

**LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA
(CAMEROON v. NIGERIA: EQUATORIAL GUINEA INTERVENING) (MERITS)**

Judgment of 10 October 2002

In its Judgment on the case concerning Land and Maritime Boundary between Cameroon and Nigeria, the Court fixed the course of the land and maritime boundaries between Cameroon and Nigeria.

The Court requested Nigeria expeditiously and without condition to withdraw its administration and its military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula. It also requested Cameroon expeditiously and without condition to withdraw any administration or military or police forces which may be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories which pursuant to the judgment fall within the sovereignty of Nigeria. The latter has the same obligation in regard to territories in that area which fall within the sovereignty of Cameroon.

The Court took note of Cameroon's undertaking, given the hearings, to "continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area".

Finally, the Court rejected Cameroon's submissions regarding the State responsibility of Nigeria. It likewise rejected Nigeria's counterclaims.

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judges ad hoc Mbaye, Ajibola; Registrar Couvreur.

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The full text of the operative paragraph of the Judgment reads as follows:

"325. For these reasons,

THE COURT,

I. (A) By fourteen votes to two,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(B) By fourteen votes to two,

Decides that the line of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in the Lake Chad area is as follows:

From a tripoint in Lake Chad lying at 14°04'59"9999 longitude east and 13°05' latitude north, in a straight line to the mouth of the River Ebeji, lying at 14°12'12" longitude east and 12°32'17" latitude north; and from there in a straight line to the point where the River Ebeji

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bifurcates, located at 14°12'03" longitude east and 12°30'14" latitude north;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

II. (A) By fifteen votes to one,

Decides that the land boundary between the Republic of Cameroon and the Federal Republic of Nigeria is delimited, from Lake Chad to the Bakassi Peninsula, by the following instruments:

(i) from the point where the River Ebeji bifurcates as far as Tamnyar Peak, by paragraphs 2 to 60 of the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;

(ii) from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo-German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;

(iii) from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Koroma;

(B) Unanimously,

Decides that the aforesaid instruments are to be interpreted in the manner set out in paragraphs 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the present Judgment;

III. (A) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

(B) By thirteen votes to three,

Decides that sovereignty over the Bakassi Peninsula lies with the Republic of Cameroon;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

(C) By thirteen votes to three,

Decides that the boundary between the Republic of Cameroon and the Federal Republic of Nigeria in Bakassi follows the thalweg of the Akpakorum (Akwayafe) River, dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as the straight line joining Bakassi Point and King Point;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

IV. (A) By thirteen votes to three,

Finds, having addressed Nigeria's eighth preliminary objection, which it declared in its Judgment of 11 June 1998 not to have an exclusively preliminary character in the circumstances of the case, that it has jurisdiction over the claims submitted to it by the Republic of Cameroon regarding the delimitation of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria, and that those claims are admissible;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Oda, Koroma; Judge ad hoc Ajibola;

(B) By thirteen votes to three,

Decides that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

- starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the "compromise line" drawn jointly at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaoundé II Declaration) and passing through 12 numbered points, whose coordinates are as follows:

	<i>Longitude</i>	<i>Latitude</i>
point 1:	8° 30' 44" E,	4° 40' 28" N
point 2:	8° 30' 00" E,	4° 40' 00" N
point 3:	8° 28' 50" E,	4° 39' 00" N
point 4:	8° 27' 52" E,	4° 38' 00" N
point 5:	8° 27' 09" E,	4° 37' 00" N
point 6:	8° 26' 36" E,	4° 36' 00" N
point 7:	8° 26' 03" E,	4° 35' 00" N
point 8:	8° 25' 42" E,	4° 34' 18" N
point 9:	8° 25' 35" E,	4° 34' 00" N
point 10:	8° 25' 08" E,	4° 33' 00" N
point 11:	8° 24' 47" E,	4° 32' 00" N
point 12:	8° 24' 38" E,	4° 31' 26" N;

- from point 12, the boundary follows the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June 1975 (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July 1975; that line passes through points A to G, whose coordinates are as follows:

	<i>Longitude</i>	<i>Latitude</i>
point A:	8° 24' 24" E,	4° 31' 30" N
point A1:	8° 24' 24" E,	4° 31' 20" N
point B:	8° 24' 10" E,	4° 26' 32" N
point C:	8° 23' 42" E,	4° 23' 28" N
point D:	8° 22' 41" E,	4° 20' 00" N
point E:	8° 22' 17" E,	4° 19' 32" N
point F:	8° 22' 19" E,	4° 18' 46" N
point G:	8° 22' 19" E,	4° 17' 00" N;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judges Koroma, Rezek; Judge ad hoc Ajibola;

(C) Unanimously,

Decides that, from point G, the boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 270° as far as the equidistance line passing through the midpoint of the line joining West Point and East Point; the boundary meets this equidistance line at a point X, with coordinates 8°21'20" longitude east and 4°17'00" latitude north;

(D) Unanimously,

Decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of 187°52'27";

V. (A) By fourteen votes to two,

Decides that the Federal Republic of Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic of Cameroon pursuant to points I and III of this operative paragraph;

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judge ad hoc Mbaye;

AGAINST: Judge Koroma; Judge ad hoc Ajibola;

(B) Unanimously,

Decides that the Republic of Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces

which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria pursuant to point II of this operative paragraph. The Federal Republic of Nigeria has the same obligation in respect of the territories which fall within the sovereignty of the Republic of Cameroon pursuant to point II of this operative paragraph;

(C) By fifteen votes to one,

Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area";

IN FAVOUR: President Guillaume; Vice-President Shi; Judges Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; Judges ad hoc Mbaye, Ajibola;

AGAINST: Judge Parra-Aranguren;

(D) Unanimously,

Rejects all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria;

(E) Unanimously,

Rejects the counter-claims of the Federal Republic of Nigeria."

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Judge Oda appended a declaration to the Judgment of the Court; Judge Ranjeva appended a separate opinion to the Judgment of the Court; Judge Herczegh appends a declaration to the Judgment of the Court; Judge Koroma appended a dissenting opinion to the Judgment of the Court; Judge Parra-Aranguren appended a separate opinion to the Judgment of the Court; Judge Rezek appended a declaration to the Judgment of the Court; Judge Al-Khasawneh and Judge ad hoc Mbaye append separate opinions to the Judgment of the Court; Judge ad hoc Ajibola appends a dissenting opinion to the Judgment of the Court.

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I. *History of the proceedings and submissions of the Parties* (paras. 1-29)

On 29 March 1994 Cameroon filed an Application instituting proceedings against Nigeria concerning a dispute described as "relat[ing] essentially to the question of sovereignty over the Bakassi Peninsula". Cameroon further stated in its Application that the "delimitation [of the maritime boundary between the two States] has remained a partial one and [that], despite many attempts to complete it, the two parties have been unable to do so". Consequently, it requested the Court, "[i]n order to avoid further incidents between the two countries, ... to determine the course of the

maritime boundary between the two States beyond the line fixed in 1975”.

In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

On 6 June 1994 Cameroon filed an Additional Application “for the purpose of extending the subject of the dispute” to a further dispute described as “relat[ing] essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad”. Cameroon also requested the Court, “to specify definitively” the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and “to examine the whole in a single case”.

After at a meeting held by the President of the Court with the representatives of the Parties, the Agent of Nigeria had declared that his Government did not object to the Additional Application being treated as an amendment to the initial Application so that the Court might examine the whole in a single case, the Court, by an Order of 16 June 1994, indicated that it had no objection to such a procedure and fixed the time limits for the filing of written proceedings.

Within the time limit fixed for the filing of its Counter-Memorial, Nigeria filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

In its Judgment of 11 June 1998 on the preliminary objections raised by Nigeria the Court found that it had jurisdiction to adjudicate upon the merits of the dispute and that Cameroon’s requests were admissible. The Court rejected seven of the preliminary objections raised by Nigeria and declared that the eighth did not have an exclusively preliminary character, and that it would rule on it in the Judgment to be rendered on the merits.

On 28 October 1998 Nigeria submitted a request for interpretation of the Judgment delivered by the Court on 11 June 1998 on the preliminary objections; that request became a new case, separate from the present proceedings. By Judgment dated 25 March 1999 the Court decided that Nigeria’s request for interpretation was inadmissible.

Nigeria’s Counter-Memorial, filed within the extended time limit of 31 May 1999, included counterclaims.

By an Order of 30 June 1999 the Court declared Nigeria’s counterclaims admissible, and fixed time limits for the subsequent procedure.

On 30 June 1999 the Republic of Equatorial Guinea filed in the Registry an Application for permission to intervene in the case pursuant to Article 62 of the Statute. According to that Application, the object of the intervention sought was to “protect the legal rights of the Republic of Equatorial Guinea in the Gulf of Guinea by all legal means available” and to “inform the Court of the nature of the legal rights and interests of Equatorial Guinea that could be affected by the Court’s decision in the light of the maritime boundary claims advanced by the parties to the case before the Court”.

Equatorial Guinea further indicated that it “d[id] not seek to become a party to the case”.

By an Order of 21 October 1999 the Court, considering that Equatorial Guinea had sufficiently established that it had an interest of a legal nature which could be affected by any judgment which the Court might hand down for the purpose of determining the maritime boundary between Cameroon and Nigeria, authorized it to intervene in the case to the extent, in the manner and for the purposes set out in its Application and fixed time limits for the subsequent intervention proceedings (Art. 85, para. 1, of the Rules of Court).

Public hearings were held from 18 February to 21 March 2002.

At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Cameroon,

“Pursuant to the provisions of Article 60, paragraph 2, of the Rules of Court the Republic of Cameroon has the honour to request that the International Court of Justice be pleased to adjudge and declare:

(a) That the land boundary between Cameroon and Nigeria takes the following course:

- from the point designated by the coordinates 13°05' north and 14°05' east, the boundary follows a straight line as far as the mouth of the Ebeji, situated at the point located at the coordinates 12°32'17" north and 14°12'12" east, as defined within the framework of the LCBC and constituting an authoritative interpretation of the Milner-Simon Declaration of 10 July 1919 and the Thomson-Marchand Declarations of 29 December 1929 and 31 January 1930, as confirmed by the Exchange of Letters of 9 January 1931; in the alternative, the mouth of the Ebeji is situated at the point located at the coordinates 12°31'12" north and 14°11'48" east;
- from that point it follows the course fixed by those instruments as far as the ‘very prominent peak’ described in paragraph 60 of the Thomson-Marchand Declaration and called by the usual name of ‘Mount Kombon’;
- from ‘Mount Kombon’ the boundary then runs to ‘Pillar 64’ mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;
- from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;
- thence, as far as the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs XVI to XXI of the Anglo-German Agreement of 11 March 1913.

(b) That in consequence, inter alia, sovereignty over the peninsula of Bakassi and over the disputed parcel

occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

(c) That the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course:

- from the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe to point '12', that boundary is confirmed by the 'compromise line' entered on British Admiralty Chart No. 3433 by the Heads of State of the two countries on 4 April 1971 (Yaoundé II Declaration) and, from that point 12 to point 'G', by the Declaration signed at Maroua on 1 June 1975;
- from point G the equitable line follows the direction indicated by points G, H (coordinates 8°21'16" east and 4°17' north), I (7°55'40" east and 3°46' north), J (7°12'08" east and 3°12'35" north), K (6°45'22" east and 3°01'05" north), and continues from K up to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two Parties.

(d) That in attempting to modify unilaterally and by force the courses of the boundary defined above under (a) and (c), the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidetis juris*), as well as its legal obligations concerning the land and maritime delimitation.

(e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian peninsula of Bakassi, and by making repeated incursions throughout the length of the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.

(f) That the Federal Republic of Nigeria has the express duty of putting an end to its administrative and military presence in Cameroonian territory and, in particular, of effecting an immediate and unconditional evacuation of its troops from the occupied area of Lake Chad and from the Cameroonian peninsula of Bakassi and of refraining from such acts in the future.

(g) That in failing to comply with the Order for the indication of provisional measures rendered by the Court on 15 March 1996 the Federal Republic of Nigeria has been in breach of its international obligations.

(h) That the internationally wrongful acts referred to above and described in detail in the written pleadings and oral argument of the Republic of Cameroon engage the responsibility of the Federal Republic of Nigeria.

(i) That, consequently, on account of the material and moral injury suffered by the Republic of Cameroon reparation in a form to be determined by the Court is due

from the Federal Republic of Nigeria to the Republic of Cameroon.

The Republic of Cameroon further has the honour to request the Court to permit it, at a subsequent stage of the proceedings, to present an assessment of the amount of compensation due to it as reparation for the injury suffered by it as a result of the internationally wrongful acts attributable to the Federal Republic of Nigeria.

The Republic of Cameroon also asks the Court to declare that the counter-claims of the Federal Republic of Nigeria are unfounded both in fact and in law, and to reject them."

On behalf of the Government of Nigeria,

"The Federal Republic of Nigeria respectfully requests that the Court should

1. *as to the Bakassi Peninsula*, adjudge and declare:

(a) that sovereignty over the Peninsula is vested in the Federal Republic of Nigeria;

(b) that Nigeria's sovereignty over Bakassi extends up to the boundary with Cameroon described in Chapter 11 of Nigeria's Counter-Memorial;

2. *as to Lake Chad*, adjudge and declare:

(a) that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission, not having been accepted by Nigeria, is not binding upon it;

(b) that sovereignty over the areas in Lake Chad defined in paragraph 5.9 of Nigeria's Rejoinder and depicted in Figs. 5.2 and 5.3 facing page 242 (and including the Nigerian settlements identified in paragraph 4.1 of Nigeria's Rejoinder) is vested in the Federal Republic of Nigeria;

(c) that in any event the process which has taken place within the framework of the Lake Chad Basin Commission, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon;

3. *as to the central sectors of the land boundary*, adjudge and declare:

(a) that the Court's jurisdiction extends to the definitive specification of the land boundary between Lake Chad and the sea;

(b) that the mouth of the Ebeji, marking the beginning of the land boundary, is located at the point where the north-east channel of the Ebeji flows into the feature marked 'Pond' on the map shown as Fig. 7.1 of Nigeria's Rejoinder, which location is at latitude 12°31'45" N, longitude 14°13'00" E (Adindan Datum);

(c) that subject to the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the midpoint of the mouth of Archibong Creek is delimited

by the terms of the relevant boundary instruments, namely:

- (i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;
- (ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946 (Section 6 (1) and the Second Schedule thereto);
- (iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and
- (iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913; and

(d) that the interpretations proposed in Chapter 7 of Nigeria's Rejoinder, and the associated action there identified in respect of each of the locations where the delimitation in the relevant boundary instruments is defective or uncertain, are confirmed;

4. *as to the maritime boundary*, adjudge and declare:

(a) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed against Cameroon by Equatorial Guinea, or alternatively that Cameroon's claim is inadmissible to that extent;

(b) that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is inadmissible, and that the parties are under an obligation, pursuant to Articles 74 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;

(c) in the alternative, that Cameroon's claim to a maritime boundary based on the global division of maritime zones in the Gulf of Guinea is unfounded in law and is rejected;

(d) that, to the extent that Cameroon's claim to a maritime boundary may be held admissible in the present proceedings, Cameroon's claim to a maritime boundary to the west and south of the area of overlapping licenses, as shown in Fig. 10.2 of Nigeria's Rejoinder, is rejected;

(e) that the respective territorial waters of the two States are divided by a median line boundary within the Rio del Rey;

(f) that, beyond the Rio del Rey, the respective maritime zones of the parties are to be delimited by a line drawn in accordance with the principle of equidistance, until the approximate point where that line meets the median line boundary with Equatorial Guinea, i.e. at approximately 4°6' N, 8°30' E;

5. *as to Cameroon's claims of State responsibility*, adjudge and declare:

that, to the extent to which any such claims are still maintained by Cameroon, and are admissible, those claims are unfounded in fact and law; and,

6. *as to Nigeria's counterclaims* as specified in part VI of Nigeria's Counter-Memorial and in Chapter 18 of Nigeria's Rejoinder, adjudge and declare:

that Cameroon bears responsibility to Nigeria in respect of each of those claims, the amount of reparation due therefor, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment."

At the end of the oral observations submitted by it with respect to the subject matter of the intervention in accordance with Article 85, paragraph 3, of the Rules of Court, Equatorial Guinea stated *inter alia*:

"[W]e ask the Court not to delimit a maritime boundary between Cameroon and Nigeria in areas lying closer to Equatorial Guinea than to the coasts of the two Parties or to express any opinion which could prejudice our interests in the context of our maritime boundary negotiations with our neighbours ... Safeguarding the interests of the third State in these proceedings means that the delimitation between Nigeria and Cameroon decided by the Court must necessarily remain to the north of the median line between Equatorial Guinea's Bioko Island and the mainland."

Geographical context (para. 30)

The Court subsequently describes the geographical context of the dispute as follows:

Cameroon and Nigeria are States situated on the west coast of Africa. Their land boundary extends from Lake Chad in the north to the Bakassi Peninsula in the south. Their coastlines are adjacent and are washed by the waters of the Gulf of Guinea.

Four States border Lake Chad: Cameroon, Chad, Niger and Nigeria. The waters of the lake have varied greatly over time.

In its northern part, the land boundary between Cameroon and Nigeria passes through hot dry plains around Lake Chad, at an altitude of about 300 m. It then passes through mountains, cultivated high ground or pastures, watered by various rivers and streams. It then descends in stages to areas of savannah and forest until it reaches the sea.

The coastal region where the southern part of the land boundary ends is the area of the Bakassi Peninsula. This peninsula, situated in the hollow of the Gulf of Guinea, is bounded by the River Akwayafe to the west and by the Rio del Rey to the east. It is an amphibious environment, characterized by an abundance of water, fish stocks and mangrove vegetation. The Gulf of Guinea, which is concave in character at the level of the Cameroonian and Nigerian coastlines, is bounded by other States, in particular by

Equatorial Guinea, whose Bioko Island lies opposite the Parties' coastlines.

Historical background
(paras. 31-38)

The Court then observes that the dispute between the Parties as regards their land boundary falls within an historical framework marked initially, in the nineteenth and early twentieth centuries, by the actions of the European Powers with a view to the partitioning of Africa, followed by changes in the status of the relevant territories under the League of Nations mandate system, then the United Nations trusteeships, and finally by the territories' accession to independence. This history is reflected in a number of conventions and treaties, diplomatic exchanges, certain administrative acts, maps of the period and various documents, which have been supplied to the Court by the Parties.

The delimitation of the Parties' maritime boundary is an issue of more recent origin, the history of which likewise involves various international instruments.

The Court then gives some particulars of the principal instruments which are relevant for purposes of determining the course of the land and maritime boundary between the Parties.

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Having described the geographical and historical background to the dispute, the Court addresses the delimitation of the different sectors of the boundary between Cameroon and Nigeria. It begins by defining the boundary line in the Lake Chad area. It then determines the line from Lake Chad to the Bakassi Peninsula, before examining the question of the boundary in Bakassi and of sovereignty over the peninsula. It then addresses the question of the delimitation between the two States' respective maritime areas. The last part of the Judgment is devoted to the issues of State responsibility raised by the Parties.

Delimitation of the boundary line in the Lake Chad area
(paras. 40-70)

Since Cameroon and Nigeria disagree on the existence of a definitive delimitation in the Lake Chad area, the Court first examines whether the 1919 Milner-Simon Declaration and the subsequent instruments which bear on delimitation in this area have established a frontier that is binding on the Parties. The Court subsequently addresses the argument of Nigeria based on the historical consolidation of its claimed title.

Whether a frontier binding on the Parties has been established
(paras. 41-55)

The Court recalls that Cameroon contends that the boundary in the Lake Chad area runs from the point

designated by the coordinates 13°05' N and 14°05' E in a straight line to the mouth of the Ebeji. Cameroon regards the governing instruments as the Milner-Simon Declaration of 1919, and the Thomson-Marchand Declaration of 1929-1930, as incorporated in the 1931 Henderson-Fleuriau Exchange of Notes. Nigeria, on the other hand, argues that there is not a fully delimited boundary in the Lake Chad area and that, through historical consolidation of title and the acquiescence of Cameroon, Nigeria has title over the areas, including 33 named settlements, depicted in its Rejoinder.

The Court recalls that in the late nineteenth and early twentieth centuries the colonial boundaries in the Lake Chad area had been the subject of a series of bilateral agreements entered into between Germany, France and Great Britain. After the First World War a strip of territory to the east of the western frontier of the former German Cameroon became the British Mandate over the Cameroons. It was thus necessary to re-establish a boundary, commencing in the lake itself, between the newly created British and French mandates. This was achieved through the Milner-Simon Declaration of 1919, which has the status of an international agreement. By this Declaration, France and Great Britain agreed:

“to determine the frontier, separating the territories of the Cameroons placed respectively under the authority of their Governments, as it is traced on the map Moisel 1:300,000, annexed to the present declaration and defined in the description in three articles also annexed hereto”.

No definite tripoint in Lake Chad could be determined from previous instruments, on the basis of which it might be located either at 13°00' or at 13°05' north, whilst the meridian of longitude was described simply as situated “35' east of the centre of Kukawa”. These aspects were clarified and rendered more precise by the Milner-Simon Declaration, which provided:

“The frontier will start from the meeting-point of the three old British, French and German frontiers situated in Lake Chad in latitude 13°05' N and in approximately longitude 14°05' E of Greenwich.

Thence the frontier would be determined as follows:

1. A straight line to the mouth of the Ebeji; ...”

The Moisel 1:300,000 map was stated to be the map “to which reference is made in the description of the frontier” and was annexed to the Declaration; a further map of the Cameroons, scale 1:2,000,000, was attached “to illustrate the description of the ... frontier”.

The Court observes that Article 1 of the Mandate conferred on Great Britain by the League of Nations confirmed the line specified in the Milner-Simon Declaration; the entitlement provided for in the mandate, to make by mutual agreement, modest alterations to the line, either by reason of any shown inaccuracies of the Moisel map or of the interests of the inhabitants, was already provided for in the Milner-Simon Declaration. This, together with the line itself, was approved by the Council of the League of Nations. In the Court's view, these provisions

in no way suggest a frontier line that is not fully delimited. The Court further considers that “delimitation on the spot of this line ... in accordance with the provisions of the said Declaration” is a clear reference to demarcation notwithstanding the terminology chosen. Also carried forward from the Milner-Simon Declaration was the idea of a boundary commission. The anticipated detailed demarcation by this Commission equally presupposes a frontier already regarded as essentially delimited.

Although the two Mandatory Powers did not in fact “delimit on the spot” in Lake Chad or the vicinity, they did continue in various sectors of the frontier to make the agreement as detailed as possible. Thus the Thomson-Marchand Declaration of 1929-1930, later approved and incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, described the frontier separating the two mandated territories in considerably more detail than hitherto. The Court considers that the fact that this Declaration and Exchange of Notes were preliminary to the future task of demarcation by a boundary commission does not mean, as Nigeria claims, that the 1931 Agreement was merely “programmatic” in nature. The Court further points out that the Thomson-Marchand Declaration, as approved and incorporated in the Henderson-Fleuriau Exchange of Notes, has the status of an international agreement. It acknowledges that the Declaration does have some technical imperfections and that certain details remained to be specified. However, it finds that the Declaration provided for a delimitation that was sufficient in general for demarcation.

Despite the uncertainties in regard to the longitudinal reading of the tripoint in Lake Chad and the location of the mouth of the Ebeji, and while no demarcation had taken place in Lake Chad before the independence of Nigeria and of Cameroon, the Court is of the view that the governing instruments show that, certainly by 1931, the frontier in the Lake Chad area was indeed delimited and agreed by Great Britain and France. It, moreover, cannot fail to observe that Nigeria was consulted during the negotiations for its independence, and again during the plebiscites that were to determine the future of the populations of the Northern and Southern Cameroons. At no time did Nigeria suggest, either so far as the Lake Chad area was concerned, or elsewhere, that the frontiers there remained to be delimited.

The Court is further of the view that the work of the Lake Chad Basin Commission (LCBC), from 1983 to 1991, affirms such an interpretation. It is unable to accept Nigeria’s contention that the LCBC was from 1983 to 1991 engaged in both delimitation and demarcation. The records show that, although the term “delimitation” was used from time to time, in introducing clauses or in agenda headings, it was the term “demarcation” that was most frequently used. Moreover, the nature of the work was that of demarcation. The Court observes in this respect that the LCBC had engaged for seven years in a technical exercise of demarcation, on the basis of instruments that were agreed to be the instruments delimiting the frontier in Lake Chad. The issues of the location of the mouth of the Ebeji, and the

designation of the tripoint longitude in terms other than “approximate”, were assigned to the LCBC. There is no indication that Nigeria regarded these issues as so grave that the frontier was to be viewed as “not delimited” by the designated instruments. The Court notes that as regards the land boundary southwards from the mouth of the Ebeji, Nigeria accepts that the designated instruments defined the boundary, but that certain uncertainties and defects should be confirmed and cured. In the view of the Court Nigeria followed this same approach in participating in the demarcation work of the LCBC from 1984 to 1990.

The Court agrees with the Parties that Nigeria is not bound by the Marking Out Report. Nonetheless, this finding of law implies neither that the governing legal instruments on delimitation were put in question, nor that Nigeria did not continue to be bound by them. In sum, the Court finds that the Milner-Simon Declaration of 1919, as well as the 1929-1930 Thomson-Marchand Declaration as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931, delimit the boundary between Cameroon and Nigeria in the Lake Chad area. The map attached by the parties to the Exchange of Notes is to be regarded as an agreed clarification of the Moisel map. The Lake Chad border area is thus delimited, notwithstanding that there are two questions that remain to be examined by the Court, namely the precise location of the longitudinal coordinate of the Cameroon-Nigeria-Chad tripoint in Lake Chad and the question of the mouth of the Ebeji.

*Coordinates of Cameroon-Nigeria-Chad tripoint
and Ebeji mouth*
(paras. 56-61)

Cameroon, while accepting that the Report of the Marking Out of the International Boundaries in Lake Chad is not binding on Nigeria, nonetheless asks the Court to find that the proposals of the LCBC as regards the tripoint and the mouth of the Ebeji “constitut[e] an authoritative interpretation of the Milner-Simon Declaration and the Thomson-Marchand Declaration, as confirmed by the Exchange of Letters of 9 January 1931”.

The Court finds that it cannot accept this request. At no time was the LCBC asked to act by the successors to those instruments as their agent in reaching an authoritative interpretation of them. Moreover, the very fact that the outcome of the technical demarcation work was agreed in March 1994 to require adoption under national laws indicates that it was in no position to engage in “authoritative interpretation” *sua sponte*.

However, having examined the Moisel map annexed to the Milner-Simon Declaration of 1919 and the map attached to the Henderson-Fleuriau Exchange of Notes of 1931, the Court reaches the same conclusions as the LCBC and considers that the longitudinal coordinate of the tripoint is situated at 14°04'59"9999 longitude east, rather than at “approximately” 14°05'. In the Court’s view, the minimal difference between these two specifications confirms, moreover, that this never presented an issue so significant as to leave the frontier in this area undetermined.

The Court then takes note of the fact that the text of the Thomson-Marchand Declaration of 1929-1930, incorporated in 1931 in the Henderson-Fleuriat Exchange of Notes, refers to "the mouth of the Ebeji". The Court considers that the text of the above instruments as well as the Moisel map annexed to the Milner-Simon Declaration and the map attached to the Henderson-Fleuriat Exchange of Notes show that the parties only envisaged one mouth. The Court further notes that the coordinates for the mouth of the Ebeji in the area just north of the site indicated as that of Wulgo, as calculated on the two maps, are strikingly similar. Moreover these coordinates are identical with those used by the LCBC when, in reliance on those same maps, it sought to locate the mouth of the Ebeji as it was understood by the parties in 1931. The point there identified is north both of the "mouth" suggested by Cameroon for the western channel in its alternative argument and of the "mouth" proposed by Nigeria for the eastern channel. On the basis of the above factors, the Court concludes that the mouth of the Ebeji, as referred to in the instruments confirmed in the Henderson-Fleuriat Exchange of Notes of 1931, lies at 14°12'12" longitude east and 12°32'17" latitude north. From this point the frontier must run in a straight line to the point where the River Ebeji bifurcates into two branches, the Parties being in agreement that that point lies on the boundary. The geographical coordinates of that point are 14°12'03" longitude east and 12°30'14" latitude north.

Historical consolidation of title claimed by Nigeria
(paras. 62-70)

The Court then turns to Nigeria's claim based on its presence in certain areas of Lake Chad. It recalls that Nigeria claims sovereignty over areas in Lake Chad which include certain named villages. Nigeria explains that these villages have been established either on what is now the dried up lake bed, or on islands which are surrounded by water perennially or on locations which are islands in the wet season only. Nigeria contends that its claim rests on three bases, which each apply both individually and jointly and one of which would be sufficient on its own:

- "(1) long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title;
- (2) effective administration by Nigeria, acting as sovereign and an absence of protest; and
- (3) manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over Darak and the associated Lake Chad villages".

For its part, Cameroon contends that, as the holder of a conventional territorial title to the disputed areas, it does not have to demonstrate the effective exercise of its sovereignty over those areas, since a valid conventional title prevails over any *effectivités* to the contrary.

The Court first observes that the work of the LCBC was intended to lead to an overall demarcation of a frontier already delimited. Although the result of the demarcation process is not binding on Nigeria, that fact has no legal

implication for the pre-existing frontier delimitation. It necessarily follows that Nigeria's claim based on the theory of historical consolidation of title and on the acquiescence of Cameroon must be assessed by reference to this initial determination of the Court. During the oral pleadings Cameroon's assertion that Nigerian *effectivités* were *contra legem* was dismissed by Nigeria as "completely question-begging and circular". The Court notes, however, that now that it has made its findings that the frontier in Lake Chad was delimited long before the work of the LCBC began, it necessarily follows that any Nigerian *effectivités* are indeed to be evaluated for their legal consequences as acts *contra legem*.

The Court then points out that the theory of historical consolidation is highly controversial and cannot replace the established modes of acquisition of title under international law, which take into account many other important variables of fact and law. Moreover, the facts and circumstances put forward by Nigeria concern a period of some 20 years, which is in any event far too short, even according to the theory relied on by it. The Court concludes that Nigeria's arguments on this point cannot therefore be upheld.

The Court observes that some of Nigeria's activities — the organization of public health and education facilities, policing, the administration of justice — could, as argued by it, normally be considered to be acts *à titre de souverain*. The Court notes, however, that, as there was a pre-existing title held by Cameroon in this area of the lake, the pertinent legal test is whether there was thus evidenced acquiescence by Cameroon in the passing of title from itself to Nigeria.

The Court observes that it has already ruled on a number of occasions on the legal relationship between "*effectivités*" and titles. In the *Frontier Dispute (Burkina Faso/Republic of Mali)*, it pointed out that in this regard "a distinction must be drawn among several eventualities", stating *inter alia* that:

"Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the *effectivité* does not coexist with any legal title, it must invariably be taken into consideration." (*I.C.J. Reports 1986*, p. 587, para. 63.) (See also *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *I.C.J. Reports 1994*, pp. 75-76, para. 38.)

The Court points out that it is this first eventuality here envisaged, and not the second, which corresponds to the situation obtaining in the present case. Thus Cameroon held the legal title to territory lying to the east of the boundary as fixed by the applicable instruments. Hence the conduct of Cameroon in that territory has pertinence only for the question of whether it acquiesced in the establishment of a change in treaty title, which cannot be wholly precluded as a possibility in law.

The Court further finds that the evidence presented to it as reflected in the case file, shows that there was no acquiescence by Cameroon in the abandonment of its title in

the area in favour of Nigeria. It therefore concludes that the situation was essentially one where the *effectivités* adduced by Nigeria did not correspond to the law, and that accordingly “preference should be given to the holder of the title”.

Accordingly, the Court concludes that, as regards the settlements situated to the east of the frontier confirmed in the Henderson-Fleuriu Exchange of Notes of 1931, sovereignty has continued to lie with Cameroon.

The course of the land boundary from Lake Chad to the Bakassi Peninsula
(paras. 71-192)

Having examined the question of the delimitation in the area of Lake Chad, the Court then considers the course of the land boundary from Lake Chad to the Bakassi Peninsula.

Relevant instruments and task of the Court
(paras. 72-86)

After summarizing the arguments of the Parties, the Court notes that Cameroon and Nigeria agree that the land boundary between their respective territories from Lake Chad onwards has already been delimited, partly by the Thomson-Marchand Declaration incorporated in the Henderson-Fleuriu Exchange of Notes of 1931, partly by the British Order in Council of 2 August 1946 and partly by the Anglo-German Agreements of 11 March and 12 April 1913. The Court likewise notes that, with the exception of the provisions concerning Bakassi contained in Articles XVIII *et seq.* of the Anglo-German Agreement of 11 March 1913, Cameroon and Nigeria both accept the validity of the four above-mentioned legal instruments which effected this delimitation. The Court finds that it will therefore not be required to address these issues further in relation to the sector of the boundary from Lake Chad to the point defined *in fine* in Article XVII of the Anglo-German Agreement of March 1913. It will, however, have to return to them in regard to the sector of the land boundary situated beyond that point, in the part of its Judgment dealing with the Bakassi Peninsula.

The Court points out that independently of the issues which have just been mentioned, a problem has continued to divide the Parties in regard to the land boundary. It concerns the nature and extent of the role which the Court is called upon to play in relation to the sectors of the land boundary in respect of which there has been disagreement between the Parties at various stages of the proceedings, either on the ground that the relevant instruments of delimitation were claimed to be defective or because the interpretation of those instruments was disputed. The Court notes that, while the positions of the Parties on this issue have undergone a significant change and have clearly become closer in the course of the proceedings, they still appear unable to agree on what the Court’s precise task should be in this regard.

The Parties have devoted lengthy arguments to the difference between delimitation and demarcation and to the Court’s power to carry out one or other of these operations.

The Court observes that, as noted by it in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (*I.C.J. Reports 1994*, p. 28, para. 56), the delimitation of a boundary consists in its “*definition*”, whereas the demarcation of a boundary, which presupposes its prior delimitation, consists of operations marking it out on the ground. In the present case, the Parties have acknowledged the existence and validity of the instruments whose purpose was to effect the delimitation between their respective territories; moreover, both Parties have insisted time and again that they are not asking the Court to carry out demarcation operations, for which they themselves will be responsible at a later stage. The Court’s task is thus neither to effect a delimitation *de novo* of the boundary nor to demarcate it.

The task which Cameroon referred to the Court in its Application is “*to specify definitively*” (emphasis added by the Court) the course of the land boundary as fixed by the relevant instruments of delimitation. In the Court’s views since the land boundary has already been delimited by various legal instruments, it is indeed necessary, in order to specify its course definitively, to confirm that those instruments are binding on the Parties and are applicable. However, contrary to what Cameroon appeared to be arguing at certain stages in the proceedings, the Court cannot fulfil the task entrusted to it in this case by limiting itself to such confirmation. Thus, when the actual content of these instruments is the subject of dispute between the Parties, the Court, in order to specify the course of the boundary in question definitively, is bound to examine them more closely. The dispute between Cameroon and Nigeria over certain points on the land boundary between Lake Chad and Bakassi is in reality simply a dispute over the interpretation or application of particular provisions of the instruments delimiting that boundary. It is this dispute which the Court will undertake to settle. In order to do so, the Court addresses in succession each of the points in dispute.

Limani
(paras. 87-91)

The Court notes that in the Limani area the interpretation of the Thomson-Marchand Declaration raises difficulties in that it simply refers to “a river” in this area, whereas there are in fact several river channels between the Agzabame marsh and the “confluence at about 2 kilometres to the north-west [of the village of Limanti (Limani)]” (para. 14 of the Declaration).

A careful study of the wording of the Thomson-Marchand Declaration and of the map and other evidence provided by the Parties leads the Court to the following conclusions. In the first place, the Court observes that the second channel from the north, proposed by Cameroon as the course of the boundary, is unacceptable. The southern channel proposed by Nigeria poses other problems. The Court cannot therefore accept this channel either. The Court notes, however, that the river has another channel, called Nargo on DOS sheet “Ybiri N.W.”, reproduced at page 23

of the atlas annexed to Nigeria's Rejoinder, which meets the conditions specified in the Thomson-Marchand Declaration. Accordingly, the Court concludes that the "river" mentioned in paragraph 14 of the Thomson-Marchand Declaration is the channel running between Narki and Tarmoa, and that from the Agzabame marsh the boundary must follow that channel to its confluence with the Ngassaoua River.

The Keraua (Kirewa or Kirawa) River
(paras. 92-96)

The Court notes that, in the area of the Keraua (Kirewa or Kirawa) River, the interpretation of paragraph 18 of the Thomson-Marchand Declaration raises difficulties, since the wording of this provision merely makes the boundary follow "the Keraua", whereas at this point that river splits into two channels: a western channel and an eastern channel. The Court finds that its task is thus to identify the channel which the boundary is to follow pursuant to the Thomson-Marchand Declaration.

After rejecting some of each of the Parties' contentions, the Court notes that according to the Moisel map the boundary runs, as Nigeria maintains, just to the east of two villages called Schriwe and Ndeba, which are on the site now occupied by the villages of Chérivé and Ndabakora, and which the map places on Nigerian territory. Only the eastern channel meets this condition. The Court accordingly concludes that paragraph 18 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the eastern channel of the Keraua River.

The Kohom River
(paras. 97-102)

The Court notes that the initial problem posed by paragraph 19 of the Thomson-Marchand Declaration consists in the identification of the course of the River Kohom, along which the boundary is to pass. After a detailed study of the map evidence available to it, the Court reaches the conclusion that, as Nigeria contends, it is indeed the River Bogaza which has its source in Mount Ngosi, and not the River Kohom. The Court's task is accordingly to determine where the drafters of the Thomson-Marchand Declaration intended the boundary to run in this area when they described it as following the course of a river called "Kohom".

In order to locate the course of the Kohom, the Court first examines the text of the Thomson-Marchand Declaration, finding that it does not provide a decisive answer. The Court points out that it therefore had to have recourse to other means of interpretation. Thus it has carefully examined the sketch-map prepared in March 1926 by the French and British officials which served as the basis for the drafting of paragraphs 18 and 19 of the Thomson-Marchand Declaration. The Court finds that it is able to determine, on the basis of a comparison of the indications provided by the sketch-map with the maps provided by the Parties, that the Kohom whose course the Thomson-Marchand Declaration provides for the boundary to follow

is that indicated by Cameroon. It notes, however, that the boundary line claimed by Cameroon in this area runs on past the source of the river which the Court has identified as the Kohom. Nor does the Court consider that it can disregard the fact that the Thomson-Marchand Declaration expressly provides that the boundary must follow a river which has its source in Mount Ngosi. In order to comply with the Thomson-Marchand Declaration, it is therefore necessary to join the source of the River Kohom, as identified by the Court, to the River Bogaza, which rises on Mount Ngosi. The Court accordingly concludes that paragraph 19 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to follow the course of the River Kohom, as identified by the Court, as far as its source at 13°44'24" longitude east and 10°59'09" latitude north, and then to follow a straight line in a southerly direction until it reaches the peak shown as having an elevation of 861 m on the 1:50,000 map in Figure 7.8 at page 334 of Nigeria's Rejoinder and located at 13°45'45" longitude east and 10°59'45" latitude north, before following the River Bogaza in a south-westerly direction as far as the summit of Mount Ngosi.

*The watershed from Ngosi to Humsiki (Roumsiki)/
Kamale/Turu (the Mandara Mountains)*
(paras. 103-114)

The Court notes that the problem in the area between Ngosi and Humsiki derives from the fact that Cameroon and Nigeria apply the provisions of paragraphs 20 to 24 of the Thomson-Marchand Declaration in different ways. In this sector of the boundary the Court's task is thus to determine the course of the boundary by reference to the terms of the Thomson-Marchand Declaration, that is to say by reference essentially to the crest line, to the line of the watershed and to the villages which are to lie to either side of the boundary. The Court addresses this question section by section, and concludes that in the area between Ngosi and Humsiki the boundary follows the course described by paragraphs 20 to 24 of the Thomson-Marchand Declaration as clarified by the Court.

*From Mount Kuli to Bourha/Maduguva (incorrect
watershed line on Moisel's map)*
(paras. 115-119)

The Court notes that the text of paragraph 25 of the Thomson-Marchand Declaration, on the application of which the two Parties disagree, provides quite expressly that the boundary is to follow "the incorrect line of the watershed shown by Moisel on his map". Since the authors of the Declaration prescribed a clear course for the boundary, the Court cannot deviate from that course.

From careful study of the Moisel map the Court concludes that paragraph 25 of the Thomson-Marchand Declaration should be interpreted as providing for the boundary to run from Mount Kuli to the point marking the beginning of the "incorrect line of the watershed", located at 13°31'47" longitude east and 10°27'48" latitude north,

having reached that point by following the correct line of the watershed. Then, from that point, the boundary follows the "incorrect line of the watershed" to the point marking the end of that line, located at 13° 30' 55" longitude east and 10° 15' 46" latitude north. Between these two points the boundary follows the course indicated on the map annexed to this Judgment, which was prepared by the Court by transposing the "incorrect line of the watershed" from the Moisel map to the first edition of sheet "Uba N.E." of the DOS 1:50,000 map of Nigeria. From this latter point, the boundary will again follow the correct line of the watershed in a southerly direction.

Kotcha (Koja)
(paras. 120-124)

The Court finds that, in the Kotcha area, the difficulty derives solely from the fact, as Nigeria recognizes, that the Nigerian village of Kotcha has spread over onto the Cameroonian side of the boundary. As the Court has already had occasion to point out in regard to the village of Turu, it has no power to modify a delimited boundary line, even in a case where a village previously situated on one side of the boundary has spread beyond it. It is instead up to the Parties to find a solution to any resultant problems, with a view to respecting the rights and interests of the local population.

The Court accordingly concludes that the boundary in the Kotcha area, as described in paragraphs 26 and 27 of the Thomson-Marchand Declaration, follows the line of the watershed, including where it passes close to the village of Kotcha, the cultivated land lying on the Cameroonian side of the watershed remaining on Cameroonian territory.

Source of the Tsikakiri River
(paras. 125-129)

The Court notes that the interpretation of paragraph 27 of the Thomson-Marchand Declaration poses problems because the Tsikakiri River has more than one source, whereas the Declaration simply states that the boundary passes through "the source" of the Tsikakiri without providing any indication as to which source is to be chosen.

The Court observes that it may reasonably be assumed that the drafters of the Declaration, in referring to the source of the Tsikakiri, intended to designate a point which could be readily identified, both on maps and on the ground and notes that one of the sources of the Tsikakiri, namely the one having the highest elevation, stands out from the others. It accordingly concludes that, in the area referred to in paragraph 27 of the Thomson-Marchand Declaration, the boundary starts from a point having coordinates 13°17'50" longitude east and 10°03'32" latitude north, which is located in the vicinity of Dumo. From there, the boundary runs in a straight line to the point which the Court has identified as the "source of the Tsikakiri" as referred to in the Declaration, and then follows that river.

From Beacon 6 to Wamni Budungo
(paras. 130-134)

The Court notes that the interpretation of paragraphs 33 and 34 of the Thomson-Marchand Declaration raises a problem in that those provisions describe the line of the boundary as passing through three beacons of which at least two have now disappeared.

After careful study of the text of the Anglo-German Agreement of 1906 and the cartographic material provided by the Parties in order to discover the location of these three beacons, the Court concludes that paragraphs 33 and 34 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to pass through the points having the following coordinates: 12°53'15" longitude east and 9°04'19" latitude north; 12°51'55" longitude east and 9°01'03" latitude north; and 12°49'22" longitude east and 8°58'18" latitude north.

Maio Senche
(paras. 135-139)

The Court notes that, in the Maio Senche area, covered by paragraph 35 of the Thomson-Marchand Declaration, the difficulty lies in identifying the line of the watershed, of which the two Parties have proposed differing cartographic representations.

After studying the cartographic material provided to it by the Parties, the Court observes that the watershed line passes, as Nigeria contends, between the basin of the Maio Senche and that of the two rivers to the south.

Jimbare and Sapeo
(paras. 140-146)

The Court notes that the interpretation of paragraphs 35 to 38 of the Thomson-Marchand Declaration poses problems, since the description of the boundary therein appears both to contain a series of material errors and, in certain places, to contradict the representation of that boundary on the 1931 map appended to the Declaration. The Court notes, however, that, as regards the area to the north of Nananoua as referred to in paragraph 36 of the Thomson-Marchand Declaration, the Parties agree that the rivers whose courses form the boundary are the Leinde and the Sassiri. Similarly, the cartographic representations of this section of the boundary proposed by the Parties correspond in every respect. To the south of Nananoua, on the other hand, there is no agreement between Cameroon and Nigeria.

The Court concludes, first, that paragraphs 35 and 36 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to pass over Hosere Bila, which it has identified as the "south peak of the Alantika Mountains" referred to in paragraph 35, and then from that point along the River Leinde and the River Sassiri "as far as the confluence with the first stream coming from the Balakossa Range". It further concludes that paragraphs 37 and 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the

course described in paragraph 1 of the Logan-Le Brun *procès-verbal*, as shown by Nigeria in Figures 7.15 and 7.16 at pages 346 and 350 of its Rejoinder.

Noumberou-Banglang
(paras. 147-152)

The Court notes that the final part of paragraph 38 of the Thomson-Marchand Declaration poses problems of interpretation in that it contains fundamental errors of a material nature; it further notes that it is, however, only the part of the boundary situated to the south of the source of the Noumberou which poses any problem. To the north of that point, Cameroon and Nigeria agree that the boundary should follow the course of the Noumberou. The course of the boundary shown on the Cameroonian and Nigerian maps confirm that agreement.

The Court considers that, to the south of the source, it is the boundary line proposed by Nigeria which is to be preferred. That line is moreover more favourable to Cameroon than the line shown on its own maps, and Cameroon has not opposed it. The Court accordingly concludes that the final part of paragraph 38 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the course of the River Noumberou as far as its source, and then from that point to run in a straight line as far as Hosere Tapere as identified by the Court.

Tipsan
(paras. 153-155)

The Court observes that at the hearings the Parties agreed that the boundary must follow a line running parallel to the Fort Lamy-Baré road some 2 km to the west thereof, as paragraph 41 of the Thomson-Marchand Declaration provides. The Court takes note of that agreement. However, the Court considers that, in order to remove any doubt, it should identify the terminal point of this section of the boundary — namely the point situated on the Mayo Tipsal “2 kilometres to the south-west of the point at which the road crosses said Mayo Tipsal” — as corresponding to the coordinates 12°12'45" longitude east and 7°58'49" latitude north.

Crossing the Maio Yin
(paras. 156-160)

The Court confirms that the boundary in the area where it crosses the Maio Yin follows the course described in paragraphs 48 and 49 of the Thomson-Marchand Declaration.

The Hambere Range area
(paras. 161-168)

The Court notes that paragraphs 60 and 61 of the Thomson-Marchand Declaration raise problems of interpretation, since they provide for the boundary to pass over “a fairly prominent peak” without any further

clarification and the Parties have differing views as to the location of that peak.

The Court observes that paragraphs 60 and 61 contain a number of indications which are helpful in locating the “fairly prominent, pointed peak” referred to therein. Having studied with the greatest care the maps provided by the Parties, the Court concludes that paragraph 60 of the Thomson-Marchand Declaration must be interpreted as providing for the boundary to follow the line of the watershed through the Hosere Hambere or Gesumi, as shown on sheet NB-32-XVIII-3a-3b of the 1955 IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria, as far as the foot of Tamnyar Peak, which the Court has identified as the “fairly prominent, pointed peak” referred to in the Declaration.

From the Hambere Range to the Mburi River
(*Lip and Yang*)
(paras. 169-179)

The Court notes that the interpretation of the Order in Council of 1946 raises two fundamental difficulties in the area between the “fairly prominent pointed peak” referred to in the Thomson-Marchand Declaration and the River Mburi. The first lies in joining up the lines prescribed by the two texts and, in particular, in identifying the peak described in the Order in Council as “prominent”, without further clarification. The second consists in determining the course of the boundary beyond that point.

The Court observes that, while unable to designate a specific peak, it has nonetheless been able to identify the crest line of which that peak must form part. This crest begins at the point where the watershed through the Hosere Hambere turns suddenly to the south at the locality named Galadima Wanderi on Figure 7.37 in Nigeria's Rejoinder, then runs due south until it approaches the point named Tonn Hill on that same Figure. The intention of the drafters of the Order in Council was to have the boundary follow this crest line. As a result, what the Court finds it has to do is to trace a line joining the peak referred to in paragraph 60 of the Thomson-Marchand Declaration, namely Tamnyar Peak, to that crest line. The Court points out that the watershed through the Hosere Hambere, on which Tamnyar Peak lies, extends naturally as far as the crest line marking the former Franco-British frontier, starting point of the sector of the boundary delimited by the 1946 Order in Council. It is thus possible to link the boundary sectors delimited by the two texts by following, from Tamnyar Peak, that watershed as represented on sheet NB-32-XVIII-3a-3b of the 1955 IGN 1:50,000 map of Cameroon, produced in the proceedings by Nigeria.

The Court then addresses the question of the course of the boundary from that crest line. It observes that the 1946 Order in Council contains a great deal of information on the course of the boundary in this area. After careful study of the maps provided to it by the Parties, the Court concludes that, from east to west, the boundary first follows the watershed line through the Hosere Hambere from Tamnyar Peak to the point where that line reaches the crest line

marking the former Franco-British frontier. In accordance with the 1946 Order in Council, the boundary then follows this crest line southward, then west-south-west to the source of the River Namkwer and then follows the course of that river to its confluence with the River Mburi, 1 mile north of Nyan. From that point, the boundary follows the course of the River Mburi. It first runs northwards for a distance of approximately 2 km, and then takes a south-westerly course for some 3 km and then west-north-west along a stretch where the river is also called the Maveu or the Ntem. Then, some 2 km further on, it turns to run due north where the River Mburi is also called the Manton or Ntem.

Bissaula-Tosso
(paras. 180-184)

The Court notes that the problem in the Bissaula-Tosso area consists in determining which tributary of the River Akbang crosses the Kentu-Bamenda road and is thus the tributary which the Order in Council provides for the boundary to follow.

The Court concludes that the 1946 Order in Council should be interpreted as providing for the boundary to run through the point where the southern tributary of the River Akbang, as identified by the Court, crosses the Kentu-Bamenda road, and then from that point along the southern tributary until its junction with the River Akbang.

The Sama River
(paras. 185-189)

The Court notes that the interpretation of the Order in Council poses problems in regard to the River Sama, since the river has two tributaries, and hence two places where it "divides into two" as the Order in Council prescribes, but the Order does not specify which of those two places is to be used in order to determine the course of the boundary.

The Court finds that a reading of the text of the Order in Council of 1946 permits it to conclude that this Order must be interpreted as providing for the boundary to run up the River Sama to the confluence of its first tributary, that being the point, with coordinates 10°10'23" longitude east and 6°56'29" latitude north, which the Court has identified as the one specified in the Order in Council where the River Sama "divides into two"; and then, from that point, along a straight line to the highest point of Mount Tosso.

*Boundary in Bakassi and question of sovereignty
over the Peninsula*
(paras. 193-225)

Having recalled each of the Parties' final submissions, the Court notes that according to Cameroon the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary. Cameroon relies for this purpose on Articles XVIII to XXI of the said Agreement, and adds that hence, when Cameroon and Nigeria acceded to independence, this

boundary became that between the two countries, successor States to the colonial powers and bound by the principle of *uti possidetis*. The Court further notes that Nigeria, for its part, does not contest that the meaning of these provisions was to allocate the Bakassi Peninsula to Germany. It does, however, insist that the said terms were never put into effect, and indeed were invalid on various grounds, though the other Articles of the Agreement of 11 March 1913 remained valid. Nigeria contends rather, that the title to sovereignty over Bakassi on which it relies was originally vested in the Kings and Chiefs of Old Calabar. It considers that, the Treaty of Protection signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar only conferred certain limited rights on Great Britain; in no way did it transfer sovereignty to Britain over the territories of the Kings and Chiefs of Old Calabar. Nigeria argues that, since Great Britain did not have sovereignty over those territories in 1913, it could not cede them to a third party. The Court notes in this connection that, in Cameroon's view, the treaty signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar established a "colonial protectorate" and, "in the practice of the period, there was little fundamental difference at international level, in terms of territorial acquisition, between colonies and colonial protectorates". According to Cameroon substantive differences between the status of colony and that of a colonial protectorate were matters of the national law of the colonial Powers rather than of international law.

The key element of the colonial protectorate was the "assumption of external sovereignty by the protecting State", which manifested itself principally through "the acquisition and exercise of the capacity and power to cede part of the protected territory by international treaty, without any intervention by the population or entity in question".

The Court begins by observing that during the era of the Congress of Berlin the European Powers entered into many treaties with local rulers, and that Great Britain concluded some 350 treaties with the local chiefs of the Niger delta. Among these were the treaties concluded in July 1884 with the Kings and Chiefs of Opobo and, in September 1884, with the Kings and Chiefs of Old Calabar. The latter Treaty did not specify the territory to which the British Crown was to extend "gracious favour and protection", nor did it indicate the territories over which each of the Kings and Chiefs signatory to the Treaty exercised his powers. In the view of the Court, Great Britain had, however, a clear understanding of the area ruled at different times by the Kings and Chiefs of Old Calabar, and of their standing.

Nigeria has contended that the very title of the 1884 Treaty and the reference in Article I to the undertaking of "protection", shows that Britain had no entitlement to do more than protect, and in particular had no entitlement to cede the territory concerned to third States: "*nemo dat quod non habet*". The Court in this respect calls attention to the fact that the international legal status of a "Treaty of Protection" entered into under the law obtaining at the time cannot be deduced from its title alone. Some treaties of

protection were entered into with entities which retained thereunder a previously existing sovereignty under international law. This was the case whether the protected party was henceforth termed "protectorat" or "a protected State". In sub-Saharan Africa, treaties termed "treaties of protection" were entered into not with States, but rather with important indigenous rulers exercising local rule over identifiable areas of territory. In relation to a treaty of this kind in another part of the world, Max Huber, sitting as sole arbitrator in the *Island of Palmas* case, explained that such a treaty

"is not an agreement between equals; it is rather a form of internal organisation of a colonial territory, on the basis of autonomy of the natives ... And thus suzerainty over the native States becomes the basis of territorial sovereignty as towards other members of the community of nations." (*RILA*, Vol. II, pp. 858-859).

The Court observes that these concepts also found expression in the *Western Sahara* Advisory Opinion. There the Court stated that in territories that were not *terra nullius*, but were inhabited by tribes or people having a social and political organization, "agreements concluded with local rulers ... were regarded as derivative roots of title" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 39, para. 80). The Court points out that even if this mode of acquisition does not reflect current international law, the principle of intertemporal law requires that the legal consequences of the treaties concluded at that time in the Niger delta be given effect today, in the present dispute.

In the view of the Court many factors point to the 1884 Treaty signed with the Kings and Chiefs of Old Calabar as not establishing an international protectorate. Nigeria itself has been unable to point to any role, in matters relevant to the present case, played by the Kings and Chiefs of Old Calabar after the conclusion of the 1884 Treaty. The Court further notes that a characteristic of an international protectorate is that of ongoing meetings and discussions between the protecting Power and the Rulers of the Protectorate. In the present case the Court was informed that "Nigeria can neither say that no such meetings ever took place, or that they did take place ... the records which would enable the question to be answered probably no longer exist ..." The Court also notes that there is no reference to Old Calabar in any of the various British Orders in Council, of whatever date, which list protectorates and protected States. Moreover, the Court has been presented with no evidence of any protest in 1913 by the Kings and Chiefs of Old Calabar; nor of any action by them to pass territory to Nigeria as it emerged to independence in 1960. The Court thus concludes that, under the law at the time, Great Britain was in a position in 1913 to determine its boundaries with Germany in respect of Nigeria, including in the southern section.

The Court then examines the treatment, in the period 1913 to 1960, of the southern sector of the boundary as defined by the Anglo-German Agreement of 11 March 1913.

Cameroon contends that the mandate and trusteeship period, and the subsequent independence process, show recognition on the part of the international community of Cameroon's attachment to the Bakassi Peninsula. Nigeria for its part argues that, at all times while the 1884 Treaty remained in force, Great Britain continued to lack power to give Bakassi away. As such, it claims that no amount of British activity in relation to Bakassi in the mandate or trusteeship periods could have severed Bakassi from the Nigeria protectorate.

The Court notes that after the First World War Germany renounced its colonial possessions. Under the Versailles Treaty the German possessions of Cameroon were divided between Great Britain and France. In 1922 Great Britain accepted the mandate of the League of Nations for "that part [of the former German colony] of the Cameroons which lay to the west of the line laid down in the [Milner-Simon] Declaration signed on the 10th July, 1919". Bakassi was necessarily comprised within the mandate. When, after the Second World War and the establishment of the United Nations, the mandate was converted to a trusteeship, the territorial situation remained exactly the same. Thus for the entire period from 1922 until 1961 (when the Trusteeship was terminated), Bakassi was comprised within British Cameroon. The boundary between Bakassi and Nigeria, notwithstanding the administrative arrangements, remained an international boundary.

The Court is unable to accept Nigeria's contention that until its independence in 1961, and notwithstanding the Anglo-German Agreement of 11 March 1913, the Bakassi Peninsula had remained under the sovereignty of the Kings and Chiefs of Old Calabar. Neither the League of Nations nor the United Nations considered that to be the position. Equally, the Court observes that it has seen no evidence that Nigeria thought that upon independence it was acquiring Bakassi from the Kings and Chiefs of Old Calabar. Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence. The Court notes in particular that there was nothing which might have led Nigeria to believe that the plebiscite which took place in the Southern Cameroons in 1961 under United Nations supervision did not include Bakassi. The Court further observes that this frontier line was acknowledged in turn by Nigeria when it voted in favour of General Assembly resolution 1608 (XV), which both terminated the Trusteeship and approved the results of the plebiscite. Shortly after, in Note Verbale No. 570 of 27 March 1962 addressed to Cameroon, Nigeria referred to certain oil licensing blocks. A sketch-map was appended to the Note, from which it is clear that the block "N" referred to lay directly south of the Bakassi Peninsula. The block was described as offshore Cameroon. This common understanding of where title lay in Bakassi continued through until the late 1970s, when the Parties were engaging in discussions on their maritime frontier. The Court finds that it is clear from the ensuing discussions and agreements that the Parties took it as a given that Bakassi belonged to Cameroon. Nigeria, drawing on the full weight of its experts as well as its most senior political figures, understood

Bakassi to be under Cameroon sovereignty. Accordingly, the Court finds that at that time Nigeria accepted that it was bound by Articles XVIII to XXII of the Anglo-German Agreement of 11 March 1913, and that it recognized Cameroonian sovereignty over the Bakassi Peninsula. In the view of the Court, this common understanding of the Parties is also reflected by the geographic pattern of the oil concessions granted by the two Parties up to 1991. The Court further takes account of certain formal requests up until the 1980s submitted by the Nigerian Embassy in Yaoundé, or by the Nigerian consular authorities, before going to visit their nationals residing in Bakassi.

For all of these reasons the Court finds that the Anglo-German Agreement of 11 March 1913 was valid and applicable in its entirety.

The Court then turns to further claims to Bakassi relied on by Nigeria. Nigeria advances “three distinct but interrelated bases of title over the Bakassi Peninsula”:

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

Nigeria particularly emphasizes that the title on the basis of historical consolidation, together with acquiescence, in the period since the independence of Nigeria, “constitutes an independent and self-sufficient title to Bakassi”. Cameroon for its part argues that a legal treaty title cannot be displaced by what in its view amounts to no more than a number of alleged *effectivités*.

The Court first recalls its finding above regarding the claim to an ancient title to Bakassi derived from the Kings and Chiefs of Old Calabar. It observes that it follows therefrom that at the time of Nigeria’s accession to independence there existed no Nigerian title capable of being confirmed subsequently by “long occupation”. On the contrary, on the date of its independence Cameroon succeeded to title over Bakassi as established by the Anglo-German Agreement of 11 March 1913. The Court also finds that invocation of the theory of consolidation of historic titles cannot in any event vest title to Bakassi in Nigeria, where its “occupation” of the peninsula is adverse to Cameroon’s prior treaty title and where, moreover, the possession has been for a limited period.

The Court then deals with other aspects of the second and third bases of title advanced by Nigeria together.

It points out that the legal question of whether *effectivités* suggest that title lies with one country rather than another is not the same legal question as whether such *effectivités* can serve to displace an established treaty title. As the Chamber of the Court made clear in the *Frontier Dispute (Burkina Faso/Republic of Mali)* case, where there

is a conflict between title and *effectivités*, preference will be given to the former (*I.C.J. Reports 1986, Judgment*, pp. 586-587, para. 63). In the view of the Court the more relevant legal question in this case is whether the conduct of Cameroon, as the title holder, can be viewed as an acquiescence in the loss of the treaty title that it inherited upon independence. The Court recalls that in 1961-1962, Nigeria clearly and publicly recognized Cameroon title to Bakassi. That continued to be the position until at least 1975, when Nigeria signed the Maroua Declaration. No Nigerian *effectivités* in Bakassi before that time can be said to have legal significance for demonstrating a Nigerian title; this may in part explain the absence of Cameroon protests regarding health, education and tax activity in Nigeria. The Court also notes that Cameroon had since its independence engaged in activities which made clear that it in no way was abandoning its title to Bakassi. The Court considers that the foregoing shows that Nigeria could not have been acting *à titre de souverain* before the late 1970s, as it did not consider itself to have title over Bakassi; and in the ensuing period the evidence does not indicate an acquiescence by Cameroon in the abandonment of its title in favour of Nigeria. For all of these reasons the Court is also unable to accept the second and third bases of title to Bakassi advanced by Nigeria.

The Court accordingly concludes that the boundary between Cameroon and Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913, and that sovereignty over the peninsula lies with Cameroon.

The maritime boundary between Cameroon and Nigeria
(paras. 226-307)

The Court then turns to the maritime boundary between Cameroon and Nigeria.

In its final submissions presented to the Court at the end of the oral proceedings on 21 March 2002, Cameroon requests that the Court confirm that “[t]he boundary of the maritime areas appertaining respectively to the Republic of Cameroon and the Federal Republic of Nigeria takes the following course”, which Cameroon describes in detail in the two subparagraphs of paragraph (c) of its submissions. Nigeria claims that the Court should refuse to carry out in whole or in part the delimitation requested by Cameroon, first, because the delimitation affects areas claimed by third States (eighth preliminary exception) and, secondly, because the requirement of prior negotiations has not been satisfied.

The Court first deals with these arguments of Nigeria.

Nigeria’s eighth preliminary objection
(paras. 237-238)

After summarizing the contentions and arguments of each of the Parties, the Court first observes that its finding in its Judgment of 11 June 1998 on the eighth preliminary objection of Nigeria that that preliminary objection did “not have, in the circumstances of the case, an exclusively

preliminary character” requires it to deal now with the preliminary objection before proceeding further on the merits. Since Nigeria maintains its objection, the Court must rule on it.

The Court begins by observing that its jurisdiction is founded on the consent of the parties. The Court cannot therefore decide upon legal rights of third States not parties to the proceedings. In the present case there are States other than the parties to these proceedings whose rights might be affected, namely Equatorial Guinea and Sao Tome and Principe. Those rights cannot be determined by decision of the Court unless Equatorial Guinea and Sao Tome and Principe have become parties to the proceedings. Equatorial Guinea has indeed requested — and has been granted — permission to intervene, but as a non-party intervener only. Sao Tome and Principe has chosen not to intervene on any basis.

The Court considers that, in particular in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In the present case, Article 59 may not sufficiently protect Equatorial Guinea and/or Sao Tome and Principe from the effects — even if only indirect — of a judgment affecting their legal rights. It follows that, in fixing the maritime boundary between Cameroon and Nigeria, the Court must ensure that it does not adopt any position which might affect the rights of Equatorial Guinea and Sao Tome and Principe. Moreover, in relation to the specific issue of the tripoint, the Court notes that both Parties agree that it should not fix one. It is indeed not entitled to do so. In determining any line, the Court must take account of this.

The Court concludes that it cannot rule on Cameroon’s claims insofar as they might affect rights of Equatorial Guinea and Sao Tome and Principe. Nonetheless, the mere presence of those two States, whose rights might be affected by the decision of the Court, does not in itself preclude the Court from having jurisdiction over a maritime delimitation between the Parties to the case before it, namely Cameroon and Nigeria, although it must remain mindful, as always in situations of this kind, of the limitations on its jurisdiction that such presence imposes.

Nigeria’s argument that the requirement of prior negotiations has not been satisfied
(paras. 239-245)

Nigeria further argues that Article 74, paragraph 1, and Article 83, paragraph 1, of the United Nations Convention on the Law of the Sea require that the parties to a dispute over maritime delimitation should first attempt to resolve their dispute by negotiation. According to Nigeria, these provisions lay down a substantive rule, not a procedural prerequisite. Negotiation is prescribed as the proper and primary way of achieving an equitable maritime delimitation, and the Court is not a forum for negotiations. Nigeria accepts that, to the extent that the dispute over the maritime boundary pertains to areas around point G and to the areas of overlapping licences, this requirement has been

satisfied. However, it maintains that waters to the south “of 4° N and 3° N and even 2° N” have never been the subject of any attempt at negotiation with Nigeria or, as far as Nigeria is aware, with any other affected State.

The Court points out that, in its Judgment of 11 June 1998, it noted that negotiations between the Governments of Cameroon and Nigeria concerning the entire maritime delimitation — up to point G and beyond — were conducted as far back as the 1970s. These negotiations did not lead to an agreement. In the Court’s view, however, Articles 74 and 83 of the United Nations Law of the Sea Convention do not require that delimitation negotiations should be successful; like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith. The Court reaffirms its finding in regard to the preliminary objections that negotiations have indeed taken place. Moreover, if, following unsuccessful negotiations, judicial proceedings are instituted and one of the parties then alters its claim, Articles 74 and 83 of the Law of the Sea Convention would not require that the proceedings be suspended while new negotiations were conducted. It is of course true that the Court is not a negotiating forum. In such a situation, however, the new claim would have to be dealt with exclusively by judicial means. Any other solution would lead to delays and complications in the process of delimitation of continental shelves and exclusive economic zones. The Law of the Sea Convention does not require such a suspension of the proceedings.

As to negotiations with Equatorial Guinea and Sao Tome and Principe, the Court does not find that it follows from Articles 74 and 83 of the Law of the Sea Convention that the drawing of the maritime boundary between Cameroon and Nigeria presupposes that simultaneous negotiations between all four States involved have taken place.

The Court concludes that it is therefore in a position to proceed to the delimitation of the maritime boundary between Cameroon and Nigeria insofar as the rights of Equatorial Guinea and Sao Tome and Principe are not affected.

The maritime boundary up to point G
(paras. 247-268)

The Court then turns to Cameroon’s request for the tracing of a precise line of maritime delimitation. It first addresses the sector of the maritime boundary up to point G.

The Court notes that, according to Cameroon, the maritime boundary between Cameroon and Nigeria is divided into two sectors. The first, from the mouth of the Akwayafe River to point G fixed by the Maroua Declaration of 1 June 1975, is said to have been delimited by valid international agreements between the Parties. In relation to this sector, Cameroon asks the Court merely to confirm that delimitation, which it says that Nigeria is now seeking to reopen. The sector beyond point G remains to be delimited, and Cameroon requests the Court to fix the limits of the Parties’ respective areas in this sector, so as to put a complete and final end to the dispute between them. The

delimitation of the first sector, from the mouth of the Akwayafe River to point G, is said by Cameroon to be based mainly on three international legal instruments, namely the Anglo-German Agreement of 11 March 1913, the Cameroon-Nigeria Agreement of 4 April 1971, comprising the Yaoundé II Declaration and the appended Chart 3433, and the Maroua Declaration of 1 June 1975. The Court then notes that Nigeria for its part draws no distinction between the area up to point G and the area beyond. It denies the existence of a maritime delimitation up to that point, and maintains that the whole maritime delimitation must be undertaken *de novo*. Nonetheless, Nigeria does advance specific arguments regarding the area up to point G, which in the Court's view it is appropriate to address in this part of the Judgment. In the first place, on the basis of its claim to sovereignty over the Bakassi Peninsula, Nigeria contends that the line of the maritime boundary between itself and Cameroon will commence in the waters of the Rio del Rey and run down the median line towards the open sea. Since the Court has already found that sovereignty over the Bakassi Peninsula lies with Cameroon and not with Nigeria, it is unnecessary to deal any further with this argument of Nigeria. Nigeria further contends that, even if Cameroon's claim to Bakassi were valid, Cameroon's claim to a maritime boundary should have taken into account the wells and other installations on each side of the line established by the oil practice and should not change the status quo in this respect. In relation to the Yaoundé II Declaration, Nigeria contends that it was not a binding agreement. Nigeria likewise regards the Maroua Declaration as lacking legal validity.

The Court begins by pointing out that it has already found that the Anglo-German Agreement of 11 March 1913 is valid and applicable in its entirety and that, in consequence, territorial title to the Bakassi Peninsula lies with Cameroon. It follows from these findings that the maritime boundary between Cameroon and Nigeria lies to the west of the Bakassi Peninsula and not to the east, in the Rio del Rey. It also follows from these findings that the maritime boundary between the Parties is "anchored" to the mainland at the intersection of the straight line from Bakassi Point to King Point with the centre of the navigable channel of the Akwayafe River in accordance with Articles XVIII and XXI of the said Anglo-German Agreement.

The Court observes that it is apparent from the documents provided to the Court by the Parties that, irrespective of what may have been the intentions of its original signatories, the Yaoundé II Declaration was called into question on a number of occasions by Nigeria subsequently to its signature and to the Joint Boundary Commission meeting of June 1971. However, it is unnecessary to determine the status of the Declaration in isolation, since the line described therein is confirmed by the terms of the Maroua Declaration, which refers in its third paragraph to "Point 12 ... situated at the end of the line of the maritime boundary adopted by the two Heads of State on April 4, 1971".

The Court considers that the Maroua Declaration constitutes an international agreement concluded between States in written form and tracing a boundary; it is thus governed by international law and constitutes a treaty in the sense of the Vienna Convention on the Law of Treaties (see Art. 2, para. 1), to which Nigeria has been a party since 1969 and Cameroon since 1991, and which in any case reflects customary international law in this respect. The Court further considers that it cannot accept the argument that the Maroua Declaration was invalid under international law because it was signed by the Nigerian Head of State of the time but never ratified. It observes that, while in international practice a two-step procedure consisting of signature and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are also cases where a treaty enters into force immediately upon signature. In the Court's opinion, the Maroua Declaration entered into force immediately upon its signature.

The Court then addresses Nigeria's argument that its constitutional rules regarding the conclusion of treaties were not complied with. In this regard the Court recalls that Article 46, paragraph 1, of the Vienna Convention provides that "[a] State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent". It is true that the paragraph goes on to say "unless that violation was manifest and concerned a rule of its internal law of fundamental importance", while paragraph 2 of Article 46 provides that "[a] violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith". The rules concerning the authority to sign treaties for a State are constitutional rules of fundamental importance. However, a limitation of a Head of State's capacity in this respect is not manifest in the sense of Article 46, paragraph 2, unless at least properly publicized. This is particularly so because Heads of State belong to the group of persons who, in accordance with Article 7, paragraph 2, of the Convention "[i]n virtue of their functions and without having to produce full powers" are considered as representing their State. With regard to the Nigerian argument that Cameroon knew, or ought to have known, that the Head of State of Nigeria had no power legally to bind Nigeria without consulting the Nigerian Government, the Court notes that there is no general legal obligation for States to keep themselves informed of legislative and constitutional developments in other States which are or may become important for the international relations of these States.

In these circumstances the Maroua Declaration, as well as the Yaoundé II Declaration, have to be considered as binding and as establishing a legal obligation on Nigeria. It follows that it is unnecessary for the Court to address Nigeria's argument regarding the oil practice in the sector up to point G. Thus the maritime boundary between Cameroon and Nigeria up to and including point G must be considered to have been established on a conventional basis by the Anglo-German Agreement of 11 March 1913, the Yaoundé II Declaration of 4 April 1971 and the Maroua

Declaration of 1 June 1975, and takes the following course: starting from the straight line joining Bakassi Point and King Point, the line follows the “compromise line” jointly drawn at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 appended to the Yaoundé II Declaration of 4 April 1971, and consisting of 12 numbered points, whose precise coordinates were determined by the two countries’ Joint Commission meeting in Lagos in June 1971; from point 12 on that compromise line the course of the boundary follows the line to point G specified in the Maroua Declaration of 1 June 1975, as corrected by the exchange of letters between the Heads of State of Cameroon and Nigeria of 12 June and 17 July 1975.

The maritime boundary beyond point G
(paras. 269-307)

The Court then addresses the maritime boundary beyond point G, where no maritime boundary delimitation has been agreed.

The Court notes that in Cameroon’s view this is a classic case of maritime delimitation between States with adjacent coasts which have been unable to reach agreement on the line to be drawn between their respective exclusive economic zones and continental shelves, although in this case the special circumstances of the geographical situation are particularly marked, and the Court is also required to take account of the interests of third States. As regards the exercise of delimitation, Cameroon argues that the law on the delimitation of maritime boundaries is dominated by the fundamental principle that any delimitation must lead to an equitable solution. In support of this contention, it cites paragraph 1 of Articles 74 and 83 of the 1982 Law of the Sea Convention and a number of decisions of this Court or of arbitral tribunals. Cameroon concludes that there is no single method of maritime delimitation; the choice of method depends on the circumstances specific to each case. Cameroon insists on the fact that the equidistance principle is not a principle of customary law that is automatically applicable in every maritime boundary delimitation between States whose coasts are adjacent, observing that, if a strict equidistance line were drawn, it would be entitled to practically no exclusive economic zone or continental shelf, despite the fact that it has a longer relevant coastline than Nigeria. The Court observes that Nigeria agrees that it is appropriate in the present case to determine a single maritime boundary, but that it rejects Cameroon’s line. Nigeria describes that line as fanciful and constructed in defiance of the basic concepts and rules of international law. It criticizes both the line’s construction and the “equitableness” of the result in light of the jurisprudence. It directs its criticism of the construction essentially to five points: the actual nature of the line; the relevant coasts used in its construction; the treatment of the islands in this construction; the definition of the area relevant to the delimitation; the method followed in the construction of the line. Nigeria further argues that the Parties’ conduct in respect of the granting and exploitation of oil concessions,

leading to the establishment of de facto lines, plays a very important role in establishing maritime boundaries. It contends that, within the area to be delimited, the Court cannot redistribute the oil concessions established by the practice of Nigeria, Equatorial Guinea and Cameroon, and that it must respect the configuration of the concessions in its determination of the course of the maritime boundary. Equatorial Guinea, the Court notes, requests that the boundary to be fixed by the Court should nowhere encroach upon the median line between its own coasts and those of Cameroon and Nigeria, which it regards as “a reasonable expression of its legal rights and interests that must not be transgressed in proceedings to which Equatorial Guinea is not a party”. It has a number of specific criticisms of the “equitable line” proposed by Cameroon, of which, moreover, it claims it only became aware in December 1998.

The Court begins by observing that the maritime areas on whose delimitation it is to rule in this part of the Judgment lie beyond the outer limit of the respective territorial seas of the two States. The Court further recalls that the Parties agree that it is to rule on the maritime delimitation in accordance with international law. Both Cameroon and Nigeria are parties to the United Nations Law of the Sea Convention of 10 December 1982, which they ratified on 19 November 1985 and 14 August 1986 respectively. Accordingly the relevant provisions of that Convention are applicable, and in particular Articles 74 and 83 thereof, which concern delimitation of the continental shelf and the exclusive economic zone between States with opposite or adjacent coasts. Paragraph 1 of those Articles provides that such delimitation must be effected in such a way as to “achieve an equitable solution”. The Court also notes that the Parties agreed in their written pleadings that the delimitation between their maritime areas should be effected by a single line.

The Court points out that it has on various occasions made it clear what the applicable criteria, principles and rules of delimitation are when a line covering several zones of coincident jurisdictions is to be determined. They are expressed in the so-called equitable principles/relevant circumstances method. This method, which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an “equitable result”. The Court observes that it will apply the same method in the present case.

Before it can draw an equidistance line and consider whether there are relevant circumstances that might make it necessary to adjust that line, the Court must, however, define the relevant coastlines of the Parties by reference to which the location of the base points to be used in the construction of the equidistance line will be determined. In the present case the Court cannot accept Cameroon’s contention, on the one hand, that account should be taken of the coastline of the Gulf of Guinea from Akasso (Nigeria) to Cap Lopez (Gabon) in order to delimit Cameroon’s

maritime boundary with Nigeria, and, on the other, that no account should be taken of the greater part of the coastline of Bioko Island. Once the base points have been established in accordance with the above-mentioned principles, it will be possible to determine the equidistance line between the relevant coastlines of the two States. As the Court has already had occasion to explain, this equidistance line cannot be extended beyond a point where it might affect rights of Equatorial Guinea.

The Court then considers whether there are circumstances that might make it necessary to adjust this equidistance line in order to achieve an equitable result. The Court feels bound to stress in this connection that delimiting with a concern to achieving an equitable result, as required by current international law, is not the same as delimiting in equity. The Court's jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting the delimitation. The geographical configuration of the maritime areas that the Court is called upon to delimit is a given. It is not an element open to modification by the Court but a fact on the basis of which the Court must effect the delimitation.

The Court notes in this respect that Cameroon contends that the concavity of the Gulf of Guinea in general, and of Cameroon's coastline in particular, creates a virtual enclavement of Cameroon, which constitutes a special circumstance to be taken into account in the delimitation process. Nigeria, for its part, argues that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area. It stresses that it is not the purpose of international law to refashion geography.

The Court finds that although it does not deny that the concavity of the coastline may be a circumstance relevant to delimitation, it nevertheless should stress that this can only be the case when such concavity lies within the area to be delimited. It notes that the sectors of coastline relevant to the present delimitation as determined above exhibit no particular concavity.

The Court then observes that Cameroon further contends that the presence of Bioko Island constitutes a relevant circumstance which should be taken into account by the Court for purposes of the delimitation. It argues that Bioko Island substantially reduces the seaward projection of Cameroon's coastline. Here again Nigeria takes the view that it is not for the Court to compensate Cameroon for any disadvantages suffered by it as a direct consequence of the geography of the area.

The Court points out that in the present case Bioko Island is subject to the sovereignty of Equatorial Guinea, a State which is not a party to the proceedings. Consequently the effect of Bioko Island on the seaward projection of the Cameroonian coastal front is an issue between Cameroon and Equatorial Guinea and not between Cameroon and Nigeria, and is not relevant to the issue of delimitation before the Court. The Court does not therefore regard the presence of Bioko Island as a circumstance that would

justify the shifting of the equidistance line as Cameroon claims.

Lastly, Cameroon invokes the disparity between the length of its coastline and that of Nigeria in the Gulf of Guinea as a relevant circumstance that justifies shifting the delimitation line towards the north-west. For its part, Nigeria considers that Cameroon fails to respect the criteria of proportionality of coastline length, which would operate rather in Nigeria's favour.

The Court notes that in the present case, whichever coastline of Nigeria is regarded as relevant, the relevant coastline of Cameroon, as described in paragraph 291, is not longer than that of Nigeria. There is therefore no reason to shift the equidistance line in favour of Cameroon on this ground.

The Court finds that, before ruling on the delimitation line between Cameroon and Nigeria, it must still address the question raised by Nigeria whether the oil practice of the Parties provides helpful indications for purposes of the delimitation of their respective maritime areas.

Thus Nigeria contends that State practice with regard to oil concessions is a decisive factor in the establishment of maritime boundaries. In particular it takes the view that the Court cannot, through maritime delimitation, redistribute such oil concessions between the States party to the delimitation. Cameroon, for its part, maintains that the existence of oil concessions has never been accorded particular significance in matters of maritime delimitation in international law.

The Court concludes that overall, it follows from its own case law and that of arbitral tribunals that, although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of the provisional delimitation line. Only if they are based on express or tacit agreement between the parties may they be taken into account. In the present case there is no agreement between the Parties regarding oil concessions. The Court is therefore of the opinion that the oil practice of the Parties is not a factor to be taken into account in the maritime delimitation in the present case.

Having further concluded that there were no other reasons that might have made an adjustment of the equidistance line necessary in order to achieve an equitable result, the Court decides that the equidistance line represents an equitable result for the delimitation of the area in respect of which it has jurisdiction to give a ruling.

The Court notes, however, that point G, which was determined by the two Parties in the Maroua Declaration of 1 June 1975, does not lie on the equidistance line between Cameroon and Nigeria, but to the east of that line. Cameroon is therefore entitled to request that from point G the boundary of the Parties' respective maritime areas should return to the equidistance line. The Court considers that from point G the delimitation line should directly join

the equidistance line at a point with coordinates 8°21'20" longitude east and 4°17'00" latitude north, which will be called X. The boundary will turn at point X and continue southwards along the equidistance line.

However, the equidistance line adopted by the Court cannot be extended very far. The Court has already stated that it can take no decision that might affect rights of Equatorial Guinea, which is not a party to the proceedings. In these circumstances the Court considers that it can do no more than indicate the general direction, from point X, of the boundary between the Parties' maritime areas. The boundary will follow a loxodrome having an azimuth of 187°52'27".

Cameroon's submissions on Nigeria's State responsibility and Nigeria's counter-claims regarding Cameroon's State responsibility (paras. 308-324)

The Court finally addresses Cameroon's submissions concerning Nigeria's State responsibility and Nigeria's counter-claims concerning Cameroon's State responsibility. In this connection, Cameroon puts forward two separate series of submissions concerning, on the one hand, the Lake Chad area and the Bakassi Peninsula and, on the other, the remaining sectors of the boundary.

The Court recalls that in paragraphs 57, 60, 61 and 225 of its Judgment it fixed the boundary between the two States in the Lake Chad area and the Bakassi Peninsula. It observes that Nigeria does not deny that Nigerian armed forces and a Nigerian administration are currently in place in these areas which the Court has determined are Cameroonian territory, adding in respect of the establishment of the municipality of Bakassi that, if the Court were to recognize Cameroon's sovereignty over such areas, there is nothing irreversible in the relevant arrangements made by Nigeria. The same reasoning clearly applies to other spheres of civil administration, as well as to military or police forces. The Court notes that Nigeria is under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from that area of Lake Chad which falls within Cameroon's sovereignty and from the Bakassi Peninsula.

The Court further observes that Cameroon is under an obligation expeditiously and without condition to withdraw any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Nigeria. Nigeria has the same obligation in regard to any administration or military or police forces which may be present in areas along the land boundary from Lake Chad to the Bakassi Peninsula which pursuant to the present Judgment fall within the sovereignty of Cameroon.

The Court also notes that the implementation of the present Judgment will afford the Parties a beneficial opportunity to cooperate in the interests of the population concerned, in order notably to enable it to continue to have access to educational and health services comparable to

those it currently enjoys. Such cooperation will be especially helpful, with a view to the maintenance of security, during the withdrawal of the Nigerian administration and military and police forces. Moreover, on 21 March 2002 the Agent of Cameroon stated before the Court that "over three million Nigerians live on Cameroonian territory, where, without any restriction, they engage in various activities, and are well integrated into Cameroonian society". He went on to declare that, "faithful to its traditional policy of hospitality and tolerance, Cameroon will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area". The Court takes note with satisfaction of the commitment thus undertaken in respect of these areas where many Nigerian nationals reside.

The Court, moreover, does not uphold Cameroon's submissions with regard to obtaining guarantees of non-repetition in the future, considering that it could not envisage a situation where either Party would fail to respect the territorial sovereignty of the other Party, now that the land and maritime boundary between the two States had been specified by the Court in definitive and mandatory terms.

In the circumstances of the case, the Court considers moreover that, by the very fact of its Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court does not therefore seek to ascertain whether and to what extent Nigeria's responsibility to Cameroon has been engaged as a result of that occupation.

Finally, concerning various boundary incidents, the Court finds that neither of the Parties sufficiently proves the facts which it alleges, or their imputability to the other Party. The Court is therefore unable to uphold either Cameroon's submissions or Nigeria's counter-claims based on the incidents cited.

*

Declaration of Judge Oda

Judge Oda fully supports the conclusions reached by the Court on the *main issues* of the present case, namely the Bakassi Peninsula and the land boundaries in Lake Chad and between Lake Chad and the sea, although he does express some reservations on technical matters.

Judge Oda holds stronger reservations concerning the Court's decision in subparagraph IV, on the "maritime boundary" issues, which cannot be considered main issues in the present dispute. He shares very few of the Court's views and only voted in favour of points IV (B), (C) and (D) because the lines drawn therein are not wholly inappropriate and do not in fact cause any harm. He identifies both procedural and substantive errors made not only by the Applicant but also by the Court.

From the procedural perspective, Judge Oda stresses the fact that in its 1994 Applications Cameroon could not be

seen as asking the Court to adjudge on any “legal dispute” concerning a maritime boundary within the meaning of Article 36 (2) of the Court’s Statute. It only requested the drawing of a boundary course. In its 1998 Judgment, the Court erred in rejecting Nigeria’s preliminary objections and in deciding that a dispute could be unilaterally submitted to the Court by Cameroon. The Applicant, Cameroon, altered its position in later proceedings by asserting its own maritime claim identified by map coordinates. This procedural error effected an essential change in the complexion of the entire case. In this light, Judge Oda voted against point IV (A) of the operative part of the Judgment.

From the substantive perspective, Judge Oda underlines the failure by the Court and the Applicant to recognize the essential difference between the territorial sea and the area of the continental shelf, which are regulated by two different legal régimes. Judge Oda submits that on the issue of the boundary within the territorial sea, the difference between the two Parties is, in fact, an issue relating *solely* to the status of the Bakassi Peninsula (whether the boundary between Cameroon and Nigeria lies to the west or to the east of the Bakassi Peninsula) and not to a maritime boundary. After stating that Bakassi is part of Cameroon, the Court’s Judgment should have had nothing more to add. It is senseless for the Court to present the two tables of coordinates referring to the territorial sea, as neither Party raised this particular issue.

As for the boundary of the continental shelf, the Court renders a decision establishing a line different from the Parties’ respective claim lines. The Court’s mistaken treatment of the maritime boundary may derive from its failure to understand the law governing this issue. According to Judge Oda, there is no legal rule or principle that mandates recognition of a given line as the *only* one acceptable under international law. The concrete boundary line of the continental shelf is to be chosen by negotiation provided that it remains within the bounds of equity. Judge Oda further states that the 1958 Geneva Convention on the Continental Shelf offers a guiding principle for parties’ negotiations: they should seek an “equitable solution” under the so-called “equidistance (median) line + special circumstance” rule. The 1982 United Nations Convention on the Law of the Sea tried to further clarify the issue in its Article 83 (1), which provides for the delimitation of the continental shelf to be “effected by agreement on the basis of international law ... in order to achieve an equitable solution”.

In Judge Oda’s view, great misunderstanding prevails in academic circles regarding the interpretation of Article 83 (2) of the 1982 Convention. First, this provision does not constitute a compromissory clause such as is referred to in Article 36 (1) of the Court’s Statute. Second, the fact that boundary negotiations have failed does not in itself mean that a “(legal) dispute” has arisen. Third, Article 83 (2) should not be interpreted as conferring compulsory jurisdiction on those institutions listed in Article 287, Part XV. Judge Oda asserts that the Court could act as a third-party authority if it were asked jointly by the Parties to draw

the boundary line, but the present case was brought unilaterally by Cameroon and the Parties have not even started negotiations. The Court could not initiate compulsory procedures entailing a binding decision and could not “decide” any specific line.

Separate opinion of Judge Ranjeva

Subscribing to the operative part and to the conclusions set out in the Judgment, Judge Ranjeva is satisfied with the undertaking given by the two Parties, under the auspices of the Secretary-General of the United Nations, to abide by the Court’s Judgment in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, an undertaking which confirms their consent to jurisdiction under international procedural law.

Judge Ranjeva expresses reservations in respect of the analysis set out in paragraphs 203 and 209 of the Judgment. The Judgment relies on rules of intertemporal law to justify the conclusion that the United Kingdom had authority to determine Nigeria’s boundary with Cameroon (para. 209). Did the refusal to accord international status to the agreements concluded by the United Kingdom with the chiefs of Old Calabar justify reference to the concept of “the law at the time”? No lawyer can help but be surprised at the Court’s warping of the founding principle of international law. In effect, as far as agreements with leaders or eminent dignitaries of what international law terms “uncivilized nations” are concerned, *pacta non servanda sunt*. Legal “unilateralism” has already been the target of criticism by legal scholars. In the case concerning *Frontier Dispute (Burkina Faso/Republic of Mali)*, the Chamber directly applied colonial law, which it recognized as such and as the source of the applicable law. Thus, it would have been preferable to distinguish between the two spheres of law in the present case: international law in respect of relations between European colonial Powers and colonial law in respect of relations between the metropole and the colonial territories.

Declaration of Judge Herczegh

In his declaration Judge Herczegh expresses the view that the critical comments made in paragraph 238 in the reasoning in the Judgment, concerning the insufficient protection which Article 59 of the Statute may afford in some cases to third States’ interests of a legal nature, are unjustified.

Dissenting opinion of Judge Koroma

Judge Koroma in his dissenting opinion acknowledged the important role of the Court as a forum for the peaceful settlement of disputes, particularly territorial and boundary disputes between neighbouring States, which have a propensity to escalate with destructive consequences for the States concerned. However, in his view, if the Court as a judicial organ is to effectively play its assigned role, its decision must be based on the application of the relevant conventions and relevant principles of international law,

foremost among which is the fundamental principle of *pacta sunt servanda*, that every treaty in force is binding upon the parties to it and must be performed in good faith. In his view, the Court cannot operate on a different set of principles. He regretted the fact that on this occasion, the majority of the Court departed from the law and legal principles enriching its decision which is therefore not sustainable.

Judge Koroma observed that, by failing to uphold the validity of the 1884 Treaty between the Kings and Chiefs of Old Calabar and Great Britain, which expressly provided for the “gracious protection” of the people of Old Calabar by Great Britain, but instead upholding the validity of the Anglo-German Agreement of 1913 which ceded the territory of the people of Old Calabar to Germany without their consent, the Court chose to consecrate political reality over legal validity. In his view, the 1884 Treaty did not entitle Great Britain to transfer the territory of the people of Old Calabar without their consent, and to the extent that the 1913 Anglo-German Treaty purportedly had this effect, it should have been declared defective by the Court. Hence, the Court was in error in upholding Cameroon’s title based on the 1913 Anglo-German Agreement.

Judge Koroma also disagreed with the Court’s response to the principal claim of Nigeria to Bakassi and settlements around Lake Chad based on historical consolidation and effective authority. In his view, historical consolidation, if established by the evidence, remains a valid basis of territorial title. In Judge Koroma’s view, the acquisition of territorial title is not closed to what the Court described in the Judgment as “established” modes. If this were so, there would have been no place in international jurisprudence for “prescription”, “recognition”, “estoppel or preclusion”, or “acquiescence”. In other words, proven long usage, coupled with a complex of interests and relations which, in themselves, have the effect of attaching a territory, and when supported by evidence of acquiescence, constitutes a legal basis of territorial title. Such a basis to territorial title has been recognized in the jurisprudence of the Court. Accordingly, what was required in this case was proof of the claim and it is for the Court to examine the evidence if it substantiates such claim. Nigeria, he observes, presented substantial evidence to justify the claim of historical consolidation and *effectivités* linking the Bakassi Peninsula and the settlements around Lake Chad with Nigeria and with the necessary evidence of acquiescence. It should have been for the Court to examine such evidence, to determine whether it established title, and not to concentrate on the “label” under which the evidence was presented to it. The Court stated that apart from the Norwegian *Fisheries* case the “notion ... has never been used as a basis of title in other territorial disputes, whether in its own or in other case law”. Even if this were so, which is not the case, what should have mattered most is the evidence and not the appellation applied to it.

In Judge Koroma’s view, it is the approach taken by the Court in considering the law and material evidence before it which proved to be the flaw in the decision which it

reached. This approach led the Court quite erroneously to uphold Cameroon’s title based on the Anglo-German Agreement of 1913, and to reject Nigeria’s claim to territorial sovereignty based on original title and historical consolidation. He took the view that on the basis of the evidence presented to the Court, if the issues of original title, historical consolidation and effective authority had been given their due consideration, a different conclusion would have been reached by the Court with regard to Bakassi and the settlements around Lake Chad.

In conclusion, Judge Koroma insisted that where the judicial settlement of territorial and boundary disputes is concerned, it is imperative for the Court to apply a valid treaty, and the relevant principles of international law, if the Judgment is to be regarded as based on law.

Separate opinion of Judge Parra-Aranguren

Judge Parra-Aranguren declared that his vote for the operative part of the Judgment, with the exception of point V (C), should not be understood as an agreement to each and every part of the reasoning followed by the Court in reaching its conclusions. He also explained that his vote against point V (C), is based on the well-established principle that “it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions”, as was recalled by the Court very recently, on 14 February 2002 (case concerning the *Arrest Warrant of 11 April 2000, (Democratic Republic of Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, para. 43). Neither Cameroon nor Nigeria requested the Court in its submissions to take note of the commitment undertaken by Cameroon to afford protection to Nigerians living in the Bakassi Peninsula. Therefore, in his opinion, the Court should have abstained from taking note of such commitment in the operative part of the Judgment, even though the Court was entitled to address it in its reasoning, as it did in paragraph 317 of the Judgment.

Declaration of Judge Rezek

Judge Rezek did not join the majority in respect of the question of sovereignty over the Bakassi Peninsula and adjacent waters.

He sets out the main reason for that in his declaration: in his view, it is unacceptable for the treaty concluded in 1884 between Great Britain and the Kings and Chiefs of Old Calabar not to be considered a treaty, because it is obvious that at the time in question even the colonial Powers were required to show a minimum of good faith.

Separate opinion of Judge Al-Khasawneh

Judge Al-Khasawneh associates himself with the reasoning of the Court in paragraphs 214 to 216 of the Judgment; however he submits that it was unnecessary and unfortunate for the Court to revert to the questions of the 1913 Agreement between Great Britain and Germany and to

the 1884 Treaty of Protection between Great Britain and the Kings and Chiefs of Old Calabar. Indeed, it is morally and legally difficult to reconcile a duty of protection with the subsequent alienation of the entire territory of the protected entity.

In its Judgment, the Court fails to distinguish between protectorates and colonies and concludes that Great Britain has acquired sovereignty to the Bakassi Peninsula through a derivative root of title. The central questions of the case thus relate to the interpretation of the 1884 Treaty and of the subsequent practice of the Parties. These cannot be circumvented by the invention of a fictitious sub-category of protectorates named “colonial protectorates” where title is presumed to pass automatically and regardless of the terms of the treaty.

No support can be found to the Court’s conclusion by reference to the *Western Sahara* or the *Island of Palmas* decisions. The latter especially mistakenly confounds inequality in status and inequality in power by concluding that suzerainty over a native State becomes the basis of territorial sovereignty by the protecting Power. In addition, its excessive generalization results in the assumption that local chiefs are deemed to have become virtual colonies or vassal of the States under the suzerainty of the protecting colonial Power regardless of the nominal control exercised by the protecting State and the fact that they were often recognized as sovereigns in their subsequent dealings with the protecting State. Besides, it is doubtful that the generalization about suzerainty and vassalage with regard to the colonial protectorates was in fact supported by State practice at that time. Moreover, this approach is based on the notion of otherness, and results in an almost regional application of intertemporal law. Judge Al-Khasawneh emphasizes that treaties of protection were sometimes a first step towards the development of a full colonial title, but until that happened and in the absence of provisions which may be interpreted as conveying title, they remained a lever and no more. This conclusion is supported by several examples of State practice — in particular by Great Britain — contemporaneous with the Berlin Conference.

Even assuming, *arguendo*, that the Berlin Conference did sanction the behaviour of colonial Powers vis-à-vis colonial protectorates, is this practice opposable to the Parties in the present dispute? This should be addressed within the principle of intertemporal law. Historically, protection, a concept traceable to the Roman jurist Ulpian, excludes notion of ownership and connotes elements of guardianship. After 1885, State practice began to deform the original classical concept and converted it into an instrument of colonialism. Should this deformation be taken into consideration in the application of the intertemporal rule? Besides, should not the rule *pacta sunt servanda*, one of the most important principles of international law, continue to be applied?

Intertemporal law is not as static as some jurists would like to think. Moreover, the intertemporal rule is not a well-defined rule capable of automatic application, it is rather a perplexing idea that was incapable of finding a place in the

1969 Vienna Convention on the Law of Treaties, and which was consistently rejected in successive decisions of the European Court of Human Rights, overcome by certain decisions of this Court and abandoned in the realm of grave crimes. In sum, the Court’s hopes to find the basis for ceding Bakassi to Germany are misplaced on a truncated concept.

In conclusion, the 1884 Treaty had international legal standing: it concerned protection and not colonial title and the Kings and Chiefs of Old Calabar had capacity to enter into treaty relations. The plain words of the Treaty suggest that there was no intent to transfer territorial sovereignty. This situation was not altered until 1913, when Great Britain ceded Bakassi to Germany. The cession implied powers associated with territorial sovereignty that Great Britain did not possess. The case of the Kings and Chiefs of Old Calabar was not weakened by the Treaty itself. However, their subsequent behaviour and their failure to protest leave Judge Al-Khasawneh with no choice but to conclude that they had given their consent to that transfer: *volenti non fit injuria*.

Separate opinion of Judge Mbaye

In an endeavour to obtain greater insight into this dispute between two brother African countries. I have set out some general observations by way of introduction to my opinion.

I share the Court’s conclusions as regards “the Lake Chad area and Bakassi”. There are existing titles in respect of sovereignty over these areas of territory. It is Cameroon who holds these titles, which must prevail over *effectivités*.

However, I regret that the Court did not rely on the principle of “respect for colonial frontiers”, since the Parties devoted lengthy and varied arguments to this matter, and it is of great importance in Africa.

As regards the land boundary between Lake Chad and Bakassi, the maritime delimitation and the issue of responsibility, my conclusions differ in minor respects from those reached by the Court.

Dissenting opinion of Judge Ajibola

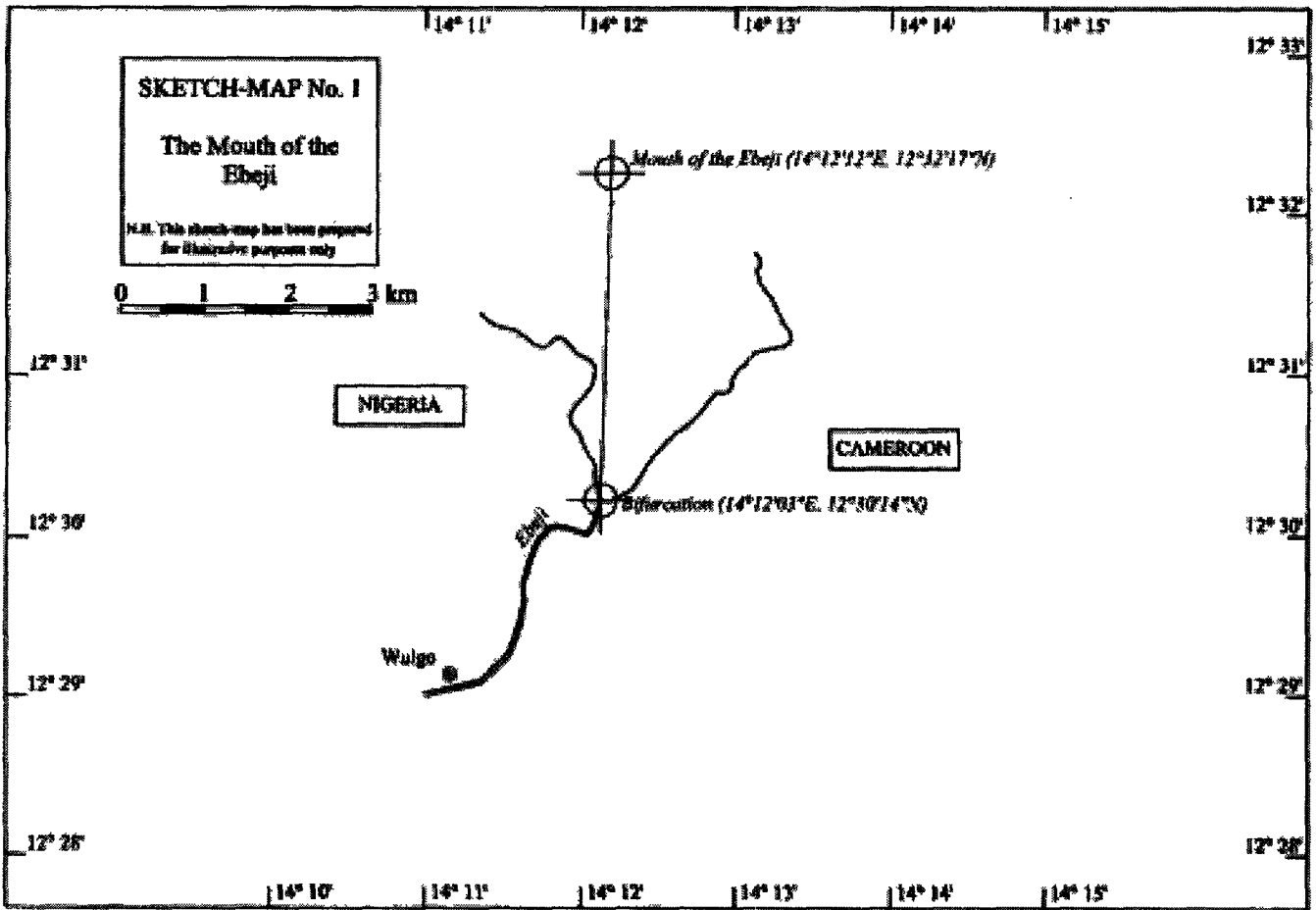
In the case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Judge Ajibola votes in support of the Court’s decision on the issue of maritime delimitation beyond point “G” which the Court based on its principle of equidistance in accordance with its jurisprudence and international law. He also supports the decision of the Court to deny Cameroon’s claim of State responsibility against Nigeria. In his opinion, the claim is rather anticipatory in that it pertains to acts allegedly committed on a disputed territory and a dispute yet to be determined by the Court. It is for the same reason that Judge Ajibola supports the decision of the Court to dismiss Nigeria’s counter-claim of State responsibility against Cameroon.

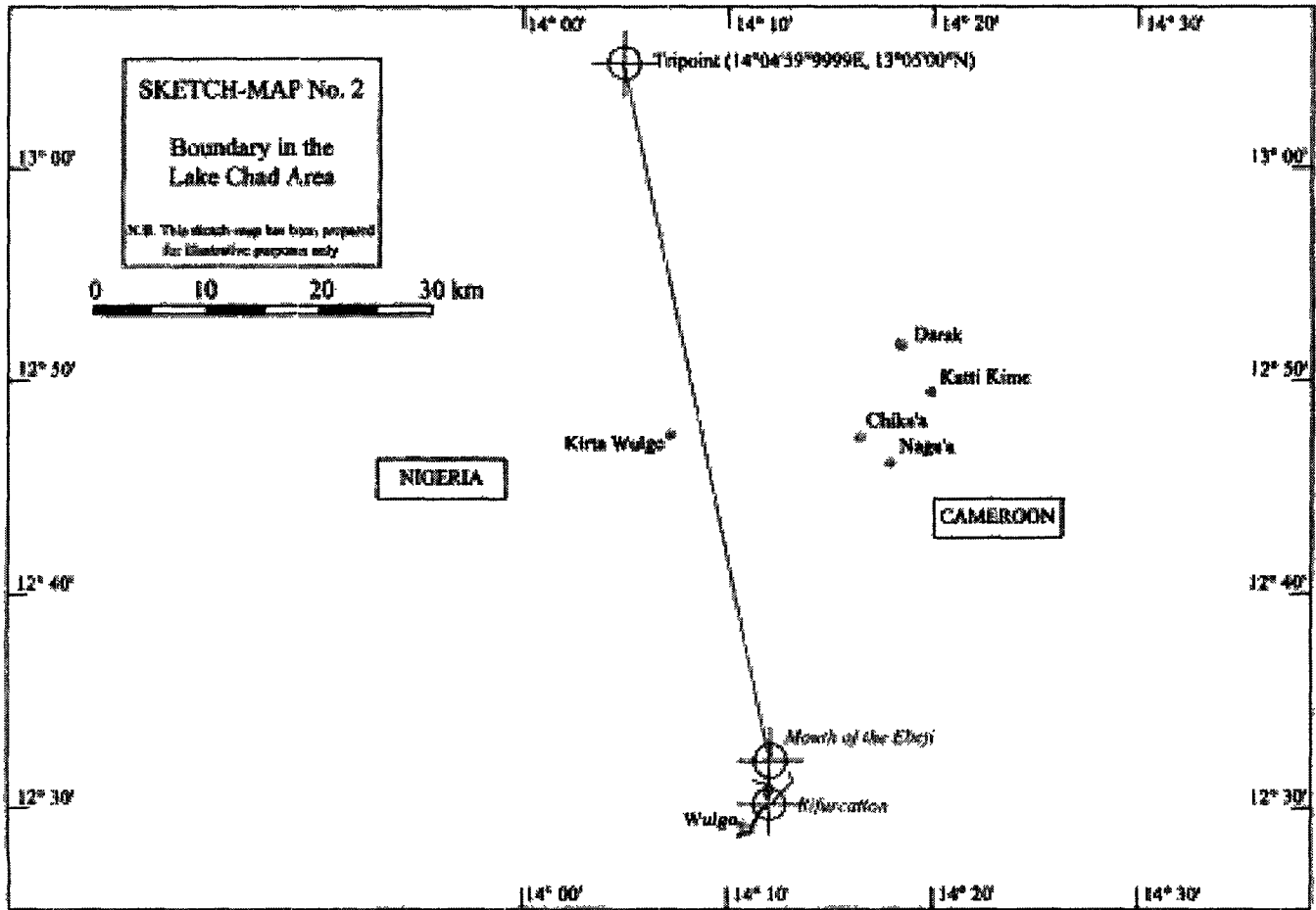
Judge Ajibola however disagrees with the decision of the Court, which declares that the territorial sovereignty over the Bakassi Peninsula belongs to Cameroon. In his own

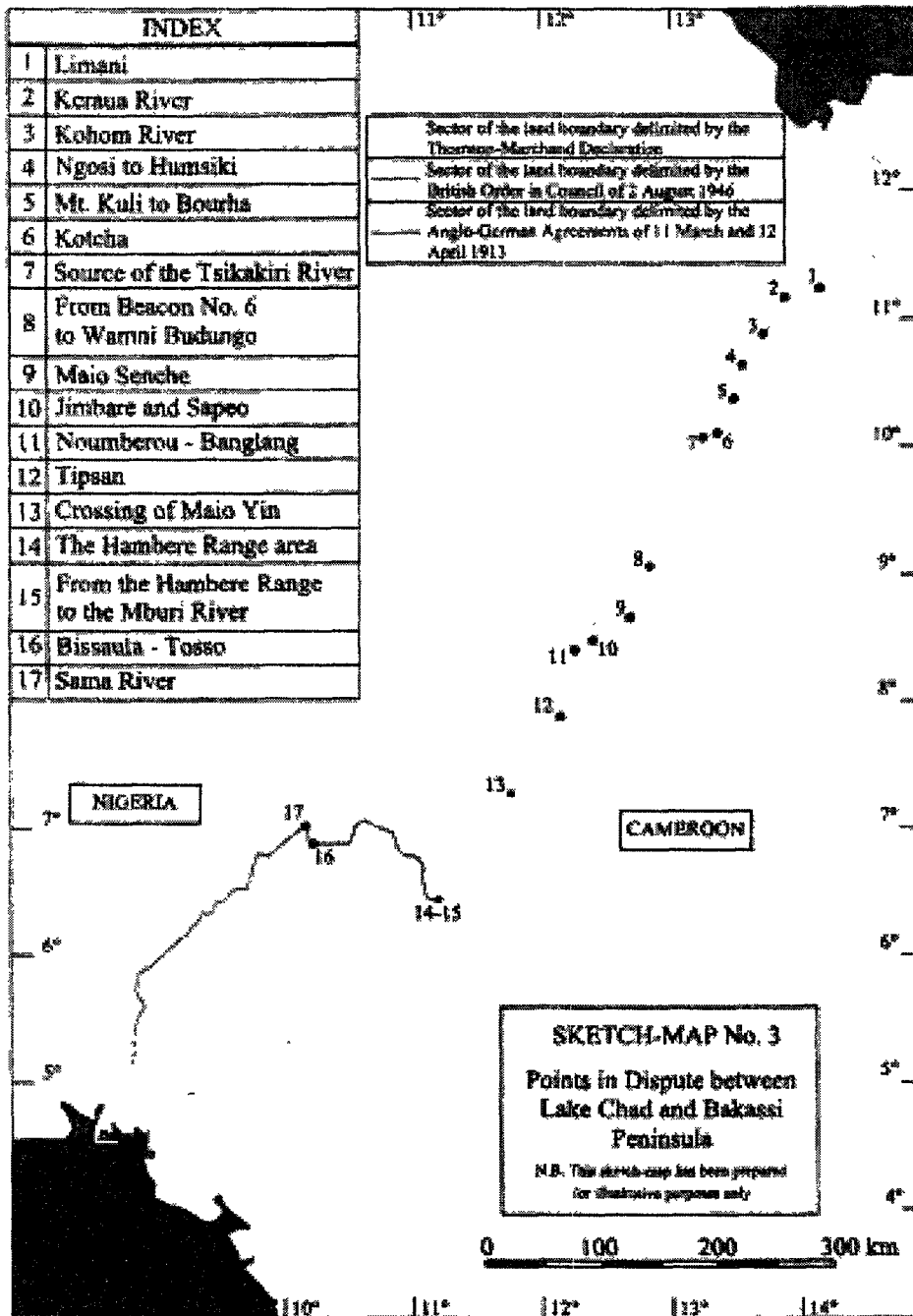
opinion, the Court's acceptance of Cameroon's title claim based on the 1913 Anglo-German Agreement can be faulted, because its Articles XVIII-XXII upon which Cameroon bases its claim are null and void, and those Articles are severable from the Agreement. He goes further to state that the Court failed in its Judgment to consider the effect of Nigeria's argument based on historical consolidation and *effectivités*. In his opinion, the evidential value of the Treaty of 10 September 1884, between the Kings and Chiefs of Old Calabar and Great Britain, is clearly in favour of Nigeria's case. It is a clear indication that at all relevant times before Nigeria's independence, the territorial sovereignty over the Bakassi Peninsula truly belonged to the Kings and Chiefs of Old Calabar and that the Treaty was a treaty of protection, which did not transfer any territorial sovereignty to Great Britain. Great Britain could not therefore transfer any territorial rights to Germany or to Cameroon, after its independence.

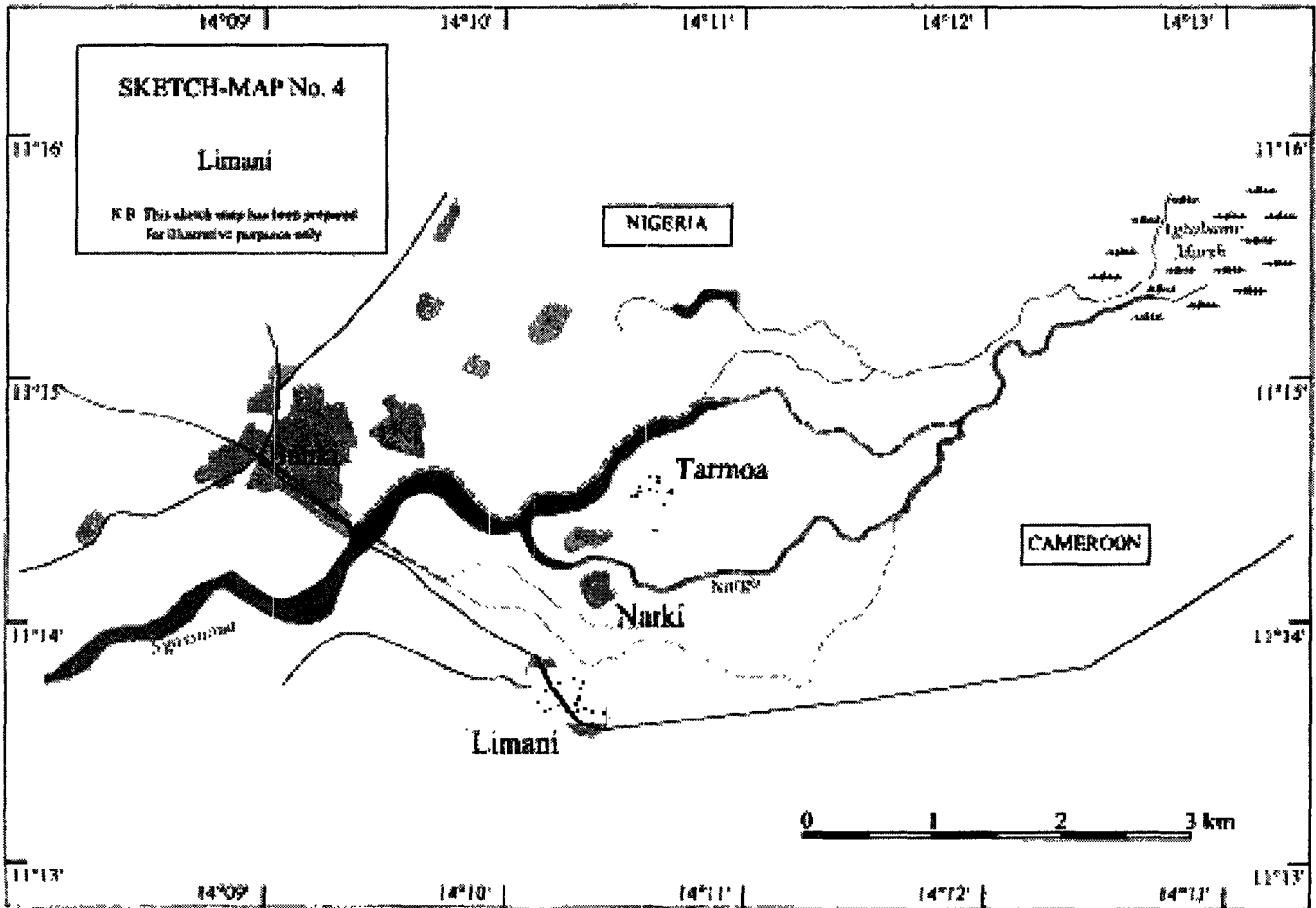
Judge Ajibola also votes against the decision of the Court on the delimitation of the Lake Chad boundary. In his opinion, the Court failed to give adequate consideration to Nigeria's claim based on historical consolidation and *effectivités* which entitles Nigeria to the 33 villages claimed.

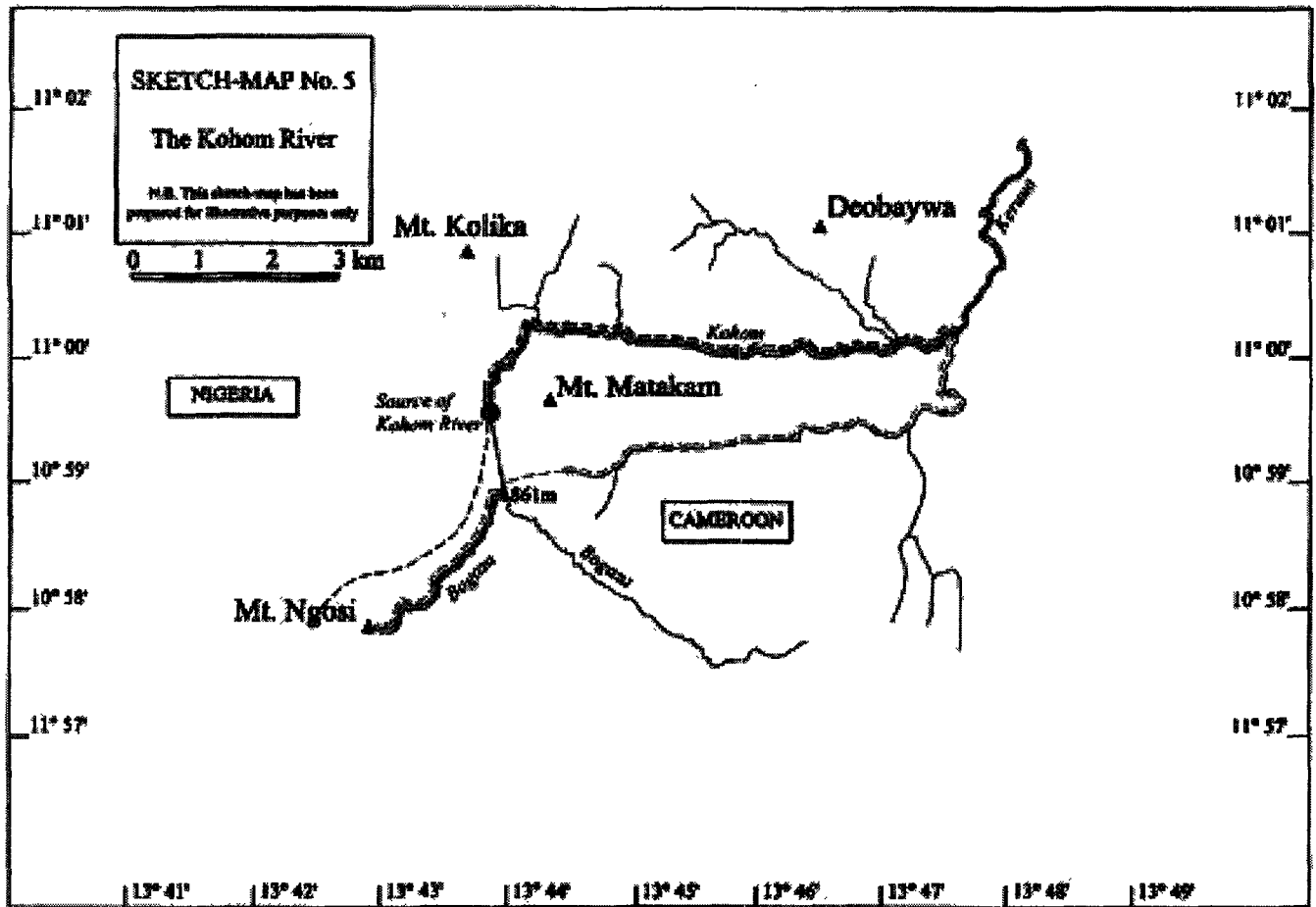
In his view, Judge Ajibola opines that the conclusion reached by the Court in this case is not in line with the development of its own jurisprudence and in particular with regard to the case of the *Frontier Dispute (Burkina Faso/Mali)*. It is his view that the Court, in accepting Cameroon's one-sided argument, merely gave recognition to a part of paragraph 63 of the case mentioned above when reaching its decision. In Judge Ajibola's view, the Court failed to give cognizance to the last three sentences of that paragraph, which urged that *effectivités* must invariably be taken into consideration.

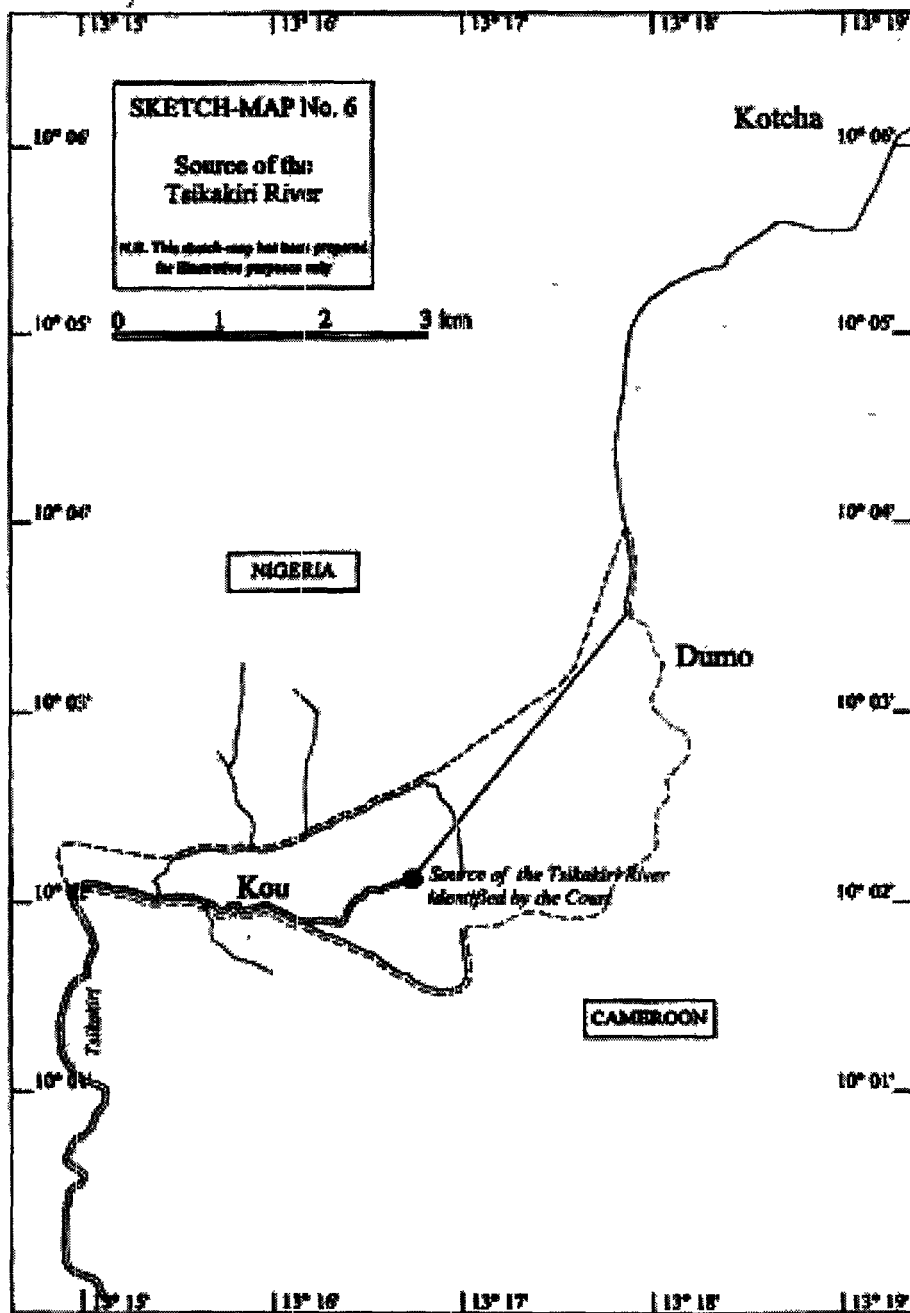


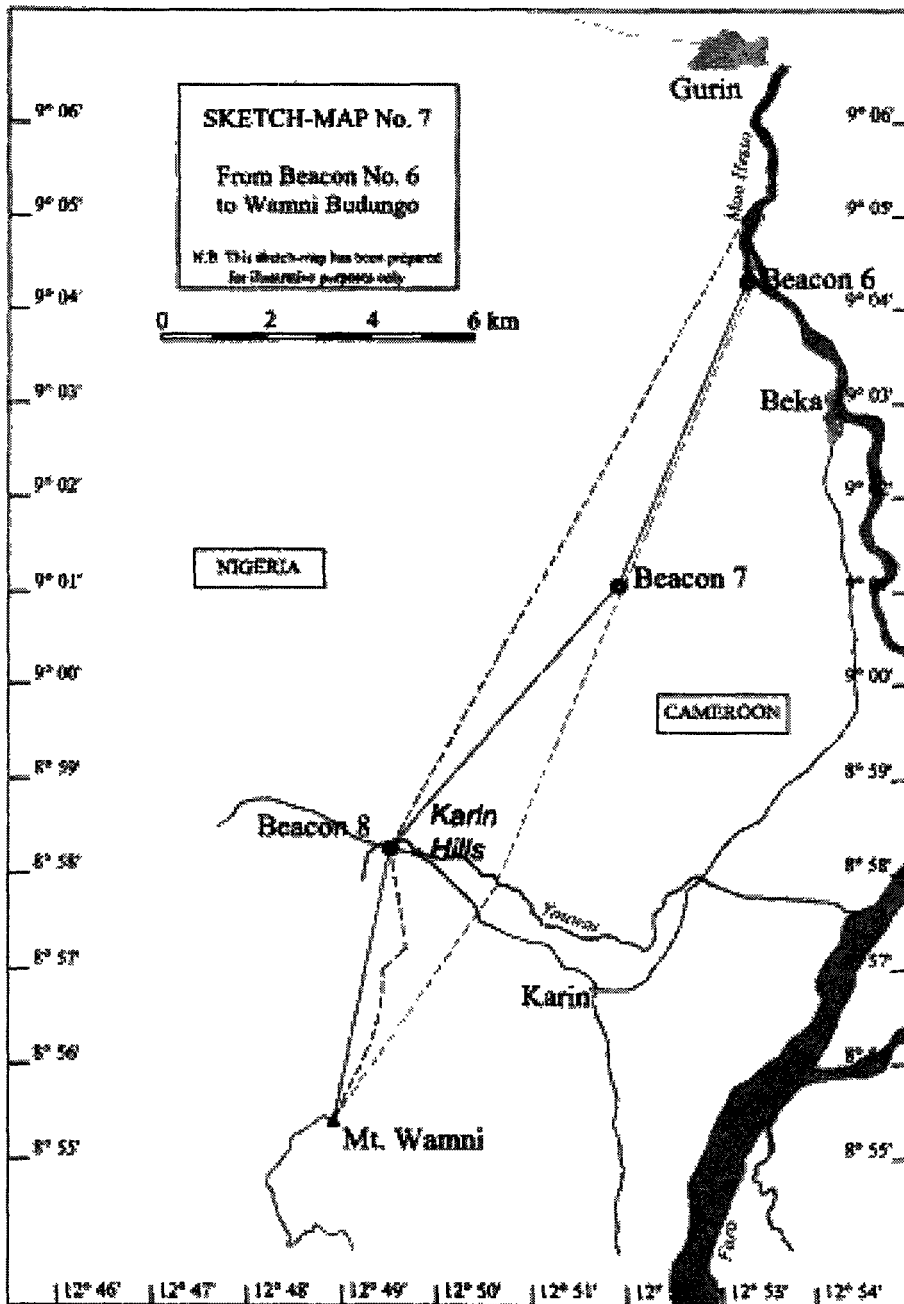


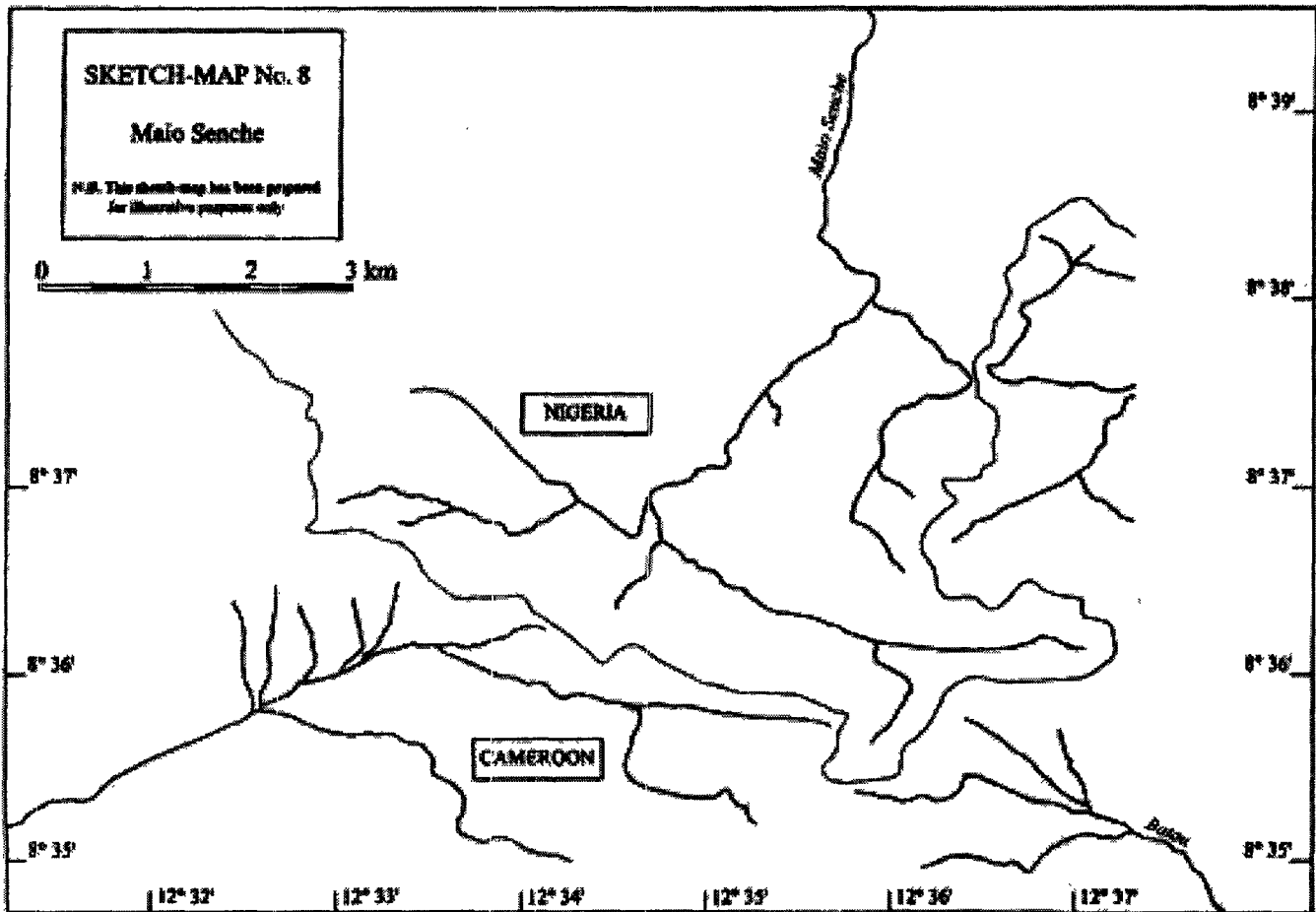


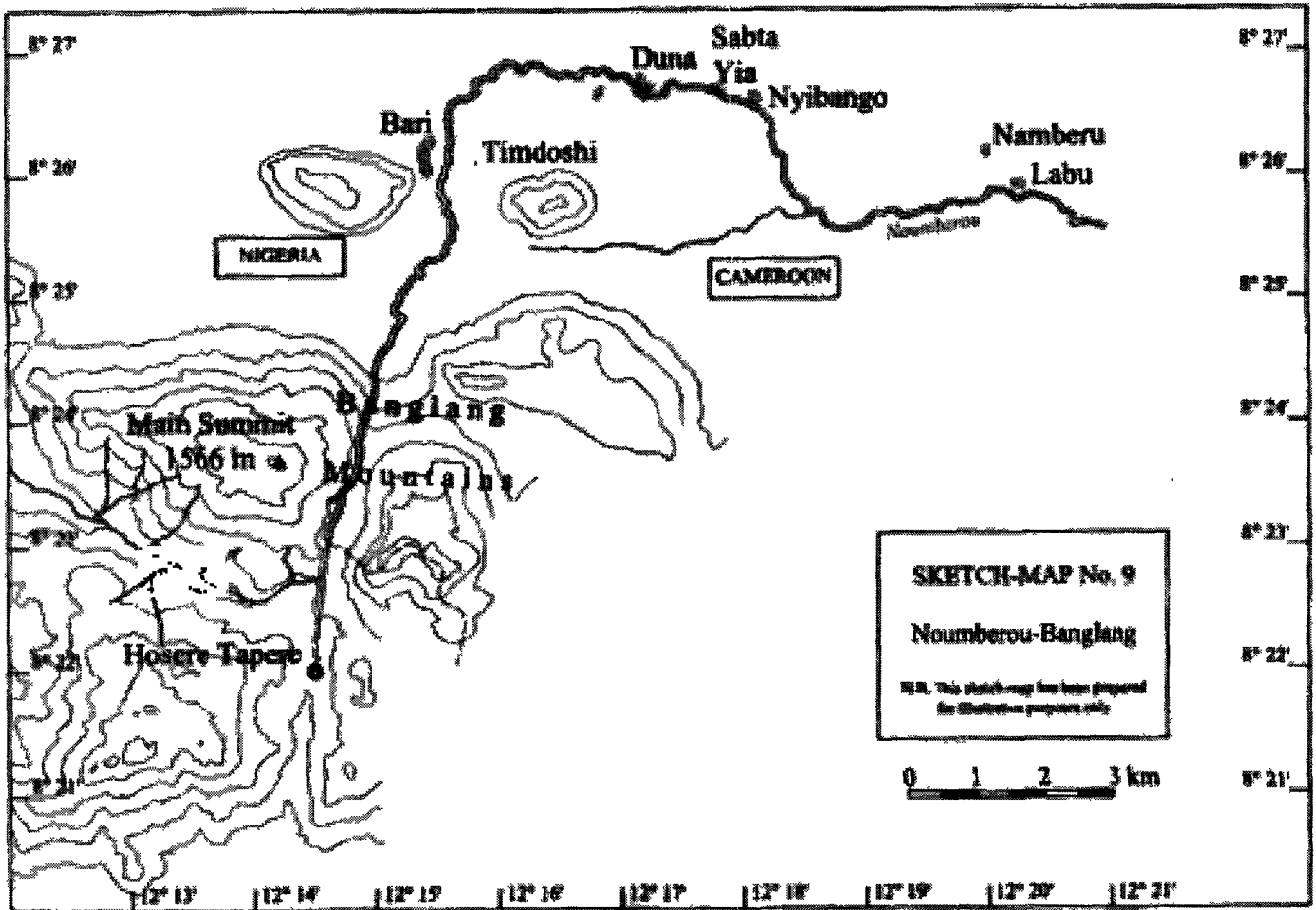


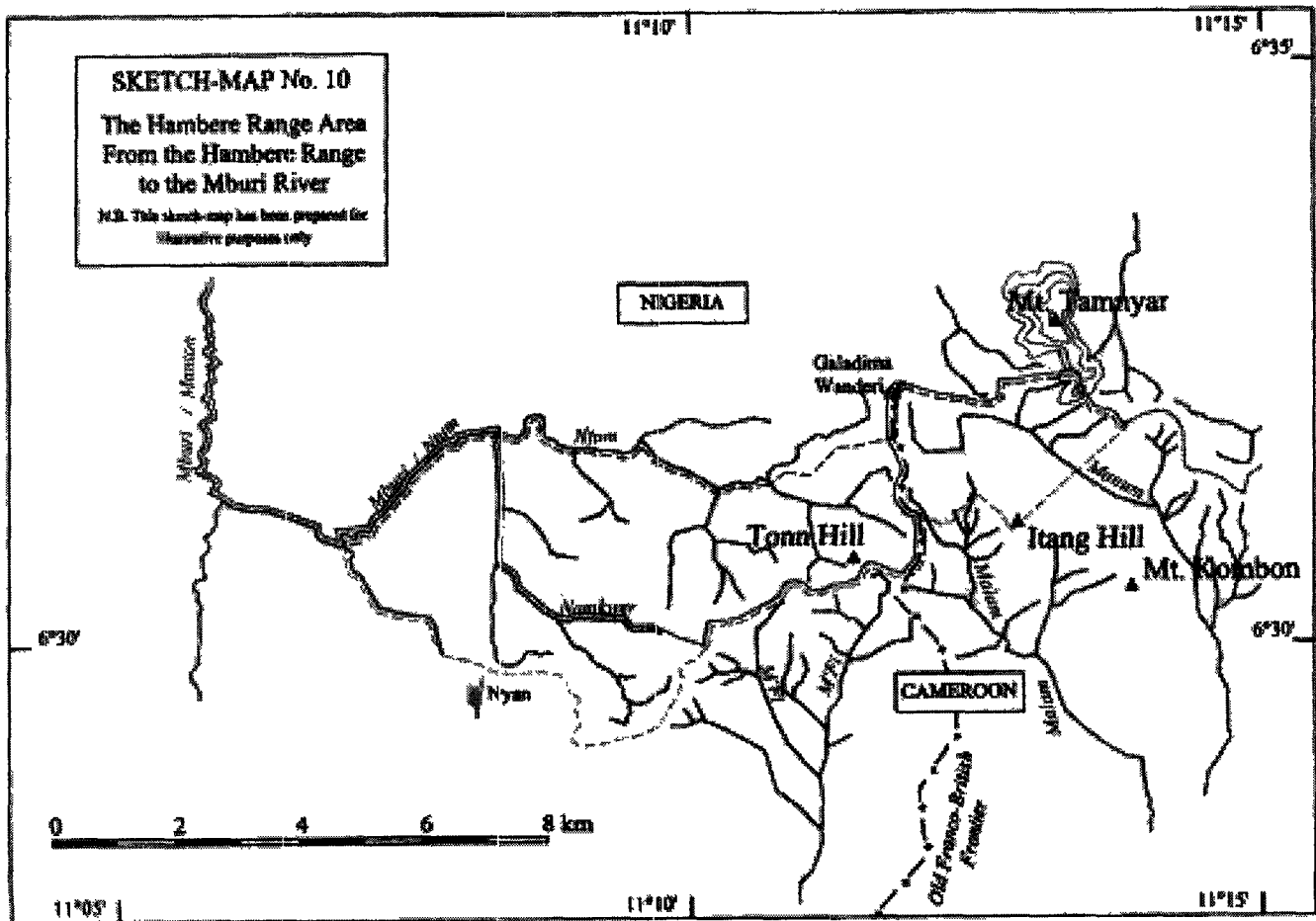


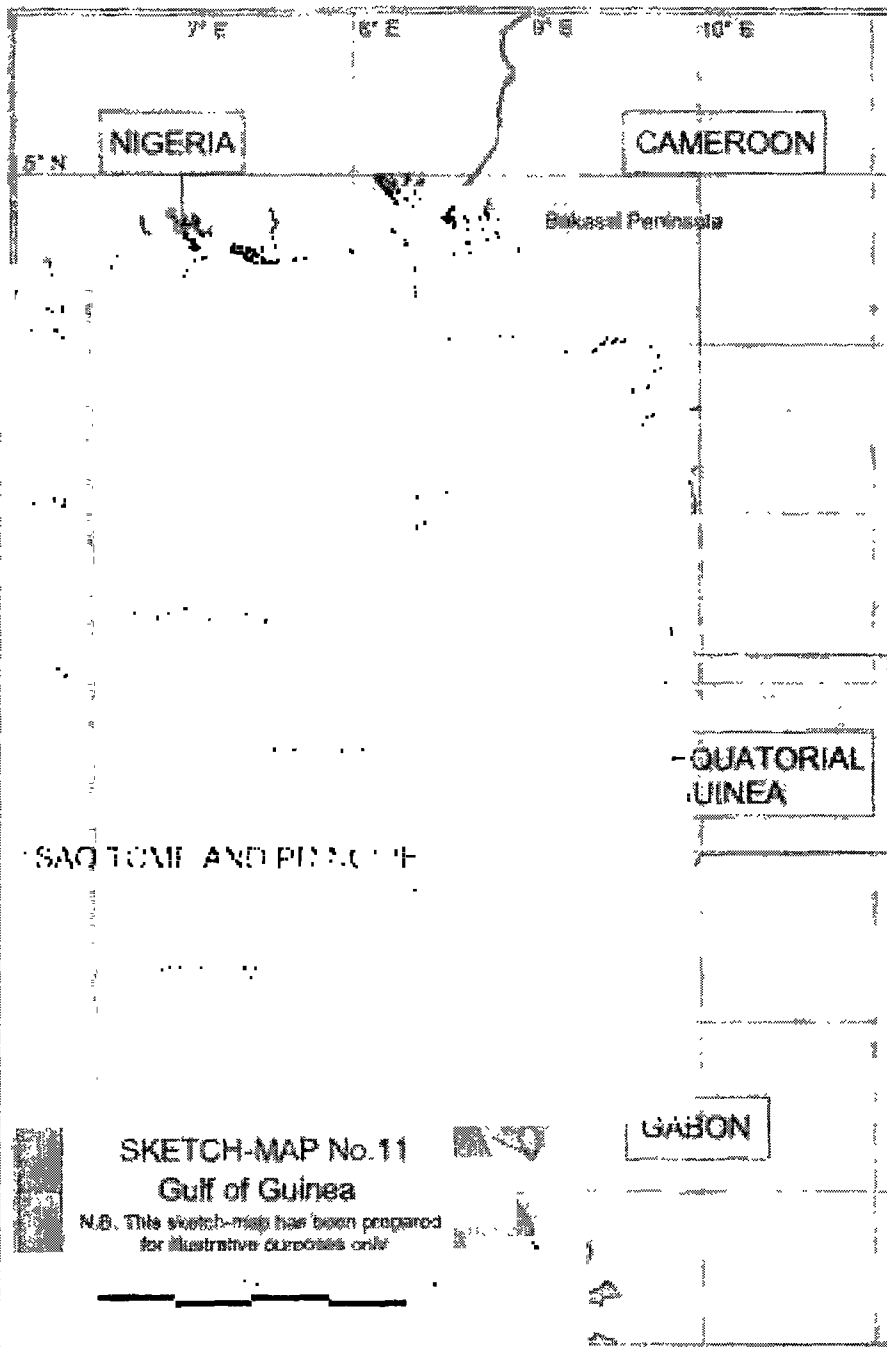


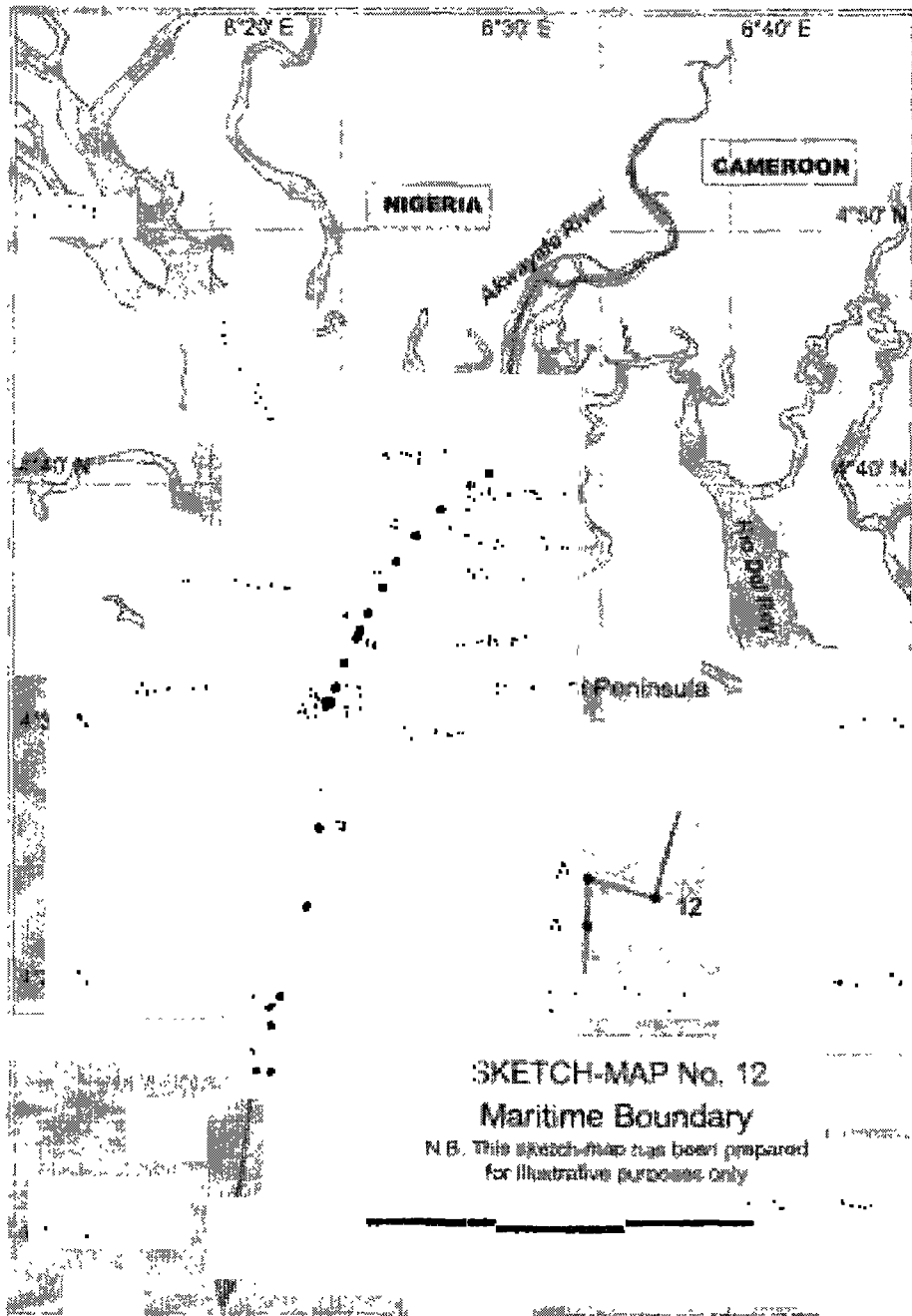




















**LEGEND OF
SKETCH-MAPS
Nos. 1-2 and 4-12**

-  Decision of the Court
-  Boundary line claimed by Cameroon
-  Boundary line claimed by Nigeria
-  River
-  Mountain
-  Village, town
-  Relief
-  Road