

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
THE LAND AND MARITIME BOUNDARY
BETWEEN CAMEROON AND NIGERIA**

(Cameroon v. Nigeria: Equatorial Guinea intervening)

**Comments of the Federal Republic of Nigeria
on the answers to the Judges' Questions
submitted by Cameroon on 10 March 2002**

4 April 2002



Comments on the answers to the Judges' Questions submitted by Cameroon on 10 March 2002

Cameroon filed its response to the questions raised by Judge Fleischhauer on 10 March 2002, and these were sent to the Agent for Nigeria by the Registry on 11 March 2002. Cameroon nowhere states whether these were its final answers or whether it intended to provide fuller and more detailed answers by 4 April 2002.

Thus Nigeria's comments contained here are a response to those answers submitted to the Court on 10 March 2002, and received by Nigeria on 11 March 2002. Nigeria reserves the right to make further comments on any additional answer that Cameroon may file with the Court by 4 April 2002.

Nigeria does not intend here to refer in detail to its own arguments, which are set out in full in its pleadings and in its answers to Judge Fleischhauer's question, which it filed at the Court on 4 April 2002. In this present document, Nigeria will confine itself simply to commenting on points raised by Cameroon in the written responses filed at the Court on 10 March 2002.

1.1 Lake Chad

This is not one of the areas identified by Nigeria as having problems of defective delimitation. Nigeria's arguments in respect of Lake Chad are set out in the *Rejoinder* at Chapters 4 and 5, pages 217-277.

1.2 The mouth of the Ebeji

Cameroon states that from Point V, the boundary as described in the Thomson Marchand Declaration follows the course of the El Beid (Ebeji) River. This is an impossibility. Point V is

not the mouth of the Ebeji, nor does it lie on that river, or any other river. Nigeria has given details about this in its *Rejoinder* at paragraphs 7.16-7.25.

1.3 Narki

Nigeria respectfully draws the attention of the Court to the point made by Nigeria's Counsel in the second round of the oral proceedings¹ that the River Ngassaoua flows into the Agzabame marsh, and not out of it, as Cameroon claims.

Nigeria notes that Cameroon does not make any substantive comment on the May 1921 sketch map signed by British and French officials, referred to in paragraph 7.28 of the *Rejoinder* and at Annex NR 151.

Nigeria denies that the Lamido of Limani governs the inhabitants of Narki, and notes that Cameroon has produced no evidence of this activity.

Nigeria has produced, in its *Rejoinder* and in the oral proceedings (Tab 14 of the Judges' Folder for the Second Round), aerial photography which shows that there is a watercourse in the location claimed by Nigeria. Its alignment agrees with that shown in the May 1921 sketch map at Annex NR 151. This clearly refutes Cameroon's claim that this water course does not exist.

1.4 Kirawa River

Nigeria denies that it has dug an artificial channel in the vicinity of the village of Gange. Cameroon has produced no evidence at all of such a construction by Nigeria. In any event, examination of Figure 7.5 in Nigeria's *Rejoinder* shows that Gange is downstream of the disputed section, and so any such construction in this area would have no effect on the river course in the disputed section.

¹ CR 2002/19 p. 22, para. 16 (Macdonald).

Nigeria regards the normal course of the Kirawa River as following the main channel, which is indisputably the eastern channel, as Nigeria has shown in paragraphs 7.33 and 7.34 of its *Rejoinder*.

1.5 Kohom River

A phrase such as "Mount Ngossi" can only be applied to a single peak. If the draftsmen of the Thomson Marchand Declaration had wished to use a mountain range, as Cameroon suggests, they would have used the phrase "Ngossi Mountains". The summit to which Cameroon seeks to attach the name Mount Ngossi is called Matakam and, as a triangulation point, is so named in the records of the Federal Surveys Department of Nigeria.

1.6 Turu

Nigeria has shown in its pleadings² that Turu has expanded across the watershed and into territory, which, under the terms of the Thomson-Marchand Declaration, belongs to Nigeria. It does not, therefore, remain entirely within Cameroonian territory as Cameroon asserts.

Although Nigeria does acknowledge that the village of Turu as it existed in 1929 was left to France, it has not acquiesced and does not acquiesce in its expansion into Nigerian territory.

1.7 From the mountain range of Ngosi to Rumsiki

Nigeria respectfully draws the Court's attention to the fact that boundary does not follow the watershed all the way from Mabas to Rumsiki. There are two sections, in the vicinity of Wula Hanko and of Rumsiki, where the Thomson-Marchand Declaration requires the boundary to leave the watershed and follow cultivated land instead. Nigeria dealt with these in the oral pleadings³.

² Nigeria's *Rejoinder* paragraphs 7.132-7.136.

³ CR 2002/11 pp. 39-40, paras 107-108 (Macdonald)

With regard to Cameroon's claim that Nigeria is wrong in believing that the boundary drawn by Cameroon on its maps does not run along the watershed, but lies 2 kms to the west of the watershed, Nigeria respectfully refers the Court to the maps submitted by Cameroon with its *Reply*. These maps show that Nigeria is correct.

1.8 Mount Kuli to Bourrha

Nigeria has not been able to understand Cameroon's comments in respect of this area. No position is given for, and Nigeria is unaware of, the village of Watré. Nigeria has in its pleadings⁴ set out its explanation for its interpretation of the boundary in this area.

1.9 Source of the Tsikakiri River

Nigeria has no comments to add.

1.10 Budunga (from Mao Hesso to the summit of Wamni Range)

There is no problem in identifying the summit of the Wamni range as Cameroon claims. Although Nigeria agrees that there is a problem in identifying the locations of Boundary Pillars 6, 7 and 8, it believes that, in its pleadings⁵, it has used the available evidence to present a sufficiently accurate interpretation of the boundary in this area.

1.11 Mayo Sensche (*sic*)

Nigeria agrees that the problem here is the representation of the watershed in this area, but does not understand how the location of the village of Batou could affect the position of the boundary. The Thomson-Marchand Declaration makes no mention of it and it clearly lies on the Nigerian side of the watershed.

⁴ Nigeria's *Rejoinder* and CR 2002/11, pp. 19-24, paras 6-32 (Macdonald).

⁵ Nigeria's *Rejoinder*, paragraphs 7.145-7.168

Nigeria believes that no demarcation consistent with the Thomson-Marchand Declaration could ever follow the boundary claimed by Cameroon in this area, and therefore does not regard this simply as a demarcation problem.

1.12 Sapeo

Nigeria believes that there is no practical problem here because both sides observe the boundary delimited and demarcated by Logan and Le Brun in 1930⁶. Cameroon includes evidence in this respect in its own pleadings⁷.

1.13 Tysan (sic)

In its oral pleadings⁸, Cameroon by its Counsel observed that the Tysan area “had always undisputedly been considered to be part of Cameroon, it was administered from Kontcha and it formed – at the level of traditional political structures – an integral part of Cameroon”.

Nigeria does not deny that the Thomson-Marchand Declaration divides the traditional Emirate of Kontcha. This division of traditional lands has occurred elsewhere along the boundary, such as at Bourha and Yola. Nonetheless the terms of the Declaration are clear, and the Tysan area is now on the Nigerian side of the international boundary.

Nigeria now understands that the whole issue of Tysan has been brought before the Court by Cameroon as a result of an exaggerated claim to territory by the Emir of Kontcha, which is in clear contradiction of the terms of the Thomson-Marchand Declaration. Cameroon has never explained in detail in the written pleadings or in the first round of the oral proceedings why it does not agree with the terms of the Declaration in this area. It has now finally done so, and the basis for its claim to Tysan is manifestly unsustainable.

⁶ Annex NR 154

⁷ Cameroon's Observations, Book II, p. 301.

⁸ CR 2002/15 p. 65, para. 45 (Simma)

Cameroon claims that “the problem results from Nigeria’s denial of the validity of Cameroon’s title to Tysan”. Nigeria does indeed deny the validity of Cameroon’s title, which appears to be based on a misconceived claim by a local ruler to territory lost during the colonial era. Cameroon’s claim is invalid.

Demarcation will inevitably follow the course of the Tysan river, as Nigeria has consistently argued throughout its written and oral pleadings⁹. Nigeria has every right to locate an immigration post at any point on its territory and this is what it has done here. Cameroon even admits that the immigration post is “indisputedly situated in Nigerian territory”¹⁰.

1.14 The crossing of the Maio Yin

Nigeria has no comments to add.

1.15 Mount Kombon

Nigeria believes that any demarcation will be inhibited by the defective nature of Article 60 of the Thomson-Marchand Declaration. Nigeria has indeed shown that there is sufficient information to identify the peak, but Cameroon’s comments simply serve to cause confusion: the problem is that the readily identifiable prominent peak is not located on the watershed, as required by the terms of Article 60.

The remainder of Cameroon’s comments are a complete misrepresentation of Nigeria’s arguments, which were clearly set out in its *Rejoinder* (at paragraphs 7.88-7.98) and its oral pleadings¹¹. Nigeria has already drawn the Court’s attention to the error in the distance from Tonn Hill to Itang Hill given by Cameroon¹².

⁹ CR 98/1, pp. 24-25 (Watts), CR 98/5, p. 42 (Watts), *Counter-Memorial*, paras. 19.72-19.76, *Rejoinder*, paras. 7.169-7.181, CR 2002/10 pp. 59-65, paras. 80-104 (Watts).

¹⁰ Cameroon *Reply* p. 193, para 4.99.

¹¹ CR 2002/11, pp. 24-28, paras 33-52 (Macdonald).

¹² CR 2002/19 p. 26, para. 32 (Macdonald).

1.16 The area of Lip, Yang

Nigeria has the following comments on Cameroon's answers in respect of this section of the boundary:

- (a) Cameroon does not specify which river has the name Makwe. Nigeria is not aware of any such name for a river in this area, and so can make no detailed comment.
- (b) Cameroon does now appear to accept that the boundary passes through the "pillar" established by Dr Jeffreys in 1941. Nigeria is pleased to note that this implies that Cameroon accepts the boundary was demarcated by Dr Jeffreys at that time, and has been observed since that date.
- (c) By saying that the boundary runs "through the pillar set up by Jeffreys and then along a crest line", Cameroon seems to have accepted the alignment for the boundary proposed by Nigeria between the cairn and Tonn Hill.
- (d) Nigeria wishes the Court to be aware that Cameroon sets out its own view of the boundary in a west to east direction, but Cameroon sets out Nigeria's view in an east to west direction.

1.17 Bissaula-Tosso

Cameroon appears to be alleging that the 1946 Order in Council boundary is shown on Moisel's map of 1913. This is clearly a ridiculous assertion. The draftsmen of the 1946 Order in Council used the words "an unnamed tributary of the River Akbang (Heboro on sheet E of Moisel's map on scale 1/300,000)". These words were chosen in order to assist in the identification of the River Akbang.

The draftsmen also omitted the numeral from the sheet reference, which should correctly be sheet E2. Cameroon has perpetuated this error.

Although Cameroon asserts that in this area the provisions of the Order in Council are sufficiently clear for a demarcation, an assertion that Nigeria agrees with, Cameroon persists in ignoring the requirement to use a tributary that crosses the Kentu-Bamenda road. It offers no sensible explanation for this failure.

1.18 The River Sama

Nigeria denies that "the Parties have always looked to the northern tributary of the Sama as the course of the boundary". Nigeria is unaware of any evidence to this effect, and Cameroon has provided none. Nigeria has always maintained that the southern tributary is the point where the Sama divides in two; it is not a position taken by Nigeria since the present proceedings began as Cameroon alleges. Again Cameroon produces no evidence to support its statement to the latter effect.

Contrary to Cameroon's assertion that "no practical problem arises here", Nigeria refers the Court to the issues of State responsibility which both sides have raised in respect of this general area. Nigeria believes that the problems relating to Tosso and Mberogo derive from a complete misunderstanding on the part of Cameroonian local officials as to where the boundary lies in this area.

1.19 Mberogo

Nigeria is not aware of any village or locality called Mbelogo on Cameroon's side of the boundary. If one does exist, Cameroon has produced no definitive evidence of it, apart from a mark, without co-ordinates, on a map submitted with the *Reply*¹³.

Cameroon's claim that there are "several localities bearing identical or similar names on either side of the boundary" is unsupported by any proof. Nonetheless, it is immaterial here, because the issues raised by Nigeria concern the Nigerian village of Mberogo, as Nigeria clearly

demonstrated in the oral pleadings¹⁴. This village is in Nigerian territory no matter which of Cameroon's or Nigeria's interpretation of the boundary between the Sama River and Mount Tosso is correct.

1.20 Pillar 64

Nigeria is pleased to note that, during the course of the oral pleadings¹⁵, Cameroon agreed that the defective delimitation in this area, albeit a minor one, could be corrected as proposed by Nigeria. As a consequence, Nigeria has no further comments to add.

¹³ RC paragraphs 12.36-12.37 and Map R27.
¹⁴ CR 2002/10 pp. 58-59, paras 73-78 (Watts).
¹⁵ CR 2002/2, p. 70, para. 28 (Shaw)

II Additional points noted by Cameroon

Cameroon includes as a final section of its answers some additional comments on sectors of the boundary at Dorofi, the Obudu cattle ranch and at boundary pillar 103. No evidence is included or referred to in support of its allegations of Nigeria's breach of the terms of the relevant instruments. Nigeria has the following comments on these specific points:

1. The question raised by Judge Fleischhauer refers only to those areas "in which Nigeria contests the correctness of the delimitation". Nigeria does not in these three instances contest the correctness of the delimitation, and therefore these areas are beyond the scope of the question raised by Judge Fleischhauer.
2. In any event, Nigeria accepts that the terms of the relevant legal instruments (in the case of Dorofi, the Thomson Marchand Declaration, and for Obudu and BP 103, the April 1913 Anglo-German Treaty) are sufficiently clear and precise to delimit the boundary in these areas.
3. Furthermore, the boundary delimited by the 1913 Anglo-German Treaty has already been demarcated on the ground by a number of boundary pillars. Nigeria accepts this demarcation. Nigeria also believes that any outstanding issues in Dorofi can be resolved by demarcation.
4. In the case of boundary pillar 103, the issue raised by Cameroon relates to individuals crossing the boundary and causing damage to property. This has not been sanctioned by Nigeria. More importantly, Nigeria does not view this as a problem of the delimitation contained in the instruments and therefore makes no further comment.

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
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(Cameroon v. Nigeria: Equatorial Guinea intervening)

Oral Hearings

18 February – 21 March 2002

**Responses of the Federal Republic of Nigeria
to the Judges' Questions**

4 April 2002



QUESTIONS OF JUDGE FLEISCHHAUER

"I have two interrelated questions for both Parties. My questions are the following:

How was the land boundary in those specified areas in which Nigeria contests the correctness of the delimitation, in practice handled before and after Independence?

In particular, where has the course of the boundary in those areas been treated as running?"

RESPONSE

1. In Nigeria's preliminary answer to these questions¹ Nigeria noted that the 22 locations at which questions regarding the delimitation of the land boundary as described in the Thomson-Marchand Declaration or the 1946 Order in Council arose fell into two different categories. Thirteen of them were locations at which Nigeria itself discerned defects in the very terms of the delimitation, that is in the delimitation as such (one of the locations in this category - BP64 - is no longer in dispute, since Cameroon accepts Nigeria's suggested interpretation for that location²). The other 9 are locations where, so far as Nigeria is concerned, the delimitation is both clear and adequate, but where nevertheless Cameroon has adopted positions which depart from that clear and adequate delimitation in the relevant instrument, with the result that Nigeria felt it necessary to draw attention to those locations.
2. It is apparent that it is only in respect of the first 13 locations that (in the terms of Judge Fleischhauer's questions) "Nigeria contests the correctness of the delimitation". Nigeria will deal with those 13 locations in Part I of this Response. However, rather than limit itself to those locations, and just in case such a reading of

¹ CR 2002/19, pp. 36-37, paras 28-33 (Watts).

² CR 2002/2, p. 70, para. 28 (Shaw); CR 2002/10, p. 43, para. 8 (Watts).

Judge Fleischhauer's questions is unduly strict, Nigeria will in Part II of this Response cover also the other 9 locations.

3. In respect of each location the questions put by Judge Fleischhauer require three matters to be treated:
 - (i) how the land boundary was handled before Independence;
 - (ii) how the land boundary was handled after Independence; and
 - (iii) where the course of the boundary has been treated as running.
4. In addition Nigeria will, by way of background to its reply on those three matters, make a brief general comment on the location, including for example relevant population or topographical considerations.
5. Before answering the questions, it may be helpful to make a few preliminary points:
 - (i) The boundary between the mouth of the Ebeji and BP 64, a distance of 1,430 kilometres, has never been demarcated in full.
 - (ii) At the time of the 1931 Declaration, pressure on land was not great and isolated differences could more economically be solved by local meetings involving both parties.
 - (iii) Indeed, where differences did arise prior to Independence, the district officers on the ground normally resolved the matter themselves, generally without referring the matter back to the central administration. This system of boundary resolution was continued after Independence by representatives of the local government areas. Thus before and after Independence, the vast

majority of the burden of boundary management was devolved to local officials.

- (iv) Visits by local district officers before Independence to the area often resulted in these officers showing the local population where the boundary area was to run, making an ad hoc and informal demarcation. Field trip visits by the Nigerian legal team to some of these areas show that these ad hoc boundaries are still observed today by the local populations.

PART I: Locations in which Nigeria considers the delimitation of the boundary to be defective.

(1) The mouth of the Ebedji

- (i) Nigeria's comments on the area generally are set out in full at pages 322-330 of Nigeria's *Rejoinder*. The Parties agree that the Ebedji has two mouths³, and that the position of the two channels has not changed since 1931⁴. In order to attempt to resolve the dispute between the two States as to the location of the "mouth", the experts of the two States, within the framework of the LCBC, made a preliminary agreement as to a point (point V) to represent the so-called mouth. However, this point is not situated at the mouth of any watercourse, and is not agreed by Nigeria, as being in conformity with the Thomson-Marchand Declaration.
- (ii) Before Independence the boundary in the area was left largely to the Nigerian local authorities which regulated and taxed the fishermen of the region. Most of the fishermen in this area came from Wulgo. To the knowledge of Nigeria, there was never any disagreement between the States as to the location of the boundary.
- (iii) After Independence the boundary in this area continued to be handled by the respective local authorities of Nigeria and Cameroon.
- (iv) The course of the boundary in this area has been treated as running along the eastern channel. The area to the west of that channel has always been administered by Ngala local government area, and the regulation and licensing of fishing in this area has always been carried out by Nigeria. The Court should also be aware that local Nigerian communities, particularly from Wulgo, have fished in the waters of the north-eastern

³ RC paragraph 3.20 and NR paragraph 7.9

⁴ RC, paragraph 3.21 and NR paragraph 7.9

channel without protest from Cameroon and without any attempt by Cameroon to regulate or tax them.

(2) Narki

- (i) By way of general comment, this area is not the subject of any acrimonious dispute between the parties. The problem arises out of the fact that the 1931 Thomson-Marchand Declaration does not define which of several watercourses, in the area around Narki, the boundary follows.
- (ii) Before Independence, this area of the land boundary was administered by the British and French district officers. In particular in the period from 1921-1926, officers of the two administrations were sent out by their respective Governors to propose a more detailed delimitation of the boundary than had been supplied in the Milner-Simon Agreement of 1919. In this area, in May 1921, officer Lethem, for Great Britain, and his French counter-part signed a sketch map depicting the boundary agreed between them in this area⁵. This boundary passes some 300 metres north of Limani and south of Narki.
- (iii) After Independence, the local populations continued to observe and regulate the boundary defined by the local officers. Tarmoa and Narki remained Nigerian villages under the administration of Bama Local Government Area, within Borno State of Nigeria. This Local Government Area has, since Independence, consistently provided water supplies, healthcare and education and other social services to the residents of these two villages. Limani remained under Cameroonian administration, and Nigeria does not dispute this.

⁵ Annex NR 151.

- (iv) The course of the boundary in this area has been treated as running along the watercourse depicted in the May 1921 Anglo-French agreement, leaving Tarmoa and Narki to Nigeria and Limani to Cameroon, as shown on Figure 7.4 and outlined in paragraph 7.30 of Nigeria's *Rejoinder*. This has never been protested or disputed by Cameroon, and, to Nigeria's knowledge, the inhabitants co-exist peacefully.

(3) Kirawa River

- (i) By way of general comment, this is an area inhabited by a large Nigerian farming community. The boundary in this area is delimited by Article 17 of the 1931 Thomson-Marchand Declaration, but it does not define which of two branches of the Kirawa River the boundary follows.
- (ii) Before Independence the boundary in this area was handled by the local district officers on the ground. It is worth pointing out that under the Milner-Simon Declaration of 1919, depicted on Moisel's map B3 (an extract of which is at Figure 7.7 of Nigeria's *Rejoinder*), the boundary follows the eastern channel of the Kirawa river.
- (iii) After Independence, the boundary in this area has not been the subject of further demarcation by the local government administrations. However, Cameroonian farmers have encroached onto the area to the west of the eastern channel, presumably to take advantage of the fertile soil of the area.
- (iv) Nigeria has treated the course of the boundary in this area as running along the eastern channel of the Kirawa River, as depicted by Milner and Simon on Moisel's map in 1919, and as set out in paragraph 7.35 of Nigeria's *Rejoinder*. However, local Cameroonian farmers appear to believe that the western channel is the boundary.

(4) Kohom River

- (i) By way of general comment, this area is remote and relatively uninhabited. The boundary in this area is delimited by Article 19 of the 1931 Thomson-Marchand Declaration, which is defective because it assumes that the source of the River Kohom is on Mount Ngossi, which is not the case.
- (ii) Before Independence, the boundary in this area was visited by district officers (Featherstone and his French counterpart) in March 1926, and a sketch map was produced (Figure 7.9 of Nigeria's *Rejoinder*). This sketch map includes the mistaken belief that the Kohom River rises at Mount Ngossi. The local inhabitants were told of the position of the boundary running along the Kohom River in the direction of Ngossi. This information has been passed on through the generations.
- (iii) After Independence the boundary in this area continued to be handled by the small number of local farmers, who continued to follow the line shown to them by the district officers in 1926. When the Nigerian legal team visited the area in March 2000, they were shown the course of the boundary by the local village chief. This reflected the boundary depicted on the 1926 map.
- (iv) The course of the boundary in this area has been treated as running as depicted in Figure 7.8 of Nigeria's *Rejoinder*, and as further outlined in paragraphs 7.40 and 7.41 of the *Rejoinder*. This has been observed on the ground since 1926, and, as far as Nigeria is aware, there is no dispute on the ground, although Cameroon's maps display a line which bears no relation to either the 1926 local agreement between the district officers or the terms of the 1931 Declaration.

(5) Mount Kuli to Bourha

- (i) By way of general comment on this area, the boundary here is delimited by reference to the “incorrect line of the watershed shown by Moisel on his map”. This section was referred to at length in the first round of Nigeria’s oral pleadings⁶. It is a relatively well-populated area, with some large towns, such as Bourha (in Cameroon), and significant farming communities on both sides of the boundary.
- (ii) Before Independence the boundary in this area had been handled at a local level. There is also evidence that there was a visit by the British and French administrations to the area in 1920⁷. The resulting *procès-verbal* stated that the boundary should follow the centre of a track from Muti towards Bourha, and that Bourha lies 1.5 kilometres to the east of the frontier.
- (iii) Since Independence, the boundary in this area has continued to be administered at a local level. Nigeria is not aware of any significant dispute. See, however, section (16) below for the area south of Bourha.
- (iv) The course of the boundary in this area has been treated by Nigeria as running along the line set out in Nigeria’s *Rejoinder* at paragraph 7.59 and depicted on Figures 7.10 and 7.11 of Nigeria’s *Rejoinder*. It is clear from Nigeria’s counterclaims that local Cameroonian officials do not have the same viewpoint.

(6) Koja (Kotcha)

- (i) By way of general comment, the boundary in this area runs close to the important Nigerian village of Koja (previously Kotcha), which has a large farming population.

⁶ CR 2002/11, pp. 19-24, paras. 6-32 (Macdonald).
⁷ Annex NR 152.

- (ii) Before Independence the boundary in this area was handled by the local district officers. The 1931 Thomson-Marchand Declaration itself refers to provisional landmarks erected in 1920 by Vereker (for Great Britain) and Pition (for France). Nigeria can confirm that these landmarks were cairns of stones, although only one has been found. In any event, the reference to the landmarks suggests that the boundary deviated slightly from the watershed in the vicinity of Koja, which lies across the watershed.

Since the 1930s, the village of Koja has continued to expand. This process has been unchallenged by Cameroon.

- (iii) After Independence the boundary in this area has continued to be administered and maintained at a local level. South-west of Koja there is a cairn of stones at 10° 04' 43" North, 13° 17' 49" East which identifies the boundary. There does not appear to be any dispute as to the location of the boundary.
- (iv) The course of the boundary in this area has been treated as running as set out in Nigeria's *Rejoinder* at paragraphs 7.62 and 7.63, and as shown in Nigeria's *Rejoinder* at Figure 7.13.

(7) Source of the Tsikakiri River

- (i) By way of general comment, this area is remote and a long distance from the Nigerian road network. The problem arises here as the 1931 Thomson-Marchand Declaration does not specify which of three possible sources of the Tsikakiri River the boundary is supposed to follow.
- (ii) Although the area is sparsely inhabited and remote, Nigeria is satisfied that the course of the river depicted by Nigeria on Figure 7.14 of its *Rejoinder* formed the

boundary in this area. The area was visited by district officers Vereker and Pition in the summer of 1920. They traced the course of the Tsikakiri “and carefully fix[ed] the local boundaries”.⁸

- (iii) After Independence, the local people on both sides have recognised this demarcation as the boundary and there has never been any problem reported.
- (iv) Nigeria submits that the course of the boundary in this area intended by the drafters of the 1931 Declaration for the reasons set out in paragraph 7.67 of Nigeria’s *Rejoinder*, has been treated as running to the southern branch of the Tsikakiri. This is set out in full in paragraph 7.69 of Nigeria’s *Rejoinder* and depicted on Figure 7.14 of the same.

(8) Jimbare

- (i) By way of general comment, this area is relatively well-populated by Nigerians. The problem here is that the delimitation contained in the 1931 Thomson-Marchand Declaration has a number of errors which render a demarcation virtually impossible. These errors have been outlined in Nigeria’s *Rejoinder* at paragraph 7.71 and were further explained by Sir Arthur Watts in the first round of Nigeria’s oral pleadings⁹.
- (ii) Before Independence the boundary in this area was visited by district officers Logan, for Great Britain, and Le Brun, for France, in 1929-1930. They acknowledged that the proposed delimitation by the two Parties contained in the 1929 agreement (which developed eventually into the 1931 Declaration), was impossible to demarcate. They therefore reached agreement on a correct, amended line, which was set out in great detail in a *procès-verbal*, signed on 16 October 1930. This line was shown to the local population on the ground and has since been passed on from generation to

⁸ Annex NR 152.

⁹ CR 2002/10 pp. 49-52, paras. 35-45 (Watts).

generation. Although the terms of the *procès-verbal* were not included in the 1931 Declaration, the amendment was included on the map eventually produced to accompany the Declaration¹⁰.

- (iii) After Independence the boundary in this area continued to be handled at a local level by the resident farming population. The demarcation shown to the local population in 1930 continued to be observed without dispute between the populations living on both sides of the boundary. A field trip by Nigeria's legal team to the area in June 2000 confirmed this information, and local resident farmers showed the team where the boundary runs. This accorded almost precisely with the Logan-Le Brun *procès-verbal*.
- (iv) The course of the boundary in this area has been treated as running along the line depicted in Figure 7.15 of Nigeria's *Rejoinder* for the last 70 years. The details set out in the 1930 *procès-verbal* can be followed on the ground with ease, and in particular, Kombunga Rock is readily identifiable. There is consequently no problem on the ground between the parties.

(9) Sapeo

- (i) By way of general comment, this area includes a substantial population living in a number of substantial Nigerian villages, including Sapeo, Namberu, Leinde and Jumba. Nigeria has produced evidence of its long standing administration of this area and of the fact that residents of Sapeo participated in the Northern Cameroons Plebiscites of 1959 and 1961 (and were therefore considered as part of British administered Cameroons)¹¹.

¹⁰ CR 2002/10 p. 54, paras. 52-53 (Watts).

¹¹ See paragraphs 7.80 and 7.81 of Nigeria's *Rejoinder* and Annexes NR 156-168.

The problem here arises from the problematic delimitation of the 1929 Thomson Marchand agreement and the resulting demarcation by officers Logan and Le Brun in this area.

- (ii) Before Independence the boundary in this area was visited by district officers Logan, for Great Britain, and Le Brun, for France, in 1929-1930. They acknowledged that the proposed delimitation by the two Parties contained in the 1929 Thomson-Marchand agreement (which developed eventually into the 1931 Declaration) was problematic. They also acknowledged that Sapeo was a Nigerian village administered by the British. They therefore reached agreement on a correct demarcation, which was set out in the same detailed *procès-verbal*, signed on 16 October 1930. This demarcation was not only shown to the local population on the ground, but also included a series of large cairns of stones at points along the boundary. Three at least of these cairns remain in place today, and two were shown in Nigeria's *Rejoinder* (at Plate 1) and during the oral proceedings (at Tab 39 of the Judges Folder for the First Round). As with Jimbare immediately to the north, the terms of the *procès-verbal* were not included in the Thomson-Marchand Declaration, but the amendment was nonetheless included on the map eventually produced to accompany the Declaration¹².
- (iii) After Independence the local population continued to observe the demarcated boundary, and there appears never to have been any dispute about this. A field trip by Nigeria's legal team to the area in June 2000 confirmed the existence of the cairns and the practice of the population in respecting the Logan Le Brun *procès-verbal*.

¹² CR 2002/10 p. 54, paras. 52-53 (Watts).

(iv) The course of the boundary in this area has been treated as running along the line demarcated according to the Logan-Le Brun *procès-verbal*, which is set out in full in paragraph 7.83 of Nigeria's *Rejoinder* and at Figure 7.16. There has never, to Nigeria's knowledge, been a dispute between the two States, at a local level or otherwise, as to the location of the boundary in this area. Furthermore Sapeo has been administered by Nigeria for over 70 years without protest, and Nigeria has produced evidence of this in its *Rejoinder*.

(10) Namberu-Banglang

(i) By way of general comment, this area is demarcated by Article 38 of the 1931 Thomson-Marchand Declaration, which refers erroneously to a valley going to the north-east and then south-east, when in fact no such valley exists. In order to make any sense at all, it can only refer to a valley going *north west* then *south west*. Furthermore the Logan-Le Brun *procès-verbal* of 1930, which sought to rectify this problem, corrected the error, but introduced a further problem in its reference to a saddle in the Hosere Banglang. This is explained fully in paragraphs 7.85 and 7.86 of Nigeria's *Rejoinder*.

(ii)+(iii) Before and after Independence the boundary in this area has been administered at a local level. It is Nigeria's understanding that there has never been a dispute on the ground as to the correct location of the boundary.

(iv) The course of the boundary in this area has always been treated as running north west and then south west up a valley, as explained in paragraph 7.87 and depicted on Figure 7.17 and on Map 13, Book II of Cameroon's *Reply*.

(11) The Position of Mount Kombon

- (i) By way of general comment, this area is where the 1931 Thomson-Marchand Declaration and the 1946 Order in Council meet. The terms of Articles 60 and 61 of the 1931 Declaration are also defective: these errors have been set out in Nigeria's *Rejoinder* at paragraphs 7.91-7.96, and during Nigeria's first round oral pleadings¹³. Nigeria has shown in its pleadings its method for identifying what it believes is the "fairly prominent pointed peak" (Itang Hill). Furthermore the boundary is required to follow a watershed, which, due to the complicated watercourse pattern, and the resulting fact that the watershed does not pass through Itang Hill, it cannot do. Despite being a relatively remote area, the region nonetheless contains a large Nigerian farming population in the Nigerian town of Tamnyar and the small village of Sanya.
- (ii) ~~Before Independence the boundary in this area was administered by the district officers. Nigeria has no documentary evidence of any visits to this area by the district officers. However, there are documents which show concern about the delimitation in this area¹⁴.~~
- (iii) After Independence, there was no further clarification of the boundary in this area. The local population, essentially comprising Nigerians from the Mambila tribe, have continued to regard the top of the escarpment as the boundary. This boundary, unlike most of the rest of the Nigeria/Cameroon boundary, is a tribal boundary between the Mambila tribe on the high Mambilla Plateau and the Cameroonians from the lowlands. The Nigerian populations of Sanya and Tamnyar continue to cultivate the farmlands on the top of the escarpment without protest.

¹³ CR 2002/11 pp. 24-28, paras. 33-52 (Macdonald).

¹⁴ Annex NR 169.

- (iv) The course of the boundary in this area has always been treated by both Parties as running along the escarpment, depicted in red on Figure 7.18 and described in paragraph 7.96 of the *Rejoinder*.
- (12) The Boundary westwards from Tonn Hill to the Mburi River**
- (i) By way of general comment, this area is covered by the final section of the second schedule to the 1946 Order in Council. It is impossible to apply the terms of that schedule to the features on the ground.
- (ii) Before Independence the boundary in this area was handled by the district officers. It was, of course, at that time an internal administrative boundary between the British administration of Northern and Southern Cameroons, and not an international boundary. Nigeria has produced evidence in its *Rejoinder* of a demarcation explained to the local population by the Senior District Officer in Bamenda, Dr Jeffreys, in 1941. Nigeria has not been able to obtain copies of the Order made by Dr Jeffreys, but a note of a meeting in 1953¹⁵ refers to this Order and sets out the description of the boundary contained in that Order. Cameroon itself provides evidence that this part of the boundary is dictated by "le tracé des frontières depuis 1941 et un procès-verbal de réunion du 13 août 1953"¹⁶.
- (iii) After Independence and the 1961 plebiscite, the boundary in this area became an international boundary between Nigeria and Cameroon. The local population in the area of Lip and Yang continued to observe the boundary demarcated by Dr Jeffreys. This is an area where there are substantial farming communities with very fertile soil, and small local disputes have arisen between the Nigerian population of Lip and the Cameroon population of Yang over farming rights.

¹⁵ Annex NR 171

¹⁶ Memorial of Cameroon Annex MC 258, p. 2153.

- (iv) Except for recent Cameroonian attempts at encroachment, which have been resisted by the Nigerian population, the course of the boundary in this area has been treated as running along the Jeffreys boundary which is set out in full in paragraphs 7.107 of Nigeria's *Rejoinder* and depicted at Figure 7.20.

(13) Sama River

- (i) By way of general comment, this area is also delimited by the 1946 Order in Council. The schedule is unclear as to the point at which the Sama River divides into two.
- (ii) Before Independence, this area was administered by the British on both sides of this administrative boundary between Northern and Southern Cameroons. There was no need here, a relatively sparsely populated area, for careful administration of the boundary as such.
- (iii) After Independence the boundary in this area has been administered locally. There are local disputes as to the location of the boundary, although Cameroon has claimed villages much further to the north than the boundary shown on the maps of both of the Parties. Indeed, it appears that local Cameroonian officials use the Gamana River as the boundary, thus provoking disputes, especially in the villages of Tosso and Mberogo.
- (iv) The course of the boundary in this area has been treated by the local Nigerian population, initially without protest, as running to the southern tributary flowing into the Sama River as depicted on Figure 7.21 and as stated in the text of Nigeria's *Rejoinder* at paragraph 7.116.

PART II: Locations where Cameroon fails correctly to apply the agreed delimitation of the boundary

(14) The Watershed from Ngossi to Roumsiki

- (i) By way of general comment, this area is a long stretch of boundary running from Ngossi at 10° 58' North, 13° 42' East in the north, to Roumsiki at 10° 31' North, 13° 35' East in the south. The boundary follows the watershed of the Mandara Mountains for by far the greater part of its length in this section, as set out in Articles 20-24 of the 1931 Thomson-Marchand Declaration. The area was discussed in detail during Nigeria's first round oral proceedings¹⁷. It is also outlined in Nigeria's *Rejoinder* at paragraphs 7.124-7.131.

This long boundary section is inhabited by farming communities on both sides of the boundary. Nigeria believes that the terms of the 1931 Declaration are sufficiently clear and precise to demarcate the boundary on the ground.

- (ii) Before Independence the boundary in this area was administered at a local level, but access to the top of the escarpment is difficult from the Nigerian side of the boundary as there is no vehicular access.
- (iii) After Independence the boundary in this area continued to be administered locally, by the local government areas. In recent years, there have been significant Cameroon encroachments onto the Nigerian side of the watershed boundary, notably at Turu, but also at other locations. Nigeria does not accept this encroachment onto its territory, and has not acquiesced in it.

¹⁷ CR 2002/11 pp. 36-41, paras. 92-113 (Macdonald).

- (iv) In Nigeria's view the course of the boundary in this area is the watershed set out in detail in Articles 20-24 of the 1931 Declaration (with the exception of the area of cultivation around the Nigerian village of Wula). It is also depicted in Figures 7.23-7.27 of Nigeria's *Rejoinder*. Nigeria adheres to this boundary and respectfully requests that its interpretation be upheld. Cameroon, on the other hand, does not accept the terms of the 1931 Declaration and pleads that its interpretation of the boundary, following a course which can in no way be said to be on the watershed, and thereby claiming over 2,000 hectares of Nigerian territory, is correct and has been accepted by Nigeria. This is manifestly incorrect.

(15) Turu

This area has been discussed under (14) above. It appears that Cameroon is claiming approximately 100 hectares of Nigerian territory, and has allowed a large village to develop, much of it to the west of the watershed boundary. Nigeria does not accept this situation and requests that its interpretation of the watershed boundary in this area, pursuant to Article 20 of the 1931 Thomson-Marchand Declaration, and as depicted on Figure 7.28 of its *Rejoinder*, be upheld.

(16) Maduguva

- (i) By way of general comment, this area is heavily populated and farmed by Nigerians. These Nigerians have been subjected to intimidation, extortion and violence by Cameroonian officials, who maintain that they are on Cameroonian territory. As Nigeria demonstrated in paragraphs 7.137-7.144 of its *Rejoinder*, this area is indisputably in Nigeria according to the terms of the 1931 Declaration.
- (ii) Before Independence the boundary in this area was administered on a local level. In the colonial era, the boundary was visited by local district officers, Larrimore and Petit,

in 1920¹⁸, and they assigned villages in the area to each country. Maduguva was clearly assigned to Great Britain.

- (iii) Since Independence there has been increased local interest in the boundary because the Cameroonian local chief of Bourha is claiming areas placed within Nigeria as a result of the 1931 Declaration, and threatens Nigerian farmers in the area of Maduguva, extorts money from them, steals their property and destroys crops. This has been the subject of a number of complaints at a local level, and now at central level. It has also formed part of a counterclaim by Nigeria as set out in paragraphs 25.50-25.57 of Nigeria's *Counter-Memorial* and Counterclaim CC22 at page 743 of Nigeria's *Rejoinder*.
 - (iv) Nigeria has always regarded the boundary as following the watershed south of Bourha, thereby attributing Maduguva to Nigeria. This complies with the requirements set out in Article 25 of the 1931 Declaration. Cameroon, however, argues that the traditional ruler of Bourha claims this land as part of his original area of jurisdiction. This does not comply with the terms of the 1931 Declaration. Nigeria does not accept the Cameroonian contention and has protested about the intimidation and violence carried out by Cameroonian officials against the Nigerian population living and farming to the west of the watershed boundary.
- (17) BP6-Wamni**
- (i) By way of general comment on this area, it is relatively uninhabited (except around boundary pillar 6). This section of the boundary marks the point where the boundary leaves a long section of riverine boundary and moves on to join a long section of watershed boundary.

¹⁸

Annex NR 152.

(ii)+(iii) Before and after independence the boundary in this area was handled on a local level.

The boundary was demarcated in 1900 by the Anglo-German boundary commission, which established boundary pillar 6, on the bank of the Maio Hesso, and boundary pillars 7 and 8 on small hills. No firm evidence of these three boundary pillars remains. Nigeria has not been able to find any evidence of additional visits by local officers since that date, until recent visits by members from Nigeria's National Boundary Commission, who were unable to find any trace of the old boundary pillars.

(iv) The course of the boundary in this area has always been treated as running from the point on the Maio Hesso, north of Beka, which is shown on Figure 7.30 of Nigeria's *Rejoinder*, and which used to be marked by a boundary pillar. It then runs in a straight line, as indicated on Moisel's map sheet D3, through boundary pillar 7 to boundary pillar 8, before it travels in a straight line to the summit of the Wamni range, as required by Article 34 of the 1931 Thomson-Marchand Declaration. This is depicted in detail in Figures 7.30 and 7.31 of Nigeria's *Rejoinder*. Nigeria confirms that this is the location observed by the local population on both sides of the boundary.

Cameroon's interpretation, on the other hand, does not comply with the terms of Articles 33 and 34 of the 1931 Declaration, as it starts at a point far to the north of the correct departure point on the bank of the Maio Hesso and does not run in a straight line or in the right direction to the summit of the Wamni Range.

(18) Maio Senche

(i) By way of general comment, this area of the boundary is covered by Article 35 of the 1931 Thomson-Marchand Declaration. It is clearly described as a watershed

boundary. It is also very remote and inaccessible. The population is scarce in this area.

- (ii)+(iii) Before and after Independence, because of the remoteness of the location, the boundary in this area has not been managed actively. It is too remote for district officers before Independence, or local government officials after Independence, to visit and maintain the boundary. However, because the boundary in this vicinity is a straightforward watershed boundary, Nigerian officials have not considered it necessary to concentrate scarce resources on supervising it. Nonetheless the Nigerian district head of Nassarawo-Koma confirms that the village marked Batou on Figure 7.33 of the *Rejoinder* is known locally as Batodi Dampti, and is a village in his domain. The villagers there pay taxes to the district head, Mallam Hamanjoda Abba. In 1985, there was a visit to the area by the then Military Governor, Colonel Yohanna Madaki, together with local government officials. As a result of that visit, the local Government set up a special project called the Koma People Development Programme, to assist in the welfare of the people in the boundary area, including Batodi Dampti.
- (iv) The course of the boundary in this area has been treated by Nigeria as running along the watershed, as depicted in Figure 7.33 of its *Rejoinder*, and further outlined during the oral proceedings¹⁹. Cameroon, on the other hand, takes the boundary off the watershed, to follow a series of streams, thereby attributing to Cameroon the small village of Batou (Batodi Dampti) and some 1,200 hectares of land territory.

¹⁹ CR 2002/11 p.34 paras. 79-82 (Macdonald).

(19) Tipsan

(i) By way of general comment, a dispute over Tipsan was raised by Cameroon in its *Application* and relied on by it as evidence of Nigeria's hostile incursions along the boundary, and therefore allegedly as proof that Nigeria did not accept the delimitation instruments. Nigeria has discussed the issue of Tipsan many times in its written and oral pleadings²⁰. Nigeria has explained with great care and in great detail the relatively simple fact that the Nigerian village of Tipsan lies on the Nigerian side of the line provided for by the 1931 Thomson-Marchand Declaration. The terms of the Declaration in this area are very clear. Cameroon has made claims that Nigeria is violating the terms of the Declaration in this area. This is patently not the case. Furthermore, Cameroon has consistently attempted to mislead the Court, and has made contradictory claims as to where it believes the boundary runs in this area. Cameroon has nevertheless now accepted that the immigration post is "indisputedly situated in Nigerian territory"²¹.

(ii)+(iii) Before Independence the boundary in this area was administered by district officers. The colonial powers agreed that France, now Cameroon, would be allowed to retain the Bare-Fort Lamy track within its territory, and therefore placed the boundary 2 kilometres west of this track. This is reflected in the 1931 Declaration. The division of territory divided the emirate of Kontcha. After Independence the boundary in this area continued to be handled at a local level. Tipsan became an issue only when Cameroon protested against Nigeria's building an immigration post on its side of the boundary on the road from Toungo to Kontcha.

²⁰ CR 98/1, pp. 24-25 (Watts), CR 98/5, p. 42 (Watts), *Counter-Memorial* paragraphs 19.72-19.76, *Rejoinder*, paras. 7.169-7.181, CR 2002/10 pp. 59-65, paras. 80-104 (Watts)

²¹ *Cameroon Reply* p. 193, para 4.99.

- (iv) The course of the boundary in this area has always been treated by Nigeria and Nigerians as running in accordance with the terms of the 1931 Declaration, which are clear and can be easily implemented on the ground. It is depicted on Figure 7.34 of Nigeria's *Rejoinder*.

Cameroon, on the other hand, has offered no explanation as to why it refuses to agree that the boundary in this area follows the clear terms of the 1931 Declaration.

(20) The Mburi River to the old Franco-British Frontier

- (i) By way of general comment, this area has been dealt with in (12) above. It is appropriate here only to add a few additional points. The course of the boundary in this area has been treated as running along the Jeffreys boundary, which was told to the local residents in 1941, confirmed at a local meeting in August 1953 and has been observed on the ground since that date. The course of the boundary is depicted on Figure 7.37 of Nigeria's *Rejoinder* and is described in detail in paragraphs 7.99–7.111 of the *Rejoinder*. It was further described during the course of the oral proceedings²².

Cameroon's claim in this area bears no relation to the course of the boundary described with errors in the 1946 Order in Council and defined more precisely by the local district officer, Dr Jeffreys, in 1941.

(21) Bissaula-Tosso

- (i) By way of general comment, the course of the boundary in this area is clearly described by the Second Schedule to the 1946 Order in Council. Nigeria has set out in detail the course of the boundary in paragraphs 7.188–7.196 of the *Rejoinder* and

²² CR 2002/11 pp. 28–32, paras. 53–74 (Macdonald).

depicted it in Figure 7.38 of the *Rejoinder*. Nigeria gave a further explanation during the course of the oral hearings²³.

The area is remote and sparsely populated, but the area to which the dispute between the Parties relates is very large, encompassing approximately 7,500 hectares.

- (ii) Before Independence the boundary in this area was an internal administrative division between British administered Northern and Southern Cameroons. Since the area was not an international boundary and was sparsely inhabited, the boundary area was, to an extent, neglected by the local officials. Nigeria can find no reference to any visits by the district officers.

However, records show that the area was visited by surveyors from the Directorate of Overseas Surveys in the early 1950s. Surveyors from Southern Cameroons travelled as far as Garamayu hill (shown near the source of the southern tributary on Figure 7.38 in Nigeria's *Rejoinder*). This was the northern extent of the area within their remit, and confirms the position taken by Nigeria as to the position of the boundary.

- (iii) After Independence the boundary in this area was administered, to an extent, by the local government officials. However, the remoteness of the location made the maintenance and supervision of the boundary difficult.
- (iv) The course of the boundary in this area has been treated by Nigeria as running from the peak of Mount Tosso in a straight line to the only point on the Kentu-Bamenda road where it is crossed by a tributary of the Akbang river, as it is required to under the terms of the 1946 Order in Council. This is depicted in Figure 7.38 of Nigeria's *Rejoinder*. Cameroon, on the other hand, takes the boundary from Mount Tosso to a point on the Kentu-Bamenda road where there is no tributary crossing.

²³ CR 2002/11 pp. 34-36, paras. 83-91 (Macdonald).

(22) Mberogo

- (i) By way of general comment, this area has been described under (13) above. It is covered by the terms of the Second Schedule of the 1946 Order in Council. It is an inhabited area, but the erroneous understanding of the boundary by local Cameroonian officials has resulted in a dispute arising between the two States. This has raised issues of international responsibility between Nigeria and Cameroon²⁴.
- (ii) Before Independence the boundary in this area was an administrative division between the British administered Northern and Southern Cameroons. The area was not an international boundary, and Nigeria can find no reference to any visits by the district officers to the area.
- (iii) After Independence the boundary in this area continued to be maintained by local government officers. It is remote and some distance from the local government headquarters. It cannot be reached by car, and so visits to the area have to be made on foot or by motorcycle.
- (iv) The course of the boundary in this area has always been treated as running according to the description given in paragraphs 7.112-7.116 and depicted in Figure 7.39 of Nigeria's *Rejoinder*. Cameroon has a different understanding of the position of the boundary. In any event, local Cameroonian officials do not observe even Cameroon's own interpretation of the boundary in this area, and raid the Nigerian villages of Tosso and Mberogo, extorting money and arresting and detaining Nigerian inhabitants. This raises

serious issues of international responsibility on the part of Cameroon. Cameroon tries to argue that there are other Cameroonian villages in the area called Tosso and

²⁴ See Nigeria's Counter-Memorial, paragraphs 25.58-25.63, and *Rejoinder* CC 23, pages 744-746.

Mberogo, but provides no evidence for these, and indeed the alleged situation of "their" Tosso, on the highest point of Mount Tosso, is ridiculous. Their arguments in respect of this area are refuted in detail in paragraphs 7.197-7.204 of Nigeria's *Rejoinder* and at CR 2002/10 pp.57-59, paras. 67-79 (Watts).

QUESTIONS OF JUDGE KOOIJMANS

"I have the following three interrelated questions for the Respondent State:

1. *Can the Respondent indicate how often and on what kind of occasions the Kings and Chiefs of Old Calabar as a separate entity had formal contacts with the Protecting Power after the conclusion of the 1884 Treaty on Protection?*
2. *Were the Kings and Chiefs of Old Calabar consulted when the Protecting Power in 1885 incorporated their territory in the British Protectorate of the Niger Districts (see Counter-Memorial of Nigeria, para. 6.66) which in turn had become part of the Protectorate of Southern Nigeria when the 1913 Anglo-German Treaty was concluded? If the answer is no, why were they not consulted? If the answer is yes, what was their reaction and is their reaction contained in a formal document?*
3. *Did that incorporation bring to an end the purported international personality of the Kings and Chiefs of Old Calabar as a separate entity? If not, when did it cease to exist?"*

RESPONSE

1. In the second round of the oral hearings, on 14 March, Nigeria gave a preliminary response to the questions put to Nigeria by Judge Kooijmans.

Background

2. Judge Kooijmans' first two questions concerned the extent of any consultation with the Kings and Chiefs of Old Calabar in the years following the conclusion of the Treaty of Protection of 1884. In seeking to provide an answer to those questions, two background points need to be made, concerning
 - (i) the arrangements for making and preserving records, and
 - (ii) the legal nature of the Kings and Chiefs of Old Calabar.

(i) **The making and preservation of records**

3. First, dealings with the Kings and Chiefs of Old Calabar will almost exclusively have taken place locally, in what for convenience will be referred to as Nigeria (even though that is not strictly accurate for the early part of that period). Any records relating, for example (to take Judge Kooijmans' first question), to occasions when the Kings and Chiefs of Old Calabar as a separate entity had formal contacts with the Protecting State after the conclusion of the Treaty of Protection, will have originally been prepared, produced and held locally.

4. Thus they will at first have been in Old Calabar (which in due course became the modern town of Calabar), or then in Lagos - for although Lagos and its immediate surrounding area was itself a colony and was thus always constitutionally distinct from the Protectorate, it was, after about 1906, the centre of British administration for the whole of Nigeria. British practice regarding its administration of its overseas territories was generally not to transfer complete sets of local records back to London - either at the time or later, for example upon Independence. If something was sufficiently important for the local Governor formally to send a report back to London, then it will probably have survived in the Foreign Office or Colonial Office archives which are now in the Public Record Office at Kew. But even the archives of Government Ministries in London were not all transferred eventually to Kew: they all went through a process of "weeding", and many have been lost in that way - especially when it is borne in mind that those doing the weeding were not lawyers thinking about what might later be relevant to some as yet unknown legal proceedings, but archivists and administrators whose main concern was with the historical significance or otherwise of the papers being kept or, as the case may be, destroyed.

5. However, even if destroyed, the original existence of the documents will nearly always be evident from the entries in the Indexes of archives: but while the Indexes will, by the title given to the document, reveal what a destroyed document was about, they will not indicate in any greater detail than that what its content was. In particular, a document indexed as dealing with one subject might well have included material relevant to another line of enquiry, and the former existence of that material will no longer be apparent just from the document's indexed title.
6. Most British records of meetings between British officials and the local people in the Calabar region would in any event have merited no more than preservation in Calabar or Lagos. They would, in the normal case, be kept for only a limited time - perhaps several years, but certainly not for several decades. As for records which may have been made by the Kings and Chiefs themselves, they are unlikely to have been as bureaucratically-minded as the British officials were, and such written records as they may have made of their dealings with the British are perhaps even more unlikely to have been kept by them for very long, if at all.

(ii) The Kings and Chiefs of Old Calabar

7. The second background point is that the Kings and Chiefs of Old Calabar were not, as Nigeria pointed out in its *Counter-Memorial*, a simple unitary entity. They were, as there described, something like what today we might classify as a loose federation. There were a number of Kings and Chiefs, having in common that they had their territorial base in and around the area of Old Calabar, and acting more and more, in an evolutionary process which is quite common, under the paramountcy of one of their number.

8. Nigeria has now undertaken further research, and has in particular had the opportunity of discussing these matters with the current Obong of Calabar, His Majesty Edidem (Professor) Nta Elijah Henshaw VI. In the light of the further information now available, particularly that recently provided by His Majesty, Nigeria can amplify the information previously given to the Court to the extent necessary to provide a full answer to Judge Kooijmans' questions.
9. Historically, in the area around Old Calabar there were a number of localities, each with its own distinct territorial base. Each of these had its own King or Chief. The Kings were called, in the Efik language, Obongs or Edidems, the former being a degree of kingship which involved an element of being God's representative on earth, while the latter was also a degree of kingship but without that additional element which entitled the King to be treated as having "Majesty" and thus to be address as "His Majesty" or "Your Majesty".
10. The several Kings and Chiefs of Old Calabar traced their origins back for some centuries. There is a record of 10 of the Kings of Old Calabar having commercial relations with British traders John Barbot, James Barbot and Snelgrave in 1698²⁵.
11. By the last half of the nineteenth century there were a number of Kings and Chiefs. They had in common that their territorial bases were in the region around Old Calabar. The various Kings and Chiefs had jurisdiction and power over their particular territories - significant towns in the case of the more important among them.

²⁵

John Barbot *A Description of the Coasts of North and South Guinea*, p. 465, edited by PEH Hair, Hakluyt Society, 1992, vol. II, p.705.

12. The Kings and Chiefs selected a paramount King from among their number: he was the most senior among them, and was known as the King of Old Calabar, and later King of Calabar. Where it was appropriate for them to act together as a single unit, whether for domestic purposes or to deal from a position of unity and strength with outside Powers, they came together for that purpose, under the leadership of whichever among their number was the paramount King for the time being.
13. However, on matters where it was appropriate for them to act on their own in their dealings with other communities - whether other Kings and Chiefs, or other States – they did so. Thus a number of the treaties cited in Nigeria's *Counter-Memorial* were concluded with only one of the Kings and Chiefs, as most relevant for the particular subject-matter of the Treaty. But it is to be noted that a Treaty concluded with the King of Old Calabar was normally a Treaty concluded for the whole Kingdom.
14. It was on this basis that when, in 1884, the Kings and Chiefs needed to constitute a single unit in order to be the one party to a Treaty of Protection to which Great Britain was the other party, they acted together. As Nigeria showed in its *Counter-Memorial* and during the first round of the oral hearings²⁶, in concluding that Treaty steps were also taken expressly to bring within its ambit a number of local Kings and Chiefs who were subject to the jurisdiction and authority of the Kings and Chiefs of Old Calabar.
15. The arrangements for the choice of King of Old Calabar were informal, and were based essentially on age, the oldest being regarded as the most senior. This did not always produce a smooth succession, and in particular in 1879, following the death of King Archibong III, there was for a time some confusion before his successor, King Duke Ephraim Eyamba IX, was chosen. He reigned until 1890, but there was then

²⁶ CR 2002/8, p.45, para 30 (Watts); also NC-M, para 6.33, pp. 93-94.

more confusion, and in fact a gap of several years during which there was no paramount King (although, of course, all the local Kings and Chiefs continued to play their several roles as the traditional rulers). The Kings and Chiefs decided to make different arrangements for the choice of their paramount King, and in 1902 formalised new arrangements whereby the Kings and Chiefs elected their paramount King from among their number to be the Obong of Calabar; the remaining Kings and Chiefs were thenceforth styled Etuboms. Whilst retaining their traditional authority, they also became members of the Obong's Court. This is the system which governs the choice of Obongs to this day. It has not been without its difficulties, and at times there have been considerable periods when the manoeuvrings were prolonged and intricate, leading to there being no Obong for a number of years. As before, however, the Kings and Chiefs - the Etuboms - still continued to function as the traditional rulers of their separate territories, and were still capable of acting together, even though they would then have to make ad hoc arrangements for doing so.

16. Thus the Obongs of Calabar trace their ruling authority in the office of Obong (as at present organised) back to the establishment of the new arrangements introduced at the beginning of the twentieth century, but their authority as King or Chief of one of the local territorial units goes back several centuries.
17. These arrangements were known to, and endorsed by, the British authorities. Evidence from the Public Record Office in Kew, London, shows that during the British Protectorate, traditional organs of public order and administration continued to function²⁷.

²⁷ See FO 881/5260 p. 190 and FO 881/6471 pp. 245-247.

18. During the period of British Protectorate until 1960, it was usual for the Obong of Calabar to use the title Edidem, still (as explained above) meaning King but without the overtones of "Majesty" which was implicit in the title of Obong. This was so as to avoid the simultaneous existence of both a Britannic "Majesty" in Great Britain, and the Obong's "Majesty" in Nigeria. After independence in 1960 this reasoning no longer applied, and the Obong then, and now, became once again properly known as "His Majesty the Obong of Calabar".
19. In summary, the Kings and Chiefs acted as a unit, or as their separate constituent territories, as circumstances dictated. As can be seen, there are considerable elements in their mutual relationship which resemble the structure of a modern federation. As a federation it was both loose and informal, but it was nevertheless real - they constituted a community which was even more integrated, cohesive and permanent than simply, to use the words of the Court in the Western Sahara Advisory Opinion²⁸, a community "socially and politically organised in tribes and under chiefs competent to represent them". It has been acknowledged that the conclusion by local rulers of treaties of protection, like that of 1884, "constitutes a recognition of personality both of the ruler and of the people concerned"²⁹.

²⁸ ICJ Reports 1975, at p. 39, para 80.

²⁹ Shaw, Title to Territory in Africa: International Legal Issues (1986), p. 37: quoted at NC-M, para 6.20, p. 88.

Question 1

20. The first question asked "how often and on what kind of occasions the Kings and Chiefs of Old Calabar as a separate entity had formal contacts with the Protecting Power after the conclusion of the 1884 Treaty of Protection".
21. So far as Nigeria has been able to discover, records which would enable the question to be answered comprehensively no longer exist, either in London, or in Calabar or Lagos, or in the National Archives in Enugu or Ibadan. However, some records have been traced, showing several occasions in the years after 1884 when there were formal contacts between the Kings and Chiefs and the British authorities.
22. In January 1885 the British Consul, Hewitt, gave a decision in a local dispute involving certain of the local chiefs in Old Calabar, apparently involving the possession of property and an outbreak of hostilities arising in that connection.³⁰ The Consul's decision involved the imposition of certain penalties and a requirement that certain specified procedures should be followed. He then stated: "The enforcement of my decision according to the treaty with England last concluded, is to be made by the Kings and chiefs, but I hope there will be no occasion to call on them to do this." This shows both the application of the terms of the Treaty of Protection, and the continuing role of the Kings and Chiefs after the conclusion of the 1884 Treaty.
23. There is a record in the Public Record Office at Kew of some correspondence in 1887 in which a Mr G Turner, writing apparently on behalf of a number of people (including Prince Eyamba, and Thomas Yellow Duke), set out a number of complaints about the misbehaviour and internal squabbling of a number of the local chiefs. He enclosed with his letter a copy of a paper made by the British Consul,

³⁰ Public Record Office: FO 84/1740, ff. 123-124.

Mr Hewitt, "for the better government of their country submitted to the Kings and Chiefs of Old Calabar". That paper consisted of "suggestions and recommendations" made by Mr Hewitt "to the Kings and Chiefs of Old Calabar at a meeting held at the British Consulate, Old Calabar, on the 14th February, 1887".³¹ Even though Mr Turner stated that the Kings and Chiefs did not accept the paper, the paper shows clearly that in 1887 the Kings and Chiefs of Old Calabar were regarded as the appropriate channel for communications of the kind in question between them and the British authorities; the paper also shows that the meeting on 14 February was not an isolated meeting, since the paper records that that meeting was adjourned until 15 March.

24. Also available in the Public Record Office is a long report, dated 1 September 1891, from Major MacDonald, the British Consul-General, to Lord Salisbury, the Secretary of State for Foreign Affairs.³² The report recorded a visit which the Consul-General paid to a number of areas within his district, in order to explain some new British proposals for the imposition of customs duties and to obtain the consent of the local rulers. So far as relevant in the present context it is to be noted that the Consul-General had in advance arranged a "meeting of the Old Calabar Chiefs". He "received King Duke, and the other, so-called Kings, and Chiefs of Old Calabar, in Durbar". Quite apart from the immediate business of the customs proposals, the Kings and Chiefs wished also "to speak to me on one or two subjects which they hoped I would represent to Her Majesty's Government", and the Consul-General accepted that that was appropriate, although better done at a later date. At the end of his visit the Consul-General secured a Declaration signed by King Duke IX and 26 others giving their consent to the imposition of the customs duties in question (text on

³¹ FO 881/5588, pp. 200-202 of the print.

³² FO 881/6351, pp. 39-43 of the print (Annex 1).

final page of Annex 1): the Declaration was in the name of "the Undersigned, Kings, Chiefs, and Headmen of the Old Calabar and district", and it was attested, and the translation certified, by documents referring to "the Old Calabar Chiefs" and "the Kings and Chiefs of the Old Calabar district". This report shows that, with this kind of official business, it was considered normal by the British authorities to use the Kings and Chiefs of Old Calabar as the proper channel for official consultations, and that the Kings and Chiefs both continued to exist as a distinctive body and were ready to assume the function envisaged for them.

25. A further occasion which Nigeria would recall in this context is the visit to London in 1913 of certain of the Kings and Chiefs of Old Calabar.³³ In that year the Kings and Chiefs made strong representations³⁴ at what they saw as a British proposal to amend the system of indigenous land tenure applicable in south eastern Nigeria (an area which, of course, included Bakassi). The Kings and Chiefs sent a representative delegation to London to pursue the question - no small matter at that time. They gave evidence to the Parliamentary Committee which had been established to examine the land tenure question in a number of African States, and a question was asked on their behalf in Parliament. The delegation was sent by Eyo Honesty VIII, Obong of Calabar, together with his Council of Etuboms. The delegation consisted of some 20 members: the two leading members of the delegation were Prince Bassey Duke Ephraim IX (a member of the Native Council of Calabar and a son of the late King Duke) and Prince James Eyo Ita VII, Chief of Creek Town and grandson of King Eyo.

³³ CR 2002/19, p.47, para 64 (Watts); NC-M, para 9.3(5)-(6), pp. 179-180.

³⁴ This appears evident from the report carried in *The African Mail* at p. 433 ("in ... Southern Nigeria there is widespread excitement and unrest in view of the proposition of the Crown to take over all lands"). See also E.E.Oku *The Kings and Chiefs of Old Calabar (1785-1925)* Glad Tidings Press, 1989, pp. 234-237. A copy was lodged at the Court with the *Counter-Memorial*.

26. As stated in Nigeria's *Counter-Memorial*, there is no documentary evidence available to show that the Kings and Chiefs of Old Calabar knew of, or discussed in London, the Anglo-German Treaty of March 1913. However, from what His Majesty the Obong has recently told Nigeria, it is probable that when the delegation set out for London they were aware of rumours about a treaty which would give away their lands (i.e. Bakassi) having recently been concluded with Germany in London (they left Nigeria separately but assembled in London on 30 May 1913³⁵, just over two months after the conclusion of the Treaty on 11 March). This could explain the last part of the question asked in Parliament on their behalf, which was (with the significant passage underlined) whether "... the Government proposes to transfer the ownership of land in Southern Nigeria from the native communities to the Crown or to dispossess the natives of their land".³⁶ The Minister's reply - that "the Government have never made, and never entertained, and would not entertain such a proposal" - would then have seemed a sufficient reassurance to the delegation, duplicitous though the reply might now be shown to have been. It would have led the Kings and Chiefs not to pursue the matter further, and then about a year after their return to Nigeria in late July 1913, the outbreak of the First World War on 3 August 1914 would have made further concern on their part apparently unnecessary.
27. Whether or not the delegation pursued the matter of the 1913 Treaty in London in addition to the land tenure question, the episode clearly shows that the Kings and Chiefs continued to exist as a separate entity and were the appropriate entity for pursuing matters of importance with the British authorities.

³⁵ The Weekly News, 19 July 1913, p. 7.

³⁶ NC-M, para 9.3(5), p. 179, and Annex NC-M 110.

Question 2

28. Judge Kooijmans' second question was whether the Kings and Chiefs of Old Calabar were "consulted when the Protecting Power in 1885 incorporated their territory in the British Protectorate of the Niger Districts ... which in turn had become part of the Protectorate of Southern Nigeria when the 1913 Anglo-German Treaty was concluded". If the answer was "no", Judge Kooijmans wanted to know why they were not consulted; and if the answer was "yes" he wanted to know what their reaction was and whether it was contained in a formal document.
29. The text of the Proclamation of 5 June 1885 is at Annex 2. It is to be noted that this Proclamation was made not only a year after the conclusion of the 1884 Treaty of Protection, but just a month after the conclusion of the Anglo-German Exchange of Notes of 29 April-7 May 1885 establishing the Rio del Rey as the limit of the two States' spheres of interests.³⁷
30. Again, the possible consultation between the Kings and Chiefs and Great Britain about the Proclamation is a matter about which Nigeria has no definitive documentary evidence either way. So far as Nigeria has been able to discover, the records which would enable the question to be answered simply no longer exist, either in London, or in Calabar or Lagos, or Abuja. It seems likely that it will prove impossible to say with any certainty, supported by documentary evidence, that the Kings and Chiefs were not consulted, and why, or that they were consulted and their answer was such and such.

³⁷ NC-M, paras 7.5-7.7, pp. 130-132, and Annex NC-M 24.

31. His Majesty the Obong has however told Nigeria that the Kings and Chiefs were made fully aware of the Proclamation, and had no difficulties with it. So far as they were concerned it in no way diminished their lands. They were content that the Protection by Her Majesty's Government would continue and would extend as far as the Rio del Rey, thereby including all the territory under their sovereignty. There was therefore no reason for the Kings and Chiefs of Old Calabar to comment unfavourably. Indeed, they seem to have regarded it, at least potentially, as giving them authority over some of the adjacent territories which were subject to other Protectorate treaties with other local rulers. Furthermore, a letter from Mr Lister of the Foreign Office to Acting Consul White on 13 May 1885³⁸ requests that he

“will take steps at once to notify to all the Chiefs to the east of the [recently concluded Anglo-German Treaty] line [in the Rio del Rey] that the Treaties concluded with them for the Protectorate of Great Britain have not been accepted by Her Majesty's Government; ... You will, at the same time, take steps to make it generally known among the Chiefs to the west of the line that the Emperor of Germany would not accept offers on their part to place themselves under the protection of the German flag.”

32. It is thus clear that the Kings and Chiefs were also informed about the Anglo-German Agreement of 1885 which extended the British Protectorate up to the Rio del Rey.
33. To that it should be added that under English law there was no requirement that the rulers of the Protectorate territories had to be consulted before a Proclamation could be made unifying in one Protectorate the various British Protectorates existing in Nigeria at the time. Consequently there was no need in English law for the Proclamation to recite that such consultation had taken place, and accordingly, if it had indeed taken place, it was not the kind of matter which would necessarily have had to be formally reported back to London.

³⁸ FO 881/5161, p. 67 of the print.

Question 3

34. Judge Kooijmans' third question was whether the incorporation of the territory of the Kings and Chiefs of Old Calabar into the British Protectorate of the Niger Districts did "bring to an end the purported international personality of the Kings and Chiefs of Old Calabar as a separate entity", and "If not, when did it cease to exist".
35. Nigeria's preliminary answer to the main body of that question was "no". After further research, Nigeria confirms that preliminary answer.
36. The unification of certain protectorate territories did not result in the instant disappearance of the Kings and Chiefs of Old Calabar. While for British administrative purposes there may have been - indeed, presumably was - convenience in treating all the protectorate territories as one, this is not the same as saying that the protected communities legally lost their distinct legal personalities. Those distinct personalities remained, subject to the rights and obligations set out in their respective treaties of protection. This is further evidenced by the fact that up to 1893 the British representatives continued to make treaties of Protection with various Chiefs within the Niger Coast Protectorate³⁹.
37. The continuation in law of those treaties of protection, and thus of the original parties to them and their successors in title, was a notable feature of the British legislation right up to the time of Independence. As Nigeria has shown in its *Counter-Memorial*⁴⁰, British legislative action in relation to Nigeria always, right through to Independence in 1960, distinguished carefully and consistently between the colony of Lagos, and the Protectorate of Nigeria. The Nigerian Protectorate was dealt with

³⁹ See Hertslet "The Map of Africa by Treaty" 3rd ed. 1967, pp.124-154.

⁴⁰ NC-M, para 6.58,p. 107; para 6.72, pp. 117-118; paras 6.79-6.80, pp. 121-122.

under the terms of the Foreign Jurisdiction Acts⁴¹, which permitted Orders in Council to be made where the British Crown had acquired power and jurisdiction in a foreign territory "by Treaty, Capitulation, Grant, Usage, Sufferance, and other lawful means".

38. In relation to the Nigerian Protectorate this enactment was applied in a succession of Orders in Council: see for example, Article III of the Southern Nigeria Protectorate Order in Council 1911⁴². They included a definition of the term "treaty" for the purposes of the Orders. So far as presently relevant, the term "treaty" was defined so that it

"includes any treaty, convention, agreement or arrangement, made on behalf of [the Crown] with ... any Native tribe, people, chief, or king".⁴³

That definition clearly covers the 1884 Treaty of Protection with the Kings and Chiefs of Old Calabar. Moreover, the Orders in Council typically⁴⁴ included a statement that the rights secured to the protected community by any treaties or agreements could not be derogated from by ordinances, and that

"all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same".

39. This formula continued to be used in the Protectorate Orders in Council right up to independence in 1960. It confirms that the legal existence of the Treaty of Protection 1884, and thus of the parties to it (i.e. including the Kings and Chiefs of Old Calabar), remained "operative and in force" until, and only came to an end with, the attainment of Independence in 1960.

⁴¹ NC-M, paras 6.73-6.80, pp. 118-122.

⁴² Annex NC-M, 44.

⁴³ The full text is in Nigeria's *Counter-Memorial*, para 8.46, p. 165, and at Annexes NC-M 44 and 53.

⁴⁴ Nigeria's *Counter-Memorial*, para 8.47, pp. 165-166, and Annexes NC-M 44, 53.

40. It is not possible to say with clarity and certainty what happened to the international legal personality of the Kings and Chiefs of Old Calabar after 1885. Certainly, the Kings and Chiefs, organised in the manner described above at paragraphs 7-18, continued to function as the traditional rulers of their territories around Calabar, as they do to this day.
41. In the case concerning Rights of Nationals of the United States in Morocco⁴⁵ the Court held that the international personality of Morocco had continued notwithstanding the French Protectorate over Morocco established by the Treaty of Fez 1912. The situation with which the Court was dealing was such that the Court's finding applied to the status of Morocco in 1948. The Treaty of Fez⁴⁶ gave France more extensive powers and authority over and in relation to Morocco than the Treaty of Protection 1884⁴⁷ gave Great Britain over and in respect of the Kings and Chiefs of Old Calabar.
42. In the Western Sahara case⁴⁸, the Court's finding in relation to the international personality of the nomadic tribes whose status was in question related to the year 1884. Those tribes had previously entered into various Protectorate treaties with Spain. Examples of those treaties are given in the published Pleadings in that case. Again, the Court's finding that the tribes had at least sufficient international personality in 1884 to have title to their lands means that they continued to have such personality at least that long after the conclusion of the various treaties of protection.

⁴⁵ ICJ Reports 1952, p.176.

⁴⁶ ICJ Pleadings, *Rights of Nationals of the United States of America in Morocco (France v. USA)*, Vol. I, p. 650.

⁴⁷ The text is at NC-M, Annex 23.

⁴⁸ ICJ Reports 1975, p. 39.

43. There seems no reason to doubt that a similar conclusion is to be reached in relation to the Kings and Chiefs of Old Calabar, indeed their position constitutes an *a fortiori* case. Like much of the constitutional and international development of the British Empire in the late nineteenth century and the first half of the twentieth century, the matter was one of gradual evolution. The emergence to full international independence of Australia, Canada, India and New Zealand, for example, was in each case a slow process, and it is difficult to pinpoint any one event by which that process could be said to have been completed: it was at the time a matter of much debate.
44. So too with Old Calabar. Two processes were at work. First, there was a gradual emergence of a single Nigerian entity. The first time that the term "Nigeria" was used in formal British legal instruments appears to have been in two Orders in Council made in 1899⁴⁹, probably as a conglomerate name invented for administrative purposes. From then on "Nigeria" gradually became the dominant concept, and came for many purposes - but not necessarily all - to constitute the legal person which was the subject of the Protectorate.
45. The second process which was at work, concurrently, was the emergence of the Obongship of Calabar as the central element in the traditional rule of the region, representing the collective authority of all the Kings and Chiefs of the Kingdom. As explained above, the present Obongship was, and still is, the result of a formalised arrangement for identifying the principal among the Kings and Chiefs, of whom the person selected to be Obong was one. The individual Kings and Chiefs, however, continued to exist, and indeed the pattern of local rulers was never ended.

⁴⁹ Nigeria's *Counter-Memorial*, para 6.68(5), pp. 113-114.

46. Whether as the entity "Kings and Chiefs of Old Calabar" (collectively represented by the most senior among them), or as individual Kings and Chiefs, or as the Obongs of Calabar (elected, and representing the Kings and Chiefs of the Kingdom collectively), the authority of those traditional local rulers has been continuous. It still continues to this day as a significant element in local governmental administration.⁵⁰
47. At what stage within this process of evolution the Kings and Chiefs and their successors in title can be said to have ceased to enjoy international personality cannot be precisely determined. They would seem clearly to have ceased to be an international person in 1960, when Nigeria became the recognised independent State in respect of their territories. But for some purposes their international personality continued at least until then. Certainly, as stated above, up to that date the Protecting State, the United Kingdom, regarded their Treaty of Protection of 1884 as still "operative and in force".
48. This Court, and its predecessor, in the cases concerning Nationality Decrees Issued in Tunis and Morocco,⁵¹ Rights of Nationals of the United States in Morocco,⁵² and Western Sahara,⁵³ set certain standards and reached certain conclusions as to international personality of certain emerging entities. By comparison with the particular situations with which the Court was dealing in those cases - the nomadic tribal society in Western Sahara, and the protectorates in the other two cases - there seems no room for doubt that (i) the Kings and Chiefs of Old Calabar had international personality at the time of the conclusion of the 1884 Treaty of Protection -

⁵⁰ NC-M, paras 6.85-6.87, pp. 123-125.

⁵¹ PCIJ Series B, No. 4.

⁵² ICJ Reports 1952, p. 176.

⁵³ ICJ Reports 1975, p. 12.

indeed their conclusion of that Treaty was a manifestation of that international personality, (ii) they did not lose it by virtue of that Treaty, and (iii) that personality continued to survive the various changes which ensued in the following years, until Independence in 1960.

QUESTION OF JUDGE ELARABY

"I have one question addressed to the Respondent: The question is as follows:

In the course of the oral pleadings, reference was made to the legal régime established by the League's Mandate and the United Nations' Trusteeship.

Would it be possible to elaborate further and provide the Court with additional comments on the relevance of the boundaries that existed during that period?"

RESPONSE

1. It appears that this question relates to two matters: first, the territorial limits adopted by the League of Nations and the United Nations for the Mandated and Trust Territory of British Cameroons, and second, the relevance for the present case of those limits in the light of the legal régime established by the Mandate and Trusteeship systems.

TERRITORIAL LIMITS

(A) Background

2. Following the outbreak of the First World War in 1914, British, French and Belgian troops occupied the German territory of Kamerun: this occupation was completed in 1916, and thereafter the administration of occupied Kamerun was undertaken by the United Kingdom and France.
3. Franco-British negotiations took place between Picot (for France) and Strachey (for the United Kingdom) regarding the provisional administration of Kamerun.⁵⁴ During their negotiations it appears that the British and French negotiators had before them

⁵⁴ See NC-M, para 18.30, p. 488.

a map produced by Picot on which he had drawn a line indicating a division of territory south of Yola (a location somewhat over half way along the Nigeria-Kamerun boundary between the sea and Lake Chad). During discussion Strachey drew on it a rough line in blue pencil amending Picot's original line. The two Governments, by an Exchange of Notes of 3-4 March 1916, accepted the lines drawn on the map signed by the two negotiators. However, the original of the map on which this line was drawn has not been found, and its nature can only be inferred from various papers which are still available. Since in any event the actual course of the line is not known, and, wherever it ran, it was superseded in 1919 by a further Anglo-French agreement, the Picot-Strachey line had little practical relevance for the boundary alignment after 1919.

4. With the end of the War in 1918, Germany relinquished its title to the former German territory of the Kamerun by Articles 118 and 119 of the Treaty of Versailles 1919.⁵⁵ Those Articles read as follows:

PART IV

GERMAN RIGHTS AND INTERESTS OUTSIDE GERMANY

Article 118

In territory outside her European frontiers as fixed by the present Treaty, Germany renounces all rights, titles and privileges whatever in or over territory which belonged to her or to her allies, and all rights, titles and privileges whatever their origin which she held as against the Allied and Associated Powers.

Germany hereby undertakes to recognize and to conform to the measures which may be taken now or in the future by the Principal Allied and Associated Powers, in agreement where necessary with third Powers, in order to carry the above stipulation into effect.

⁵⁵ NC-M, Vol. V, Annex NC-M 49, p. 476.

In particular Germany declares her acceptance of the following Articles relating to certain special subjects.

SECTION I
GERMAN COLONIES

Article 119

Germany renounces in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions.

5. These Articles did not identify the German possession of Kamerun as one of the German oversea possessions covered by these Articles, but it is common ground between the Parties that that was so. Since Kamerun was not in terms identified in these Articles of the Treaty of Versailles, there was no reference in that Treaty to its boundaries.
6. In practice it was for the Principal Allied and Associated Powers to agree among themselves what was to be done with German oversea possessions. In the meantime they provisionally administered those possessions. As part of the provisional arrangements, the former German Kamerun continued to be administered under the authority of the British and French Governments.
7. On 10 July 1919 the United Kingdom and France signed a "Franco-British Declaration".⁵⁶ In this they recorded that they had

"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."

⁵⁶ NC-M, paras 18.31-18.33, pages 488-490; Annex NC-M 50.

8. The annex to the Declaration was entitled "Description of the Franco-British Frontier, marked on the Moisel's Map of the Cameroons, scale 1:300,000". It described the boundary in Article 1, made provision for demarcation in Article 2, and attached a map of the Cameroons, scale 1:2,000,000, "to illustrate the description of the above frontier". This document is generally referred to as the Milner-Simon Declaration, those being the names of the British and French Ministers who signed it.
9. The Milner-Simon Declaration described the boundary from Lake Chad (at the mouth of the Ebedji) to the Atlantic (to seaward of the junction of the Matumal and Victoria Creeks, in effect at the mouth of the Cameroon River). This boundary thus formed the eastern boundary of the British area of the Cameroons, and the western boundary of the French area of the Cameroons. It is illustrated on the sketch map at Annex 3.

(B) The Mandate

10. Under the Treaty of Versailles the Principal Allied and Associated Powers had acquired all Germany's rights over, inter alia, the Cameroons. As recorded in the Preamble to the Mandate eventually conferred upon Great Britain,⁵⁷ those Powers agreed that the British and French Governments should make a joint recommendation to the League of Nations as to the future of the Cameroons. The two Governments made a joint recommendation to the Council of the League of Nations that mandates should be conferred upon them covering (for Great Britain) "that part of the Cameroons lying to the west of the line agreed upon in the [Milner-Simon] Declaration", and (for France⁵⁸) "that part of the Cameroons lying to the east of the line agreed upon in the [Milner-Simon] Declaration".

⁵⁷

Annex NC-M 51.

⁵⁸

See Mandate for French Cameroons, preamble: Annex NC-M 52.

11. Accordingly, Article 1 of the Mandate for the British Cameroons described the territorial scope of the Mandate in the following terms:

"The territory for which a Mandate is conferred upon His Britannic Majesty comprises that part of the Cameroons which lies to the west of the line laid down in the Declaration signed on the 10th July 1919, of which a copy is annexed hereto."

The Declaration referred to was the Milner-Simon Declaration. The Article went on to allow that line to be "slightly modified" in certain circumstances, and provided also that "The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said Declaration" - a reference to the arrangements set out in Article 3 of the Milner-Simon Declaration.

12. Article 1 of the Mandate for the French Cameroons described the territorial limits of the Mandate in equivalent terms, although of course referring to that part of the Cameroons lying to the east of the Milner-Simon line.

13. It is to be noted that Article 1 of the British Mandate only set out, by its reference to the Milner-Simon Declaration, the eastern boundary of the British Cameroons. The northern, southern and western boundaries were left as covered simply by the reference to "that part of the Cameroons": i.e. if a territory was part of the Cameroons, and if it lay to the west of the line set out in the Milner-Simon Declaration, then it was covered by the Mandate and was part of the British Cameroons.

14. Consequently, this meant that internationally

- the eastern boundary of the British Cameroons was that described in the Milner-Simon Declaration,

- the northern boundary was the boundary of the former Kamerun facing Lake Chad,
- the southern boundary was the coast line (together with its territorial sea) of the former Kamerun facing the Gulf of Guinea, and
- the western boundary was the boundary between the Nigeria Protectorate and the former Kamerun, as described almost entirely in various Anglo-German treaties.

These boundaries are illustrated in the sketch map at Annex 3.

15. It is to be noted that this description of the boundary does not result in a completely certain territorial boundary for the British Cameroons. Thus, for example, if any of the relevant instruments contained a defective delimitation, or a delimitation which is ambiguous or otherwise unclear, then the boundary will itself be defective or unclear. Again, if any of the relevant instruments is in some way without legal effect, then the boundary will to that extent not be determined by that instrument.
16. In short, the language of the territorial definition in Article 1 of the Mandate for the British Cameroons (and its mirror image in the Mandate for the French Cameroons) begs the question whether any particular piece of territory was or was not "part of the Cameroons". This question is of particular relevance to the position of the Bakassi peninsula, for the reasons fully set out in Nigeria's written pleadings and in Nigeria's oral argument, and bearing in mind the general limits on the powers of the Administering Authority (as to which see below).
17. No formal change was made to the terms of Article 1 of the Mandate for either the British or French Cameroons during the continuance of the Mandate.

18. However, during the 1920s various relatively minor practical problems arose regarding the application of the Milner-Simon Declaration. Various joint Anglo-French teams inspected the boundary areas and made reports. The Governor of Nigeria (Sir Graeme Thomson) and the Governor of the French Cameroons (M. Paul Marchand) put in hand arrangements for further specifying the boundary between the British and French Cameroons. The result of their work was a "Declaration .. defining the Boundary between British and French Cameroons",⁵⁹ signed by them, but not dated (although it would appear to have been signed in 1929).
19. This Declaration is referred to as the Thomson-Marchand Declaration. It describes the whole Anglo-French boundary, from Lake Chad to the sea at, in effect, the mouth of the Cameroon River, by reference to successive lines described in 188 short paragraphs. The Declaration was approved by the two Governments in an Exchange of Notes of 9 January 1931⁶⁰.
20. In doing so, the Governments noted that (as set out in paragraph 2 of the British Note) "this declaration is ... not the product of a boundary commission constituted for the purposes of carrying out the provisions of Article 1 of the Mandate, but only the result of a preliminary survey conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary commission". Despite its stated "preliminary" character, the two Governments agreed that "the Declaration does in substance define the frontier", and they agreed that the "actual delimitation" could now be entrusted to the boundary commission envisaged in Article 1 of the Mandate. In fact, only a limited stretch of boundary was demarcated between December 1937 and May 1939, and that stretch

⁵⁹ Annex NC-M 54, at p. 4.

⁶⁰ Annex NC-M 54.

is now wholly within Cameroon and thus not relevant to the present boundary between Nigeria and Cameroon.

21. Perhaps because of its "preliminary" character, while the fact of the Thomson-Marchand Declaration was notified to the League of Nations (Annex 4), its provisions do not appear to have been communicated by the two Governments to the League. Thus during the period of the Mandate the Thomson-Marchand Declaration does not seem to have formally formed part of the boundary arrangements with which the League was concerned.
22. The League was, however, keenly interested in developments affecting the territorial extent of the Mandates for British and French Cameroons, as for all Mandated territories. The Mandatory Governments did not have sovereignty over the mandated territories, and therefore did not have any unilateral right to dispose of any territory subject to the Mandate, or to acquire additional territory for the Mandate. Any territorial changes needed the approval of the League of Nations. It was thus necessary for a Mandatory Government to report any changes or prospective changes to the League, not necessarily with total specificity but at least with sufficient clarity to enable the League to control what was happening and, if necessary, to make further enquiries. An example is the British Government's 1934 Report to the League on the British Cameroons, which reported a frontier adjustment, almost certainly in the region of Sapeo⁶¹.
23. In 1946, after the Second World War had ended and in preparation for the forthcoming arrangements for United Nations Trusteeship, the United Kingdom made new arrangements for the administration and government of the British Cameroons. These

⁶¹ Annex NC-M 265; see also CR 2002/10, p.55, para 57 (Watts)

involved dividing the mandated area into a northern part and a southern part. The dividing line between the northern and southern parts of the British mandated area of Cameroons was set out in the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946⁶². This administrative change was solely concerned with the internal administrative line of division, and did not at the time affect the external boundaries of the mandated area, in particular the boundary with French Cameroons, which continued as before.

(C) Trusteeship Agreement

24. The Mandates system came to an end after the end of the Second World War, and was replaced by the Trusteeship system under the United Nations Charter. The Trusteeship Agreement for the British Cameroons was approved by the General Assembly on 13 December 1946, and came into force on the same day.⁶³ It defined the territory to which it applied in terms equivalent to those adopted in Article 1 of the Mandate. Article 1 of the Trusteeship Agreement was in the following terms:

"The Territory to which this Agreement applies comprises that part of the Cameroons lying to the west of the boundary defined by the Franco-British Declaration of 10 July 1919, and more exactly defined in the Declaration made by the Governor of the Colony and Protectorate of Nigeria and the Governor of the Cameroons under French mandate which was confirmed by the Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government of 9 January 1931. This line may, however, be slightly modified by mutual agreement between His Majesty's Government in the United Kingdom and the Government of the French Republic where an examination of the localities shows that it is desirable in the interests of the inhabitants."

25. It should be noted that, since the eastern boundary of the British Trust Territory should be identical with the western boundary of the French Trust Territory, there is a discrepancy between Article 1 of each of the Trusteeship Agreements in that,

⁶² Annex NC-M 55.

⁶³ Annex NC-M 56.

somewhat curiously, the French Agreement does not contain any reference to the Thomson-Marchand Declaration.⁶⁴ Strictly speaking, therefore, the boundary inherited by Cameroon on independence was that described in the Milner-Simon Declaration only, and not the boundary as set out in greater detail in the Thomson-Marchand Declaration. Nigeria does not, however, seek to attach any substantive significance to this technical discrepancy: Nigeria clearly inherited a boundary determined by the Thomson-Marchand Declaration, and Nigeria is willing to accept its provisions as delimiting the boundary (subject, of course, to the specific locations which Nigeria has drawn to the Court's attention).

26. No formal agreement making any "slight modification" of the kind referred to in the final sentence of Article 1 of the Trusteeship Agreement was ever concluded: the territorial limits of the Trust Territory therefore formally remained throughout the Trusteeship period as prescribed in Article 1.

27. Those territorial limits followed, in effect, the pattern of the limits prescribed by Article 1 of the Mandate, with the addition, for the British Cameroons, of the reference to the 'more exact definition' in the Thomson-Marchand Declaration. Accordingly, the observations made above in relation to the Mandate continued to be relevant - Article 1, by its reference to the Milner-Simon Declaration and the Thomson-Marchand Declaration, only defined the eastern boundary of the British Cameroons. The northern, southern and western boundaries were left as covered simply by the reference to the phrase "that part of the Cameroons": i.e. only if a territory was part of the Cameroons, and if it lay to the west of the line set out in the Milner-Simon and Thomson-Marchand Declarations, was it covered by the Trusteeship Agreement. Thus, internationally, the northern boundary continued to be the boundary of the

⁶⁴

See NC-M paras 19.68-19.70, pages 542-543.

former Kamerun facing Lake Chad, the southern boundary continued to be the coast line (together with its territorial sea) of the former Kamerun facing the Gulf of Guinea, and the western boundary was the boundary between the Nigeria Protectorate and the former Kamerun, as described almost entirely in various Anglo-German treaties.

28. In short, the language of the territorial definition in Article 1 of the Trusteeship Agreement continued to beg the question whether any particular piece of territory was or was not "part of the Cameroons".
29. As explained in relation to Article 1 of the Mandate, this question is of particular relevance to the position of the Bakassi peninsula, bearing in mind also not only the general limits on the powers of the Administering Authority (as to which see below) but also in particular its obligations under Article 8 of the Trusteeship Agreement.

THE RELEVANCE OF THE MANDATE AND TRUSTEESHIP BOUNDARIES

30. It is generally accepted that Mandatory States and Administering Authorities under Trusteeships Agreements (together here referred to as 'Administering States') did not have sovereignty over the mandated or trust territories under their administration. The Court held, in the case concerning the International Status of South West Africa, that conferment of a mandate upon a mandatory State did not involve any cession or transfer of territory to it, but that, rather, the territory had its own international status⁶⁵. The notion that the mandatory State could in some way be regarded as having annexed the mandated territory was clearly rejected in the Namibia (South West Africa) Legal Consequences Case⁶⁶.
31. They had specific rights and powers under the terms of the Mandate or Trusteeship Agreement in question, and in relation to any specific matter the first requirement is to look at the terms of those instruments. Although those terms differed from instrument to instrument, the one consistent provision in all of them was that the Administering States were legally accountable for their discharge and fulfilment of the mandate and trusteeship agreement. They exercised their rights and powers subject to the authority of the international community's supervisory bodies - the Council of the League of Nations, advised by the Permanent Mandates Commission, and the Trusteeship Council of the United Nations. Those bodies exercised their supervisory roles primarily on the basis of annual reports submitted by the Administering States.
32. The specific point which Nigeria made in the oral proceedings, and to which Judge Elaraby was presumably referring, was that, as noted above, the Administering States did not have sovereignty over the territories they were administering. This

⁶⁵ ICJ Rep. 1950 at p.132.

⁶⁶ ICJ Rep. 1971 at pp. 28, 30, 43.

carries with it the consequence that, in particular, they did not have the power unilaterally to alter their boundaries either so as to increase the limits of the territories or so as to diminish them⁶⁷. Any such variation in the territorial limits of the mandated or trust territory required the approval of the relevant supervisory organs of the League of Nations and United Nations⁶⁸ - that is, in the former case, the Council of the League acting on the advice of the Permanent Mandates Commission, and in the latter case, the Trusteeship Council of the United Nations.

33. There is no record - and certainly Cameroon has not produced any - of any such approval having been given in relation to the Bakassi peninsula. It follows that the boundaries of the Mandated and later Trust territory of British Cameroons were during the Mandate and Trusteeship periods, and at their end, precisely what they were at the beginning, i.e. in 1922, since at no time subsequently did the British Government have any right or power unilaterally to alter those boundaries. Accordingly, the Bakassi peninsula had the same territorial status in 1960 as it had in 1922.
34. Moreover, as the continuing Protecting State in respect of Nigeria, Great Britain remained bound by the Treaty of Protection of 1884, and so continued not to have any right or power to alienate Bakassi so as to transfer it to the Mandated or Trust territory of the British Cameroons.
35. For the same reasoning, Great Britain had no power as the transitional administering authority from 1918 to 1922, or as the belligerent occupying power during the First World War, to make any unilateral changes in the boundary of Kamerun, nor could Great Britain as the continuing Protecting State have lawfully transferred Bakassi to

⁶⁷ Counsel for Cameroon stated: "It was axiomatic in this structure that the administering power did not have the power unilaterally to dispose of such territory" (CR 2002/4, p.19, para 4 (Ntamarck)).

⁶⁸ Cameroon agrees: CR 2002/4, p.19, paras 6-7 (Ntamarck).

Kamerun during that transitional period. There is no evidence that Great Britain ever purported to make any such change or transfer during that period. Accordingly the territorial status of Bakassi was the same in 1922, at the beginning of the Mandate, as it had been in 1914.

36. The only possible change in its territorial status before then would have been that which resulted from the Anglo-German Treaty of 11 March 1913 had that treaty been effective to change the Nigeria-Kamerun boundary to the Akwayafe (now, Akpa Yafe). For the reasons which Nigeria has set out at length, the relevant provisions (Articles XVIII-XXII) were not legally effective to achieve that result, given their violation of the fundamental and universally accepted rule, nemo dat quod non habet.



ANNEX 1

1 September 1891

**Report by Major Macdonald to the
Marquis of Salisbury & enclosure**



Major MacDonald to the Marquis of Salisbury.—(Received October 5.)

(No. 2.)

My Lord,

Bonny, September 1, 1891.

I HAVE the honour to report that on the 27th August I returned from a tour of visits round the various rivers in the Protectorate.

The tour commenced on the 30th July, and was undertaken so that I could install—in a suitable manner—the various Vice-Consuls in their several districts, and for the purpose of calling together the native Chiefs, most of whom are already known to me, explaining to them the Tariff of customs duties, and obtaining their consent for the imposition of the same.

My first meeting was held at Bonny on the 30th July. There were present at the meeting all the more important Chiefs of Bonny, as well as King Amachree, and the Chiefs of New Calabar.

I explained fully to them the reasons for the new order of Administration which I was about to inaugurate, reminded them of my previous visit to them in 1889, on which occasion they had desired that their district might be administered as a Crown Colony, and shewed them the very great difficulties which lay in the way of an immediate realization of such a form of Government. I then informed them that Her Majesty's Government had decided to appoint a Consular officer in each River district, who would be resident in the district and who would be the Representative of Her Majesty the Queen; to this officer they could always appeal in any matter, and to him they could always come for advice. He would be responsible to Her Majesty's Government, through the Consul-General at Old Calabar, that law and order should be maintained, and that every man should be allowed to practise his trade or calling in peace; and that, to meet the extra expenses which this form of government would entail, it was proposed to impose duties on certain articles of import. I then went carefully through each item of the Customs Tariff, and explained it to them.

At the conclusion of the meeting I introduced General Hammill to them as their future Vice-Consul, and requested them to give me a statement in writing to the effect that they thoroughly understood the duties, that the said duties were imposed with their consent, and that they would abide by them.

A discussion followed which lasted a considerable time; they finally said that they would be grateful for a few days to consider the matter. I said I would give them three days, and that, on my return, I should like to have my answer in writing. I pointed out to them that if there was anything they did not understand, or if they did not consent to the imposition of the duties, they were to let me know.

The meeting then terminated. A deputation of the New Calabar Chiefs waited upon me afterwards, and stated they had quite understood the duties and saw that it was for the good of the country that they should be imposed; but they hoped that, as they paid equal duties with the Bonny men, they would have a Consular officer for themselves.

I told them in reply that I would consider their request, but that, at present, they must be content with periodical visits from the Vice-Consul at Bonny. I also informed them that, on my return from Old Calabar, I should come and pay them a visit, and we would then talk the matter over.

On the following day I proceeded in Her Majesty's ship "Swallow," accompanied by Her Majesty's ship "Racer," to Old Calabar, having sent messages in advance summoning a meeting of the Old Calabar Chiefs for the afternoon of Saturday the 1st August. Being delayed by bad weather, I was unable to hold the meeting until Monday 3rd August.

I landed at 10 A.M. under a salute of eleven guns from Her Majesty's ship "Swallow," and, accompanied by several of the officers from Her Majesty's ships, received King Duke, and the other, so-called Kings, and Chiefs of Old Calabar, in Darbar.

No Chief or Headman of any importance was absent on this occasion. I was listened to most attentively, and, at the conclusion of my address to the Chiefs, they requested leave to withdraw to consult among themselves. This I consented to, and, in half-an-hour, they returned, and said they would gladly sign a paper such as I had asked them to. They wished, however, to speak to me on one or two subjects which they hoped I would represent to Her Majesty's Government, notably the



behaviour of the late Consul and his police. I said that this had nothing to do with the present question, but that it was my duty to inquire into, and, if I thought it necessary, to take action regarding any complaint they brought before me, and that I should most certainly do so at a later date. They then signed the document herewith inclosed, and the meeting terminated.

The nature of their complaint forms the subject of another despatch.

On the following day, the 4th August, I proceeded in Her Majesty's ship "Racer" to Bonny, Her Majesty's ship "Swallow" having gone to Fernando Po to coal.

On the 4th August we anchored at Bonny, and on the 6th I proceeded to Okrika, a large and important trading village situated 22 miles from the mouth of the river. The Okrika people have a very bad reputation in the Bonny district; they are professing cannibals, and in a large temple, ("Ju-ju" house) in the centre of the village are kept the skulls and bones of the victims of their last cannibal orgie, which took place in November 1888, and for which they were fined by Consul Hewett. Twenty-five puncheons (equal to 200L.) of this fine still remains unpaid, and it was to make inquiries regarding this—also because the Chiefs had not attended my meeting in Bonny—although they had been duly summoned, that I went to pay them a visit. On my way to the Mission House we passed the "Ju-ju" house referred to, where the skulls, bones, &c., are displayed to the view of anybody passing.

I was unable to see the King, and, as a heavy storm was approaching, I returned, together with the two naval officers who had accompanied me to the steam-cutter. As we were about to embark some 400 villagers turned out and menaced us, but attempted no violence; the expressions used by the natives were of a most insulting description.

There is a Mission station at this place. On my return to Bonny on the 27th August I received the two letters, copies of which are herein inclosed.

I mention this incident to show how much yet remains to be done towards the civilizing of the Protectorate. I have summoned a meeting of the Okrika Chiefs for Saturday next, the 5th September, when I propose pointing out to them what a standing shame and disgrace the presence of their cannibal "Ju-ju" house is to them and their people, and that if they do not, of their own accord, destroy the house and give up cannibalism, I shall shortly take severe measures to compel them to do so.

On the following day, the 7th August, I held my second meeting with the Bonny Chiefs, on which occasion they presented me with a letter, copy of which I herewith forward to your Lordship. The market question, which forms the subject of the last paragraph of their letter, I have dealt with in a separate despatch. At my desire they also signed a paper stating that they understood the duties, consented to their imposition, and would abide by them. I have the honour to inclose this document in original.

Her Majesty's ship "Swallow" having returned from Fernando Po, I proceeded in her to Bugama, the principal town of the New Calabar district, and on the 9th August held a meeting of the King and Chiefs where, after considerable discussion, they signed the document which I have the honour to inclose herein. They again repeated their request to have a Consular officer specially appointed to themselves.

The following morning I proceeded in Her Majesty's ship "Swallow," and anchored in the Opobo River on the 12th August, having previously warned the Chiefs of my arrival. A meeting was held the same afternoon. The Chiefs listened to my remarks explaining the new administration in silence, and signed the document, which I have the honour to inclose herewith, without any remark. Through their Head Chief Ojolo they then asked me whether I had received any answer from your Lordship respecting their request that the body of their late Chief Ja Ja might be sent to them. I then read your Lordship's telegram of the 11th August, stating that the Spanish Law forbade exhumation except after a lapse of two years. This intelligence was received with something akin to consternation, and after consulting amongst themselves, they implored me to approach your Lordship once more on the subject, stating as their reasons that, until their King was buried in their own country, they would always be held up as objects of contempt amongst the neighbouring tribes, and that this would lead to continual quarrels, and even petty wars, up the markets, and would be very detrimental to trade. The European traders had informed me that trade was at a complete standstill in the district. Under the circumstances, I informed them that I would once more telegraph to your Lordship, but that I could hold out but faint hopes of their request being acceded to, for, although I was sure that Her Majesty's Government were willing to help them in the matter, yet the law of Spain made negotiations on the subject exceedingly difficult; but that if by any chance their request was acceded to, they must look upon it as a mark of especial favour on the part of Her



Majesty's Government, and one of which they must show their appreciation by assisting me to open up civilization and trade in the interior.

In connection with the above, I may add that the day after my return to Bonny I received your Lordship's telegram of the 28th August, informing me that the Spanish Government had authorized, under certain restrictions, the exhumation of Ja Ja's body. The same day I proceeded to Opobo, and read the above-mentioned telegram to the assembled Chiefs. The greatest joy prevailed, and the Chiefs begged that I would thank Her Majesty's Government for this mark of favour; they also assured me that they would never forget what I had done for them, and would assist me, to the best of their ability, in any undertaking I wished to enter into.

I left Opobo in Her Majesty's ship "Swallow" on the 13th August, and anchored in the Brass River on the 15th. I had communicated with Brass by telegram from Bonny, and had summoned a meeting for the afternoon of the 15th.

On arrival at Brass I was informed that the Chiefs had sent a message to the effect that they had a meeting of their own, and could not come to see me till the next day, owing to the distance they had to travel. On the following day the Chiefs arrived, and, at my request, Captain Finnis, of Her Majesty's ship "Swallow," landed a party of sixty seamen and marines as a guard of honour for myself.

This guard had a marked effect upon the behaviour of the Chiefs, who were inclined at first to be unruly and somewhat truculent in their manner. Before commencing the meeting, I informed the Chiefs that, when I sent them a message, implicit obedience was what I expected, and what I, as Representative of Her Majesty, would have.

I then proceeded to address them upon the subject of the new administration. At the conclusion of my remarks they stated that they had understood everything I had said, and that now they wished to speak to me on the subject of their markets. I said that I would listen to nothing until they had given me their opinion regarding the subject on which I had spoken. They then requested leave to retire, and have a meeting amongst themselves to consider the question, promising that, on the following morning, they would let me have my answer. To this I consented. They then retired to the neighbouring village of Twon, and held a meeting, which lasted late into the night—at which meeting it was unanimously decided that they would refuse to sign any paper respecting duties, &c., until I had given a written promise to get back their markets for them from the Niger Company.

Having been privately informed of this decision, I opened the meeting on the following morning by informing the Chiefs that I had been sent by Her Majesty's Government to look after their interests, as well as those of the White man, and that, therefore, I was there as their representative and friend.

With regard to the paper I had asked them to sign, I wished them to exercise their own entire free-will in the matter, and that, therefore, it was not a question of their signing as a favour to me for which another favour would be bestowed in return. If, however, they refused to sign, I must request them to sign another paper stating that they did not consent to the imposition of duties, and giving their reasons for the same, which paper I should forward to Her Majesty's Government. After considerable consultation amongst themselves they informed me that I was their father, and their mother, and that, for the future, they would do everything I told them, that they deeply regretted not having come to the meeting on the Saturday, but it was not altogether their fault. They said they would gladly sign a paper consenting to the imposition of duties, for they saw that the Government of the country could not be carried on without a revenue.

Several local matters were then entered upon, which I handed over to Captain Macdonald, Vice-Consul of the district, whom I had duly installed at the meeting of the previous day.

The question of oil-produce markets was then introduced. From what I could gather at the meeting, and from my previous knowledge of the subject, I am of opinion that, unless some arrangement is arrived at with the Niger Company, the trade of Brass will shortly cease to exist, as the Niger Company have made Treaties with all the oil-producing villages at the back of the Brass River, and it is impossible for the native traders to earn even a livelihood with the heavy export duties on palm oil and kernels imposed by the Company.

On this subject I shall have the honour to report to your Lordship at a later date. I forward herewith the statement made respecting duties by the Chiefs of the Brass River.

On the same day I proceeded in Her Majesty's ship "Swallow" to Warri, by way



of the Forcados River. At the mouth of this river we were joined by Her Majesty's ship "Racer," and, piloted by steam-ship "Whydah," a vessel I have chartered from the African Steam-ship Company, we proceeded to Warri, and anchored there at midday on the 19th August.

The Chiefs of Warri belong to the Jekri tribe, and are under Nana, the great middleman Chief of Benin. They are, however, very anxious to become independent, and as the trade here promises to be one of the most flourishing in the Protectorate, and as Nana is already sufficiently powerful, and threatens to become a second Ja-Ja, I thought it politic to establish a separate Vice-Consulate at this place, and to conclude with the Chiefs of Warri a separate protection Treaty. My meeting with the Warri Chiefs took place on the 19th August, and passed off satisfactorily in every respect.

I forward herewith a copy of the Treaty made with these Chiefs.

A statement that they understood, and consented to the imposition of duties, was made to Captain Synge, Her Britannic Majesty's Deputy Commissioner and Vice-Consul, in my presence.

On the 20th August I proceeded in steam-ship "Whydah," accompanied by Her Majesty's ships "Swallow" and "Racer," through the creeks to Benin, at which place we anchored on the evening of the 21st. The meeting here was the largest and most important of any I had held. Nana came in a war-canoë, paddled by upwards of 100 slaves, with four or five similar canoes in attendance, and with a personal escort of twenty men armed with Winchester repeating-rifles. All the other Chiefs of any note, escorted by large retinues, were also present.

On this occasion, having two of Her Majesty's ships with me, I requested Captain Finnis to land as large a guard of honour as possible, and 120 seamen and marines paraded on shore. This display has, so I have been informed by all the European traders, had a most excellent effect, such a large number of White men never having been seen in the river before.

The Chiefs listened to my remarks with great attention, and a lengthy discussion followed, during which they showed that they thoroughly understood the matters in question. Nana had in his possession a copy of the Proclamation containing the schedule of duties, which he informed me he had carefully studied so that his European friends should not charge more for their goods than was laid down in the schedule. All the Chiefs, headed by Nana, and followed by his rival (Numa), signed the Declaration, which I have herewith the honour to inclose. Nana then stood up and said that he wished I would bring to the notice of Her Majesty's Government the treatment he had received from Consul Annesley. He (Nana) spoke in a very impassioned manner for several minutes. I told him that his letter of complaint had been received at the Foreign Office, and that it had been sent to Consul Annesley for any remarks he might have to make upon it, and that, as soon as I heard, I would communicate with him through the Vice-Consul whom Her Majesty's Government had appointed for their district. The meeting then terminated, Nana and the Chiefs begging me to convey their thanks to Her Majesty's Government for having appointed a resident Consular officer to their district, to whom they might apply in any difficulty.

I held a separate meeting of the European traders afterwards, and it was evident to me that in this River I would have to combat another Ja Ja difficulty. Some of the traders represented Nana as everything that is honest and upright; others painted him in colours exactly the opposite. One thing is certain, that he is a man possessed of great power, and wealth, astute, energetic, and intelligent.

I informed the European traders that I was prepared to maintain order at the markets as soon as I had a revenue wherewith to defray the necessary expense of doing so (they had complained that they could not trade at the markets because they could not get fair play owing to Nana's great power and influence), but I pointed out that I should not be able to obtain the amount of revenue I required, nor they the amount of protection, for some months to come, as their storehouses were stocked with dutiable articles which had been expressly imported to escape the duty.

I may here add that the African Association have been particularly zealous in this particular.

I told the traders that, with regard to the question of their proceeding to the markets to obtain produce direct, or their employing the middlemen to do so, rested with themselves; all I could promise them was that those who proceeded to the markets should obtain protection there, as soon as I had sufficient revenue to insure the same.

From all I heard, I am of opinion that the trade of Benin is capable of immense development.

I left Benin in Her Majesty's ship "Swallow" on the 23rd August, and returned



to Bonny on the 27th, having visited all the rivers in my district where European factories are established with the exception of the Kwo-Ibo, a small stream where, however, there are some important plantations. These I shall visit from Old Calabar.

At the conclusion of each meeting in a district I introduced to the European traders and to the native Chiefs the Consular officer who had been appointed by Her Majesty to act in the capacity of Deputy Commissioner and Vice-Consul for that district, and I pointed out to the native Chiefs that the officer in question would be resident in the district, and had been specially appointed by Her Majesty to represent her there, and that it was his duty to make himself thoroughly acquainted with this district and the wants and wishes of Her Majesty's subjects, both white and coloured, and to carry out the provisions of the Protection Treaties which the Chiefs had made from time to time with Her Majesty; he was specially charged to encourage and foster lawful trade, though he himself was independent of it, and in no sense a trader; and, generally, to uphold justice, peace, and civilization throughout the Protectorate.

The following are the names of the Vice-Consuls in the Protectorate, with the districts they are in charge of:—

Major-General D. Hammill, Bonny District.
 Captain H. L. Gallwey, Benin District.
 Captain F. M. Synge, Forcados District (Warri).
 Captain D. C. Macdonald, Brass District.
 Mr. W. Cairns Armstrong, Opobo District.
 Mr. T. H. Wall, Old Calabar District.

I have, &c.
 (Signed) CLAUDE M. MACDONALD.

Inclosure 1 in No. 61.

Declaration signed at Old Calabar River, August 3, 1891.

WE, the Undersigned, Kings, Chiefs, and Headmen of the Old Calabar and district, hereby declare that we thoroughly understand the customs duties which have been read to us by Major Claude MacDonald, Her Majesty's Consul-General and Commissioner.

We also declare that we consent to the imposition of the above-mentioned duties, and will abide by them.

(Signed) KING DUKE IX.
 (And 26 others.)

I certify that I was present at the meeting of the Old Calabar Chiefs held by Major C. M. MacDonald on the 3rd August, 1891; heard the customs duties, &c., explained by him to the said Chiefs, and witnessed their signatures.

(Signed) JAMES F. ROBERTS,
Deputy Commissioner and Vice-Consul.

I hereby declare that I translated the foregoing to the King and Chiefs of the Old Calabar district, and they thoroughly understood its meaning.

(Signed) UDÖ AKPAN BASSY,
Interpreter to the Consular Court.

Inclosure 2 in No. 61.

The Christians of Okrika to Major MacDonald.

Okrika, August 14, 1891.

WE, the Christians and Church adherents of Okrika, do humbly beg to approach you with a few lines, hoping you may accept the same most kindly and grant us a favourable answer.

We desire most respectfully to express to you, the Consul-General, the Vice-Consul, and the officers of Her Majesty's gun-boat, our regret for the rude conduct shown to you by the ignorant portion of our people on your last visit.

You will please feel sure that not one of us Christians or Church adherents could have been guilty of such unseemly behaviour, for we have been taught otherwise.



ANNEX 2

5 June 1885

**Proclamation of the British Protectorate of the Niger Districts
- published in The London Gazette.**





The London Gazette.

Published by Authority.

FRIDAY, JUNE 5, 1885.



*Lord Chamberlain's Office, St. James's Palace,
March 24, 1885.*

NOTICE is hereby given, that Her Majesty's Birthday will be kept on Saturday, the 6th of June next.

*Lord Chamberlain's Office, St. James's Palace,
May 19, 1885.*

NOTICE is hereby given, that His Royal Highness The Prince of Wales will, by command of The Queen, hold a Levee at St. James's Palace, on behalf of Her Majesty, on Tuesday, the 9th of June next, at two o'clock.

It is The Queen's pleasure that Presentations to His Royal Highness at the Levee shall be considered as equivalent to Presentations to Her Majesty.

REGULATIONS

TO BE OBSERVED AT THE QUEEN'S LEVEE TO BE HELD BY HIS ROYAL HIGHNESS THE PRINCE OF WALES, ON BEHALF OF HER MAJESTY, AT ST. JAMES'S PALACE.

By Her Majesty's Command,

The Noblemen and Gentlemen who propose to attend Her Majesty's Levee, at St. James's Palace, are requested to bring with them two large cards, with their names *clearly written* thereon, one to be left with The Queen's Page in attendance in the Corridor, and the other to be delivered to the Lord Chamberlain, who will announce the name to His Royal Highness.

PRESENTATIONS.

Any Nobleman or Gentleman who proposes to be presented, must leave at the Lord Chamberlain's Office, St. James's Palace, *before twelve o'clock*, two clear days before the Levee, a card with his name written thereon, and with the name of the Nobleman or Gentleman by whom he is to be presented. In order to carry out the existing regulations that no presentation can be made at a Levee excepting by a person actually attending that Levee, it is also necessary that an intimation from the Nobleman or Gentleman who is to make the presentation, of his intention to be present, should accompany the presentation card above referred to, which will be submitted to The Queen for Her Majesty's approbation. It is Her Majesty's command that no presentations shall be made at Levees, except in accordance with the above regulations.

It is particularly requested, that in every case

cards to be delivered to the Lord Chamberlain, in order that there may be no difficulty in announcing them to His Royal Highness.

The State Apartments will be open for the reception of Company coming to Court at half-past one o'clock.

KENMARE,

Lord Chamberlain.

(PORT OF BRISTOL.—APPROVAL OF LANDING-PLACES FOR FOREIGN ANIMALS.)

AT the Council Chamber, Whitehall, the 3rd day of June, 1885.

By Her Majesty's Most Honourable Privy Council.

THE Lords and others of Her Majesty's Most Honourable Privy Council, by virtue and in exercise of the powers in them vested under The Contagious Diseases (Animals) Acts, 1878 and 1884, and of every other power enabling them in this behalf, do hereby approve of the following parts of the Port of Bristol as Landing-Places for foreign animals not subject to slaughter or quarantine:

(1.) *Bristol Docks Landing-Place.*

All that space and premises in the parish of Redminster, in the city and county of Bristol, situate on the north side of the Harbour Railway Wharf commencing at a point at the water edge of the south side of the Floating Harbour twenty-five yards on thereabouts east of the landing-place of the Gas Works Ferry, thence in an easterly direction for a distance of sixty-one yards or thereabouts bounded by the Floating Harbour, thence at a right angle in a southerly direction for a distance of eleven yards or thereabouts bounded by a wooden fence, thence at a right angle in a westerly direction for a distance of fifty-two yards or thereabouts bounded by a wooden fence parallel to the water edge of the said Wharf, thence at a right angle in a southerly direction for a distance of one hundred and forty-seven yards or thereabouts along the east side of the cattle-path bounded by a wooden fence, thence at a right angle in an easterly direction for a distance of sixty-one yards or thereabouts along the south side of the said Harbour Railway Wharf bounded by a wooden fence, thence in a southerly direction for a distance of twenty-four yards or thereabouts bounded by a wooden fence, thence in an easterly direction three yards or thereabouts bounded by a wooden fence, thence in a southerly direction for a distance of



(SWINE-FEVER.)

AT the Council Chamber, Whitehall, the 5th day of June, 1885.

By Her Majesty's Most Honourable Privy Council.

THE Lords and others of Her Majesty's Most Honourable Privy Council, by virtue and in exercise of the powers in them vested under The Contagious Diseases (Animals) Act, 1878, and of every other power enabling them in this behalf, do order, and it is hereby ordered, as follows:

1. The following Area (namely),—in the county of Edinburgh comprised within the following boundaries, that is to say, on the south the road from Slateford to Edinburgh, on the west a small brook running towards Gorgie, and on the north and east the fields of Gorgie Park,—which was declared by Order of Council dated the twenty-fourth day of April, one thousand eight hundred and eighty-five, to be an Area infected with swine-fever, is hereby declared to be free from swine-fever, and that Area shall, as from the commencement of this Order, cease to be an Area infected with swine-fever.

2. This Order shall take effect from and immediately after the sixth day of June, one thousand eight hundred and eighty-five.

C. L. Peel.

Foreign Office, June 5, 1885.

NOTIFICATION.

BRITISH PROTECTORATE OF THE NIGER DISTRICTS.

IT is hereby notified for public information, that under and by virtue of certain Treaties concluded between the month of July last and the present date, and by other lawful means, the territories on the West Coast of Africa, hereinafter referred to as the Niger Districts, were placed under the Protectorate of Her Majesty the Queen from the date of the said Treaties respectively.

The British Protectorate of the Niger Districts comprises the territories on the line of coast between the British Protectorate of Lagos and the right or western river-bank of the mouth of the Rio del Rey. It further comprises the territories on both banks of the Niger, from its confluence with the River Benué at Lokoja, to the sea, as well as the territories on both banks of the River Benué from the confluence, up to and including Ibi.

The measures in course of preparation for the administration of justice and the maintenance of peace and good order in the Niger Districts will be duly notified and published.

Foreign Office, May 9, 1885.

THE Queen has been graciously pleased to appoint David Boyle Blair, Esq., to be Her Majesty's Vice-Consul for the Territories under the Protectorate of Germany, in the Districts of the Cameroons, bounded on the west by the Rio del Rey.

Foreign Office, May 21, 1885.

THE Queen has been graciously pleased to appoint Harry Lionel Churchill, Esq., now British Vice-Consul at Tehran, to be Her Majesty's Vice-Consul in the Dominions of the Sultan of Zanzibar.

Foreign Office, June 3, 1885.

THE Queen has been graciously pleased to appoint Henry Grant, Esq., now Her Majesty's Consul at Naples, to be Her Majesty's Consul for South Italy, including the Southern Adriatic and Southern Mediterranean Regions, to reside at Naples.

The Queen has also been graciously pleased to appoint Alexander Roesler Franz, Esq., now Her Majesty's Consul for the Province of Rome, to be Her Majesty's Consul for Central Italy, including the Provinces of Rome, Perugia, Ascoli, and Macerata, to reside at Rome.

(C. 2337.)

Board of Trade, Whitehall Gardens, June 2, 1885.

THE Board of Trade have received from the Secretary of State for Foreign Affairs a Despatch from Bogotá enclosing a translation of a Decree of the Government of the United States of Colombia, in virtue of which the Customs' duties hitherto charged in that country upon the importation of a large number of articles have been considerably increased. The Despatch, with its enclosure, may be seen on application at the Commercial Department of the Board of Trade.

(C. 2365.)

Board of Trade, Whitehall Gardens, June 2, 1885.

THE Board of Trade have received from the Secretary of State for Foreign Affairs a copy of a Despatch from Her Majesty's Consul at Saint Petersburg, reporting that a graduated scale of charges under the denomination of "clerical tax" has been established at all Russian Custom Houses in addition to the present legal charges.

The following is the scale on which these charges will be levied:—

(1.) On each declaration or invoice of imported goods, or also for each declaration or similar document relative to exported goods:—

When the amount of duty is from	rbls. cop.
10 rbls. to 100 rbls.	0 30
Ditto from 100 rbls. to 500 rbls. ...	0 60
Ditto from 500 rbls. to 1,000 rbls. ...	1 00
When the duty exceeds 1,000 rbls., then on every 100 rbls., or portion thereof	0 10

NOTE.—Declarations or invoices of goods, the duty on which is under 10 rbls., are exempt from charge.

(2.) On each declaration or similar document relating to export goods not liable to duty on exportation on each 1,000 rbls. of their declared value (fractions of 1,000 rbls. to be reckoned as a whole thousand)

(3.) On each permit for receiving goods out of Customs' warehouses, or for escort of goods by Customs' officers, including permits for receipt of parcels forwarded by post

NOTE.—Permits relating to merchandize, the duty on which is under 10 rbls., are exempt from charge.

(4.) On each Customs' receipt note for duty and other dues paid

(5.) For copies of documents issued to private persons or public companies, per sheet, counting 25 lines to each sheet



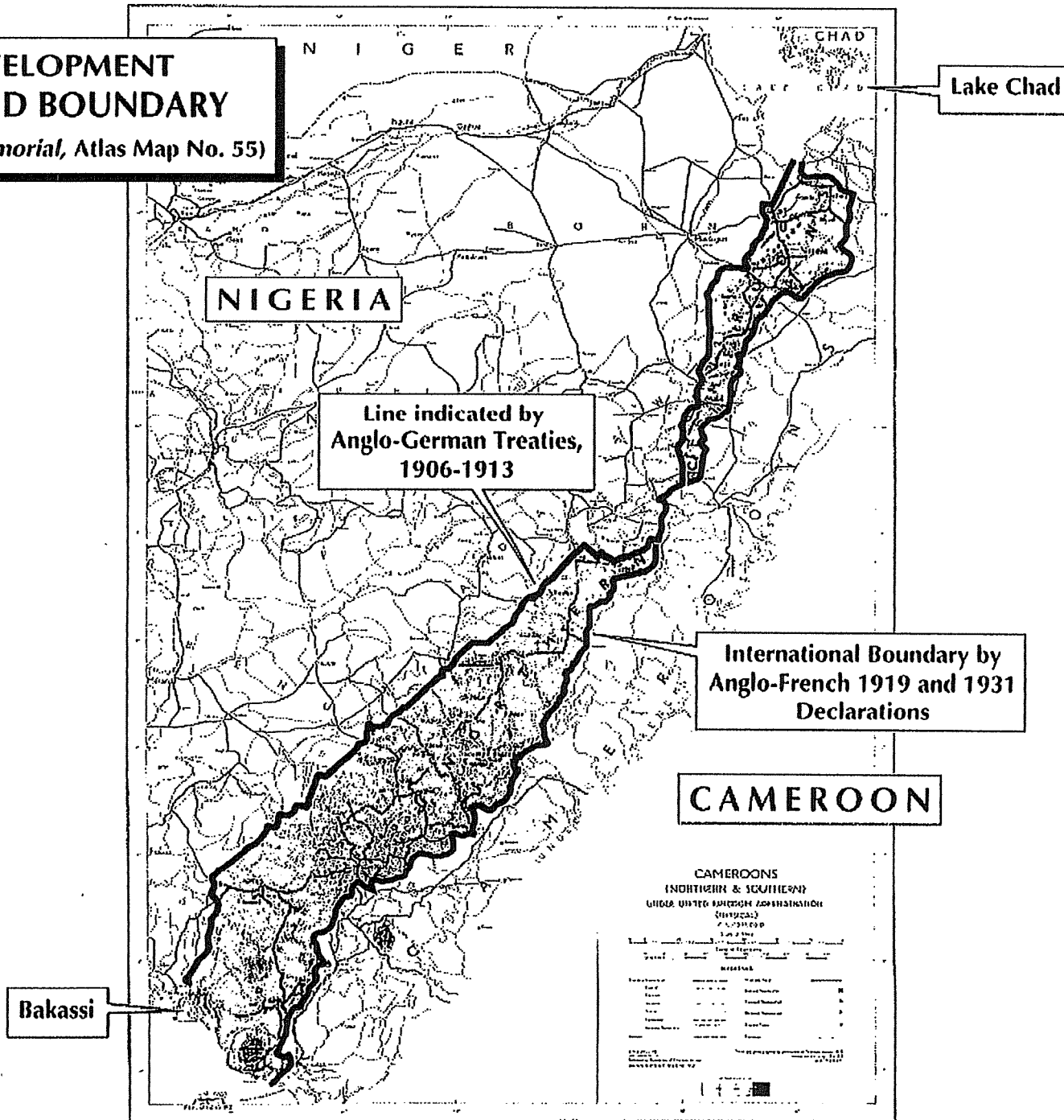
ANNEX 3

**Map under Tab 25 of the Judges' Folder for the
Second Round of the oral pleadings
(CR 2002/19, p. 52, para 86)**



THE DEVELOPMENT OF THE LAND BOUNDARY

(Nigeria Counter-Memorial, Atlas Map No. 55)





ANNEX 4

1931

**Report by the United Kingdom to the Council of the
League of Nations on the Administration of the Cameroons
under British Mandate for the year 1930 (p. 7)**



Issued by the Colonial Office.

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Report

by His Majesty's Government in the United Kingdom of
Great Britain and Northern Ireland to the Council of
the League of Nations on the Administration of the

CAMEROONS UNDER BRITISH MANDATE

For the Year 1930.

*(For Reports for 1928 and 1929 see Non-Parliamentary Publications
Colonial No. 42, 1929, and Colonial No. 54, 1930,
price 5s. 3d. and 5s. respectively.)*



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1931.

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58-64



(3) 23rd June, 1881. Great Britain and San Salvador. Extradition Treaty. Accession 8th August, 1930.

(4) 25th September, 1928. Great Britain and Panama. Treaty of Commerce and Navigation. Accession 10th June, 1930.

(ii) International Frontiers.

15. The Declaration of the Boundary between the British and French spheres of the Mandated Territory of the Cameroons, which was signed by the Governor of the Colony and Protectorate of Nigeria and by the High Commissioner of the French Republic in the area under French Mandate, was confirmed by the respective Home Governments early in 1931.

16. It is understood that this Declaration is not the product of a boundary commission constituted for the purpose of carrying out the provisions of Article I of the Mandate, but only the result of a preliminary survey conducted in order to determine more exactly than was done in the Milner-Simon Declaration of 1919 the line ultimately to be followed by the boundary commission; but, none the less, the Declaration does in substance define the frontier. This Declaration having been confirmed by the two Governments, the actual delimitation of the boundary will now be entrusted to a boundary commission appointed for the purpose in accordance with the provisions of Article I of the Mandate.

IV.—GENERAL ADMINISTRATION.

(1) Cameroons Province.

17. The Cameroons Province, as in previous years, is divided into four Administrative Divisions:—

- (1) Victoria;
- (2) Kumba;
- (3) Mamfe;
- (4) Bamenda.

Each of the four Divisions is in charge of a District Officer, who is directly responsible to the Resident in charge of the Province.

18. The alteration in the boundary of Victoria and Kumba Divisions, foreshadowed in paragraph 34 of the 1929 Report, has been partially carried out in accordance with the statement made by the Accredited Representative in his address to the Permanent Mandates Commission during the examination of that Report. That is to say, that the Bakole villages, on the coast line, and the fish towns in the estuary of the Rio del Rey have been transferred from Kumba to Victoria Division. The object of this transfer is to assist the prevention of sea-borne contraband trade by placing the whole coast line of the Province under the administrative control of the Divisional Officer, Victoria, instead of having one part of the coast in Victoria and the other in Kumba Division. The original intention to include at the same time the territory of the

