenté de nous convaincre que la Guinée équatoriale n'avait pas renoncé à ses prétentions sur ces eaux vis-à-vis du Cameroun. Mais, Monsieur le président, la nuance ne ressort nullement de ce traité, et je ne vois aucune raison de le récrire, — de récrire un libellé très clair — à seule fin de corroborer la thèse que soutient aujourd'hui la Guinée équatoriale. Mon ami et collègue M. Pellet a examiné dans le détail cette question le 25 février, et je ne reviendrai pas sur l'intégralité de son argumentation[40]. Ainsi, une fois de plus, la ligne du Cameroun ne traverse pas des eaux revendiquées par la Guinée équatoriale, — à une petite exception près, nous le reconnaissons.

14. Cette exception, relativement mineure, concerne la zone circonscrite par les points H''-I-I'-vi-H''— la région marquée en rouge sur le graphique 8 soumis par la Guinée équatoriale; une zone de quelque 34 kilomètres carrés. C'est une région à propos de laquelle le conseil du Cameroun a parlé le 25 février, de chevauchement[41] — léger lapsus, qui n'a certainement pas été délibérément trompeur. Cela dit, la Guinée équatoriale a tout à fait raison : il ne s'agit pas au sens strict d'une zone de chevauchement puisqu'elle est située au nord de la ligne du Cameroun, de sorte qu'elle n'est pas revendiquée par le Cameroun, mais par la Guinée équatoriale. Reste, Monsieur le président, que mis à part ce tout petit segment — tout petit segment —, la ligne avancée par le Cameroun traverse dans son intégralité — nous le répétons — des eaux que la Guinée équatoriale ne revendique pas. Il s'agit de toute la ligne qui va du point G au point K et au-delà, abstraction faite du segment dont je viens de parler. Soit dit en passant, cela signifie

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[40] CR 2002/6, notamment aux pages 64-65, par. 24-26.

[41] *Ibid.*, p. 68, par. 36.

également que la zone des intérêts de la Guinée équatoriale invoquée par M. Dupuy, zone grisée sur la carte 19 présentée hier, est inexacte dans la mesure où elle comprend les régions hachurées sur le diagramme dont nous nous occupons à présent.

15. Permettez-moi de dire d'emblée que nous n'en avons pas fini pour autant. Pas du tout fini, comme je le montrerai dans un instant. Mais c'est un fait capital qu'il convient de garder
052 présent à l'esprit : les eaux que traverse la ligne équitable ne sont donc pas revendiquées, fût-ce par la Guinée équatoriale. Elles le sont peut-être par le Nigéria, mais cela ne concerne pas la Guinée équatoriale. Les six situations frontalières évoquées hier par M. Colson et illustrées à l'onglet 10 de son dossier sont donc dans une autre catégorie. Dans chacune d'entre elles, prolonger la frontière entre les deux Parties à l'instance revenait à la faire passer dans des zones revendiquées par un Etat tiers (intervenant ou non) : ainsi, dans l'affaire *Qatar c. Barheïn*, on risquait, en prolongeant la ligne jusqu'à un éventuel point triple avec l'Arabie saoudite, d'empiéter sur des zones revendiquées par l'Arabie saoudite, mais tel n'est pas le cas en l'espèce. Si bien que les prétendus intérêts de la Guinée équatoriale ne constituent pas une raison suffisante pour motiver, de la part de la Cour, le refus de confirmer la ligne revendiquée par le Cameroun.

16. Reste que le fait que la ligne du Cameroun traverse des eaux non revendiquées par la Guinée équatoriale, s'il est important, ne règle bien évidemment pas la question. Car la zone figurée dans un bleu plus vif sur notre diagramme (encore plus vif dans votre dossier, Monsieur le président) — ce sont les eaux qui entourent Bioko (avec leurs fonds marins et leur sous-sol) et dont je parle ici —, cette zone est naturellement revendiquée par la Guinée équatoriale. Déclarer la ligne du Cameroun (ou toute autre ligne de même nature) valable *erga omnes* reviendrait, pour la Cour, à anticiper les droits revendiqués par la Guinée équatoriale et à leur porter atteinte. Mais le Cameroun n'a évidemment pas demandé à la Cour de se prononcer *erga omnes*; et la Guinée équatoriale insiste à bon droit sur le fait que la Cour n'est pas compétente pour rendre pareille décision quand elle-même n'a pas accepté sa juridiction. Sur cette question au moins, les trois Etats qui comparaissent devant vous sont tout à fait d'accord. En résumé, si nous posons la question : «Confirmer la ligne du Cameroun implique-t-il que l'on considère automatiquement l'ensemble des eaux situées au sud de cette ligne comme camerounaises ?», la réponse est «non», catégoriquement «non». De même, confirmer la ligne revendiquée par le Cameroun (ou une ligne

de même nature) n'empêche en aucun cas la Guinée équatoriale de revendiquer les eaux représentées sur notre diagramme dans un bleu plus vif — c'est-à-dire les eaux entourant Bioko, avec leurs fonds marins et leur sous-sol.

17. Afin de dissiper toute équivoque, le Cameroun souligne qu'il n'accepte pas pour autant dans leur intégralité toutes les demandes de la Guinée équatoriale. Mais comme l'Etat intervenant s'est lui-même évertué à vous le rappeler, il veut instamment régler cette question par la voie des négociations bilatérales, sans recourir au règlement judiciare. Le Cameroun est d'accord avec la Guinée équatoriale sur ce point, d'autant que le règlement par tierce partie est impossible en l'absence du consentement de la Guinée équatoriale. Et s'il doit y avoir des négociations bilatérales — et il faudra bien, tôt ou tard, en passer par là —, alors nul besoin pour le Cameroun
053 de dévoiler son jeu à l'avance. Je me permettrai cependant de dire à l'agent de la Guinée équatoriale qui a laissé entendre que le Cameroun revendiquerait un espace allant jusqu'au littoral même de l'île de Bioko[42], qu'il a en l'occurrence exagéré. La Guinée équatoriale s'est enorgueillie, dans ses conclusions, de défendre une position raisonnable[43]. Elle peut compter sur un Cameroun tout aussi raisonnable et sérieux.

18. Cela étant, je répète que si vous confirmez formellement la ligne que revendique le Cameroun face au Nigéria (ou une ligne semblable), cela n'empêche absolument pas la Guinée équatoriale de revendiquer l'un quelconque des espaces maritimes qui sont ombrés en bleu vif sur notre diagramme. C'est une évidence pour quiconque connaît un tant soit peu le droit international et sait que seules les parties sont liées par la décision qui est finalement rendue. Et il est peu probable que la Guinée équatoriale doive le rappeler à des Etats tiers ou à des concessionnaires éventuels — ni les uns, ni les autres ne sont assez naïfs. Le Cameroun a toujours pris les tierces parties pour ce qu'elles sont — de simples tierces parties — et n'a certainement jamais voulu induire quiconque en erreur — qu'il s'agisse d'un Etat agissant en tant que tel ou d'un investisseur potentiel — quant aux incidences de l'arrêt que le Cameroun espère voir la Cour rendre finalement sur sa frontière maritime avec le Nigéria. [Fin de projection.]

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[42] CR 2002/21, p. 20, par. 10.

[43] Voir, par. ex., *ibid.*, p. 62, par. 26.

19. Monsieur le président, il me reste un dernier point à évoquer avant de conclure. Et je pèche ici par excès de prudence. Nous avons conclu que, pour les raisons que nous avons exposées, rien n'empêche la Cour de confirmer la ligne équitable dans son intégralité. Cela vaudrait également, *mutatis mutandis*, pour toute ligne similaire que la Cour voudrait finalement retenir. Mais nous devons aussi envisager le cas où la Cour déciderait, quelle qu'en soit la raison, de rejeter notre conclusion en partie, en disant que si certains segments de la ligne présentée par le Cameroun sont acceptables, d'autres ne le sont pas. Par exemple, imaginons que la Cour estime, en dépit de nos conclusions, que certaines parties de notre ligne sont susceptibles de porter atteinte aux droits et intérêts légitimes de la Guinée équatoriale. Monsieur le président, mon ami M. Pellet a déjà dit, tout spécialement le 25 février, comment la Cour devrait, selon lui, régler un tel problème[44], et il a évoqué plusieurs possibilités. En particulier, il a dit que la Cour pourrait, en

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pareil cas, laisser indéterminé un segment, — voire plusieurs segments — de la ligne[45]. En réponse, le conseil du Nigéria a accueilli cette proposition avec mépris, mais en réalité il n'y a là rien de fondamentalement impossible ni de déraisonnable. Certes, le tracé d'une frontière est en général continu, mais il n'y a rien d'illogique à considérer qu'une partie, une partie seulement, de la frontière puisse être déterminée, à un moment donné, par une tierce partie. Par exemple, le plateau continental entre la France et le Royaume-Uni n'a été délimité que partiellement par le tribunal d'arbitrage[46], le reste ayant été délimité plus tard. Cette idée est encore une fois illustrée par les affaires de délimitation de frontière que la Guinée équatoriale a citées hier, comme la délimitation des deux extrémités de la frontière en l'affaire *Qatar et Bahreïn.* L'on constate que ces frontières sont, par définition, l'aboutissement d'un long processus qui exige plusieurs étapes. Et nous ne voyons pas pourquoi laisser un segment non déterminé dans la ligne camerouno-nigériane causerait des problèmes insurmontables, à fortiori vis-à-vis de la Guinée équatoriale, lorsqu'il est communément admis que la frontière appelle des négociations. J'insiste cependant : nous n'évoquons ce point que dans un souci d'exhaustivité. Pour le Cameroun, ce problème ne se pose pas et ne devrait pas se poser.

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[44] CR 2002/6, p. 68-72, par. 36-48.

[45] *Ibid.*, p. 70, par. 42.

[46] Organisation des Nations Unies, *Recueil des sentences arbitrales (RSA)*, 1977, XVIII p. 155.

4. Remarques finales

20. Voici mes observations finales. Nous avons essayé de démontrer qu'inéluctablement, le fait que la Guinée équatoriale intervienne sans être partie à l'instance signifie qu'elle ne peut vous demander ni de fixer un tripoint, ni une «zone du point triple», et encore moins de tracer jusque là la ligne du Cameroun. Nous avons également conclu que rien, dans les faits de l'affaire, ne vous empêche de confirmer la ligne du Cameroun, non seulement en raison de l'article 59 du Statut, mais également au vu des circonstances propres à l'espèce, et tout particulièrement du fait que la ligne camerounaise ne traverse pas, pour l'essentiel, d'espaces maritimes revendiqués par la Guinée équatoriale. Confirmer la ligne du Cameroun ne porterait pas atteinte aux droits de la Guinée équatoriale lors de ses futures négociations avec le Cameroun au sujet des eaux entourant Bioko et la position de la Guinée équatoriale vis-à-vis d'autres Etats n'en serait pas affaiblie.

21. Monsieur le président, Madame et Messieurs de la Cour, tout au long de cette procédure, le Cameroun s'est montré respectueux du statut de la Guinée équatoriale en tant que non-partie à l'instance et il a scrupuleusement veillé à ce que rien ne porte atteinte à ses droits ou intérêts. La
0 5 5 ligne équitable qu'il propose n'empêche pas la Guinée équatoriale de continuer à défendre ce qu'elle estime être ses droits, et ne la désavantage pas non plus dans les négociations, la voie qu'elle veut suivre de préférence à celle de votre juridiction. Le Cameroun vous demande donc respectueusement de confirmer la ligne qu'il propose.

22. Monsieur le président, Madame et Messieurs de la Cour, je vous remercie de votre bienveillante attention. Voilà qui met un terme aux conclusions du Cameroun dans ce premier tour de parole consacré à l'intervention. A présent, je vous prie, Monsieur le président, de bien vouloir appeler à la barre mon ami M. Thouvenin qui se penchera pendant une dizaine de minutes sur les demandes reconventionnelles du Nigéria, comme convenu.

The PRESIDENT: Thank you very much, Professor Mendelson. That indeed closes Cameroon's first-round observations on Equatorial Guinea's intervention. We shall now go on to Cameroon's second round of oral argument on Nigeria's counter-claims. Professor Thouvenin, you have the floor.

Mr. THOUVENIN: Thank you, Mr. President.

NIGERIA'S COUNTER-CLAIMS

1. Mr. President, Members of the Court, it falls to me to present Cameroon's final observations on Nigeria's counter-claims.

2. Last Thursday, Professor Crawford expressed regret at the fact that Cameroon had failed to follow him down the meandering path of his first statement, devoting just a few minutes — one eye on the clock — to rebutting his arguments[47].

3. Our reply would doubtless have been a fuller one if Cameroon had been faced with a serious foray onto the terrain of the charges levied against it, and their proof. But, in terms of that terrain, Professor Crawford's first-round statement was, on his own admission, barely more than a "little excursion into the realm of fact"[48]. And we can hardly criticize him for this; as our opponents have more than once pointed out: "a lawyer's opinion is as good as his brief"[49].

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4. In his reply, Professor Tomuschat first sought to dispel the misleading impression created by Nigeria's oral argument[50]. That is why he returned in particular to the 1981 incident. And that proved to be not unhelpful for, ultimately, the distinguished co-Agent of the Federal Republic of Nigeria frankly admitted to you last Thursday that the incidents had in fact taken place in Bakassi, and not on the Nigerian side of the Akwayafe[51]. Thus it was Cameroon who was right.

5. Professor Tomuschat also replied to certain arguments concerning the evidentiary value of the documents annexed to the counter-claim. That was too brief for Nigerian counsel's taste. I will therefore return to this point, addressing, first, the witness statements of which our opponents make so much and, second, their statistical estimates of the casualties on either side.

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[47]CR 2002/20, p. 36, paras. 2-4 (Crawford).

[48]CR 2002/14, p. 54, para. 22 (Crawford).

[49]CR 2002/18, p. 23, para. 24 (Akinjide) ; CR 2002/20, p. 67, para. 7 (Abdullahi).

[50]CR 2002/16, pp. 66-69, paras. 38-47 (Tomuschat).

[51]CR 2002/18, p. 26, para. 34 (Akinjide).

1. The witness statements

6. Mr. President, examining the annexes containing the witness statements which in Professor Crawford's view are so damning for Cameroon[52], the first thing we note is that not one of them was made under oath.

7. Nigeria thus took the gamble that informal statements would suffice to found its responsibility claims. It was a risky gamble. It is perhaps not unhelpful to recall here that, in the case of *Flexi-Van Leasing, Inc.* v. *Iran*[53], the Iran-United States Claims Tribunal refused to uphold a liability claim founded on: "a vague affidavit, unexplained by oral testimony". And the Tribunal added: "To do so would be arbitrary and improper."[54]

8. But let us return to these informal depositions. There are quite a few of them, and they have clearly been prompted. Moreover, they present a certain uniformity, the majority of them having been drafted by a limited number of hands. That is not denied by Nigeria's counsel[55].

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9. But that is all we know. We do not know, for example, what were the questions put to the witnesses. Were they "leading" questions, which automatically invite the replies which the questioner expects[56]. Were they posed in the over-militarized and somewhat oppressive environment depicted in the numerous photographs of Bakassi annexed by Nigeria to its pleadings? That is a possibility that cannot be discounted.

10. All the more so inasmuch as the statements were taken by individuals whose identity and status are unknown. Moreover, Nigeria has been at pains not to take responsibility for those persons' actions, to attest to their probity, or to guarantee the authenticity of their transcription of the depositions. In short, all the circumstances in which the "witness statements" were sought out, taken down and then transmitted to the Nigerian Government remain mysterious.

11. But even supposing that the statements were taken under proper conditions, it will be clear to the Court that they all come from individuals claiming Nigerian nationality. But: "We

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[52]CR 2002/14, p. 55, paras. 25-26 , p. 56, para. 28 (Crawford) ; CR 2002/20, p. 36, paras. 6-7 (Crawford).

[53]*Flexi-Van Leasing, Inc.* v. *Iran,* decision No. 259-36-1, 11 Oct. 1986, Iran-United States Claims Tribunals Reports, vol. 12, 1988 (12 Iran-U.S. C.T.R.), p. 335.

[54]*Ibid.*, p. 355.

[55]CR 2002/14, p. 55, para. 25 (Crawford).

[56]See, for example, J.-C. Witenberg, *La théorie des preuves devant les juridictions internationales, RCADI* (1939-II), Vol. 56, pp. 1-105, paras. 78-79.

should never lose sight of the fact that the witness, however honest he may be, risks being unconsciously influenced by poorly understood considerations of patriotism."[57]

12. It is thus with extreme caution — to say the least — that these statements should be approached. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court moreover pointed out that:

> "two forms of testimony which are regarded as prima facie of superior credibility are, first the evidence of a disinterested witness — one who is not a party to the proceedings and stands to gain or lose nothing from its outcome — and secondly so much of the evidence of a party as is against its own interest" (*I.C.J. Reports 1986*, p. 43, para. 69).

13. No witness statement meeting these criteria has been produced by Nigeria.

2. The statistical argument

14. I now have to say a few words about the extraordinary statistical argument urged on you by Professor Crawford[58]. The Court will recall that this involved estimates of the numbers of dead and injured on either side since 1991.

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15. I will not enter into any discussion of the figures, even though Cameroon regards them as worthless. I only ask myself if they include, among the Nigerian deaths, Mr. Okong Asuqo, alleged to have drowned in a boating accident[59]. I note also that they do not include missing persons. Yet Annex RC 211 refers to 123 missing on the Cameroonian side. Finally, I note that, in Annex OCDR 46 alone, five Cameroonian deaths are attributed to Nigeria, whereas Professor Crawford's total, from all annexes, has only three.

16. The statistical argument that he put to you is clearly worthless, even for indicative purposes. Not only because the figures are unverifiable, since the sources have not been disclosed, but also because Nigeria's counsel stated that his calculation included allegations "without admitting that they necessarily all are true"[60]. If Nigeria does not believe in its own allegations, how could the Court do so?

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[57] *Ibid.*, p. 90.

[58] CR 2002/14, p. 54, para. 21 and p. 57, para. 31 (Crawford); CR 2002/20, pp. 37-38, paras. 9-12 (Crawford).

[59] Rejoinder of Nigeria, p. 750, and Ann. NR 215.

[60] CR 2002/14, p. 57, para. 31 (Crawford).

17. The fact remains that the armed conflict has undoubtedly caused losses on both sides. We must also deplore the civilian victims, since, as can be seen from the photographs produced by our opponents, in which soldiers so visibly mingle with the civilian population, Nigeria has chosen not to remove the latter from the combat zone.

18. But the resultant human tragedies are entirely attributable to Nigeria, which, since 1994, has constantly provoked clashes.

19. Or rather, it has provoked a war. Thus it was prisoners of war that the Parties exchanged on 24 November 1998, under the supervision of the Red Cross[61]. The latter's role, as always exemplary, has not, moreover, been facilitated by Nigeria. While the ICRC welcomed "the constructive dialogue it was able to establish with the High Authorities of the Republic of Cameroon", it also regretted the conduct of Nigeria, which too often refused without reason its legitimate requests[62]. This is confirmed by the letter from the ICRC, which you will find at tab 159 in your folder.

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20. What then remains of the image of "wicked Cameroon" that Nigeria has sought to create? Nigeria's strongest argument is that it has always been in peaceful possession of Bakassi[63] and that, in consequence, whatever wrongdoing that may have taken place is attributable to Cameroon But that claim is groundless.

21 In 1994 it did not even occur to the Nigerian Foreign Minister to make such a claim. His purpose at that time was to negotiate as expensively as possible the withdrawal of Nigerian troops from Bakassi The letter of 17 March 1994 which discloses this [tab 160 in your folder] carries an extremely high probative value; it is signed by a third party to the conflict, the Egyptian Foreign Minister[64] He writes that his discussions with the Nigerian Foreign Minister have addressed the conditions of *withdrawal* of the Nigerian forces from Bakassi. Would Nigeria have held such discussions if it considered that its forces were present on territory of which it had always been in peaceful possession? Of course not. Its troops were never entitled to be in Bakassi, and it knew

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[61] Supplementary documents filed by Cameroon on 10 Jan. 2002, Ann. C 23.

[62] Ann. OCDR 43, quoted in CR 2002/16, p. 69, para. 46 (Tomuschat).

[63] CR 2002/20, p. 20, para. 7 (Abi-Saab).

[64] Observations of Cameroon, Ann. 17.

this, at least in 1994. But their withdrawal did not take place. As a result, it is clearly upon Nigeria that the entire responsibility for the fighting rests, and for the resultant losses.

22. Mr. President, Members of the Court, that concludes my statement for this morning, delivered with an eye on the clock, and I thank you most warmly for your attention.

The PRESIDENT: Thank you, Professor. That ends this morning's sitting. The next sitting will be held this afternoon at 3 p.m. We will hear Nigeria's reply to Equatorial Guinea's observations in this first round of argument. The sitting is closed.

The Court rose at 12.25 p.m.