PART I

BAKASSI

CHAPTER 1

THE ORIGINAL TITLE OF NIGERIA:

THE 1913 TREATY AND ITS ANTECEDENTS

A. Background

(i) Cameroon's *Applications* of 29 March and 6 June 1994

1.1 So far as concerned the question of title to the Bakassi Peninsula, Cameroon's initial *Application* of 29 March 1994 sought a declaration from the Court "that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon".

1.2 Cameroon's *Additional Application* of 6 June 1994 made no further claim to title over the Bakassi Peninsula.

(ii) Cameroon's *Memorial*

1.3 So far as concerned the question of title to the Bakassi Peninsula, Cameroon, in its *Memorial* contended in essence that

(1) the pattern of Anglo-German agreements between 1885 and 1913 established in practice that the boundary between British and German territories ran to the west of the Bakassi Peninsula, leaving the Peninsula on the German side of the boundary (MC, paragraphs 2.06-2.58);

(2) the Anglo-German Treaty of 11 March 1913 provided for a boundary between British and German territories which left the Bakassi Peninsula on the German side of the boundary (MC, paragraphs 4.277-4.342);

(3) *effectivités* after the entry into force of the 1913 Treaty confirmed that Bakassi formed part of German/Cameroonian territory (MC, paragraphs 4.420-4.454);

(iii) Nigeria's *Preliminary Objections*

1.4 None of Nigeria's *Preliminary Objections* directly questioned the Court's jurisdiction over, or the admissibility of, that part of Cameroon's *Application* which put in issue the question of sovereignty over the Bakassi Peninsula (although certain other aspects of Cameroon's *Application* and *Additional Application* indirectly affected that issue or made assumptions as to the conclusions to be reached in relation to it). Indeed, although Nigeria submitted in its fifth *Preliminary Objection* that there was no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tri-point in Lake Chad to the sea, Nigeria stated that this was without prejudice to Nigeria's title over the Bakassi Peninsula: Nigeria accepted that there was a dispute over title to that peninsula. Accordingly, nothing said by the Court in its Judgment of 11 June 1998 (I.C.J. Reports 1998, p. 275) was directly relevant to the question of title to the Bakassi Peninsula.

(iv) Nigeria's *Counter-Memorial*

1.5 In its *Counter-Memorial* Nigeria's argument regarding sovereignty over the Bakassi Peninsula was principally, in essence, as follows:

(1) the Kings and Chiefs of Old Calabar were acknowledged to possess international personality including the capacity to conclude international treaties (NC-M, paragraphs 5.11-5.13, 6.15-6.26; and see below, paragraphs 1.6 *et seq.*, 1.31);

(2) Bakassi was included within the domains of the Kings and Chiefs of Old Calabar (NC-M, paragraphs 5.15-5.19, 6.33-6.36; and see below, paragraphs 1.15-1.16);

(3) in 1884 the Kings and Chiefs of Old Calabar concluded a treaty with Great Britain, by virtue of which Great Britain established a Protectorate over the Kings and Chiefs (NC-M, paragraphs 6.27-6.65; and see below, paragraph 1.29 *et seq.*);

(4) under that Protectorate Treaty Great Britain acquired only certain limited powers, and in particular did not acquire sovereignty over the territories of the Kings and Chiefs, which continued to be territory belonging to them (NC-M, paragraphs 6.37, 6.45-6.60; and see below, paragraphs 1.32, 1.41, 1.46-1.47);

(5) Great Britain and Germany (as the Protecting State for the neighbouring protectorate of Kamerun (Cameroon)) concluded various agreements in and after 1885 to delimit their respective spheres of interest (NC-M, Chapter 7; and see below, paragraph 1.52);

(6) those Anglo-German agreements concluded between 1885 and 1893 and which entered into force adopted the Rio del Rey as the line of division between British and German spheres of interest in the region, but did not otherwise deal with the boundary in the region of the Bakassi Peninsula; while subsequent Anglo-German discussions up to 1913 which covered that region did not lead to agreements which ever became legally binding (NC-M, paragraphs 7.1-7.33, 8.1-8.19);

(7) the Treaty of 11 March 1913 between Great Britain and Germany had in part the purported effect of

transferring the Bakassi Peninsula to Germany (NC-M paragraph 8.24);

(8) the Bakassi Peninsula did not belong to Great Britain, which therefore (since *nemo dat quod non habet*) could not transfer it to another State (NC-M, paragraphs 8.26, 8.28-8.40; and see below, paragraphs 1.47, 1.58 *et seq.*);

(9) the relevant provisions of the Treaty were accordingly ineffective to bring about that transfer (NC-M, paragraph 8.40-8.48; and see below, paragraph 1.60 *et seq.*);

(10) the 1913 Treaty accordingly did not alter sovereignty over Bakassi, the original title to which survived the Treaty, maintaining the *status quo ante* (NC-M, paragraphs 8.41-8.42);

(11) no transfer of sovereignty resulted from the subsequent history of the Bakassi Peninsula up to the Independence of Nigeria in 1960, during which period that area continued to be under the authority of the Kings and Chiefs of Old Calabar and of the Nigerian regional and local government system (NC-M, Chapter 9; and see below, Chapter 2).

(12) after Nigeria (and Cameroon) attained independence in 1960 Nigeria continued to administer Bakassi, and its original title to the Bakassi Peninsula was confirmed by historical consolidation, acquiescence and recognition (NC-M, Chapter 10; and see below, Chapter 3).

B. The situation before the conclusion of the 1913 Treaty

(i) The City States of Old Calabar

The location of the City States of Old Calabar is shown on Fig 1.1.

1.6 The role of the original title vested in the Kings and Chiefs of Old Calabar appears clearly from the relevant passages in the *Counter-Memorial* of Nigeria, as follows:

> "The title of Nigeria to Bakassi was originally a title vested in the Kings and Chiefs of Old Calabar. The original title of Old Calabar was not affected by the Anglo-German Treaty of 11 March 1913 (as explained in Chapters 8 and 9) and was eventually absorbed in the emerging entity of Nigeria. By the time of Independence in 1960 the original title to Bakassi vested in Nigeria as the successor to Old Calabar.
>
> The four bases of the Nigerian claim to title over the Bakassi Peninsula are as follows:
>
> (1) Long occupation by Nigeria and by Nigerian nationals constituting an

historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960.

(2) Effective administration by Nigeria, acting as sovereign, and an absence of protest.

(3) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

(4) Recognition of Nigerian sovereignty by Cameroon."

1.7 In the *Reply* the Government of Cameroon attacks the "pre-colonial" titles invoked by Nigeria on several bases. In the first place, Cameroon contends that the location of the City States is problematical, and that the influence of the City States extended to the north and west of Bakassi: see the *Reply*, pages 246-249, paragraphs 5.21 to 5.33.

1.8 For the sake of argument, it may be supposed that this is true. But it would make no difference to the legal position, which is that the United Kingdom and other States of the relevant period recognised the City States as treaty partners and, consequently, as having international legal personality.

1.9 The *Counter-Memorial* presents ample evidence of the treaty-making practice of the States in the relevant period. Evidence is presented of seventeen treaties concluded between the British Crown and the Kings and Chiefs of Old Calabar: see NC-M, pp. 71-74, paragraphs 5.11-5.13. In the *Reply* Cameroon simply ignores this evidence.

1.10 It is also clear that from time to time the individual City States made agreements with each other. See for example the Agreement between Henshaw Town and Duke Town (Annex NC-M 15).

1.11 Further agreements are to be found in the pages of the Foreign Office Confidential Print, No.2193: see Annex NR 1.

1.12 The *Reply* quotes various passages from the historian Professor Anene: see the *Reply,* pp. 247-8. However, Professor Anene was not addressing the issue of international legal personality and in his monograph he shows little or no interest in such matters.

1.13 The *Reply* shows no awareness of the general tendency of European States to make treaties with African dynasties. This tendency and the relevant practice is described in scholarly detail by Professor Alexandrowicz, *The European African Confrontation: A Study in Treaty Making,* Leiden, 1973, pp. 94-105 (and see also Alexandrowicz, Hague Academy, *Recueil des Cours,* Vol. 123-I, 1968, pp. 165-82). Professor Alexandrowicz refers also to the extensive French practice and emphasises that most of the treaties entered into with African rulers were real and not personal treaties: see *The European African*

Confrontation, pages 94-96. Thus the practice alluded to by Nigeria in the *Counter-Memorial* is by no means exceptional.

1.14 Cameroon also fails to invoke any principle of inter-temporal law according to which African States and Rulers did not have a treaty-making capacity.

1.15 In the *Counter-Memorial* Nigeria has invoked reputable evidence, including expert opinion, to establish that the Bakassi Peninsula was at the material time a dependency of Old Calabar: see NC-M, pp. 74-5, paragraphs 5.15-5.19. In its *Reply* Cameroon contends that Bakassi did not belong to Old Calabar: see the *Reply*, pp. 252-4, paragraphs 5.42-5.48. Moreover, Cameroon does not seek to examine the materials adduced by Nigeria either generally or individually. Cameroon confines its response to citations from the *Western Sahara* case and the *Eritrea/Yemen* Arbitration (Phase I). The passages quoted by Cameroon are in very general terms and relate to regions with histories which bear no similarity to the conditions in the Bight of Bonny in the eighteenth and nineteenth centuries.

1.16 In the submission of Nigeria the assertions of Cameroon must be rejected in view of its persistent habit of ignoring the precise items of evidence presented by Nigeria in the *Counter-Memorial.*

(ii) Pre-protectorate circumstances

1.17 Cameroon seeks to belittle the relevance of what it refers to as "pre-colonial titles" (RC, paragraphs 5.49-5.60), and criticises Nigeria's emphasis on historic considerations (RC, paragraph 1.49). Cameroon's observations are mistaken, There can be no doubt that the pre-protectorate circumstances of the Bakassi region *are* very relevant to the correct appreciation of subsequent events, including particularly the 1884 Protectorate Treaty and the Anglo-German Treaty of 11 March 1913.

1.18 Nigeria would observe, first, that the correct term for the period before 1884, when the Protectorate Treaty was concluded, should be "pre-protectorate" rather than "pre-colonial". This is not just a question of terminology (although even questions of mere terminology should be treated correctly) but reflects a point of substance. This is that the Nigerian territories under consideration in the present context were never colonies of Great Britain, but were territories under British protection. Cameroon prefers to ignore this distinction, and to treat the territories as British colonies and Great Britain as having in relation to them the extensive sovereign authority possessed by a colonial power in relation to its colonies. But this is totally misleading, and, as was demonstrated in Nigeria's *Counter-Memorial* and is further explained later (below, paragraph 1.22 *et seq.*), is neither in fact nor in law a correct representation of the British protectorate over the relevant Nigerian territories.

1.19 In addition to Cameroon's misrepresentation of the true nature of Great Britain's relationship with the Nigerian territories under its protection, Cameroon's attempt to disregard the pre-protectorate history of the region is misplaced. It no doubt suits Cameroon's purpose to try to ignore that history, since it runs completely counter to the main thrust of Cameroon's case and demonstrates that the Bakassi area was well within the limits of the territories subject to the authority of the Kings and Chiefs of Old

Calabar.

1.20 Nigeria has drawn attention to the pre-protectorate history of the region because it is directly relevant to the question of title *at present* in dispute.

(1) First, any question of present title has to be seen not as a self-contained issue standing apart from all that has gone before, but must rather be seen as part of a historical continuum.

(2) Second, the pre-protectorate circumstances of the region are directly relevant to the determination of the territorial extent of the territories subject to the authority of the Kings and Chiefs of Old Calabar, which in turn is a necessary prerequisite for any finding as to the extent of the territories coming within the scope of the Protectorate Agreement of 1884.

(3) Third, contrary to Cameroon's implication, Nigeria does not assert that historical considerations take the place of relevant legal considerations; Nigeria's position is rather that historical considerations are complementary to those legal considerations, and in particular are part of the context in the light of which they fall to be applied.

1.21 Cameroon's attempt to ignore pre-protectorate circumstances, and even circumstances arising before the conclusion of the Anglo-German Treaty of 11 March 1913, is an understandable response to the fact that those circumstances undermine Cameroon's argument as to the alleged rightfulness of Cameroon's claims to Bakassi. But that cannot be allowed to obscure the facts that the historical considerations put forward by Nigeria *are* relevant to the questions of present title now before the Court, and that by wishing to omit all mention of them Cameroon has put before the Court a very inadequate and partial account of the nature of the present dispute over Bakassi.

(iii) The British Protectorate

1.22 Cameroon has sought in the *Reply*, (paragraphs 5.61-5.91) to analyse the nature of protectorates as comprising either 'international' protectorates (paragraphs 5.69-5.73) or 'colonial' protectorates (paragraphs 5.74-5.88). Cameroon places Nigeria in the latter category, as a 'colonial protectorate'. Cameroon completes this part of its argument by asserting that a 'colonial' protectorate is in international law equivalent to a colony (paragraph 5.91), that the 'colonial' power in a 'colonial' protectorate can cede the protectorate's territory (paragraphs 5.89-5.91), and that the particular incidents of individual protectorate arrangements (other than the basic distinction between 'colonial' and 'international' protectorates) are primarily of internal and constitutional significance and have no effect on the international plane (paragraphs 5.92-5.125).

1.23 Nigeria takes issue with each of these assertions, but before refuting each in turn Nigeria feels it necessary to make a general observation about Cameroon's approach. This is that Cameroon's analysis is presented in terms of theoretical generality, and *at no point* gives careful consideration to the actual terms of the particular protectorate agreement which has to be applied in the present case.

1.24 It is necessary to emphasise that concepts such as 'international protectorate' and 'colonial protectorate' are the constructs of writers and commentators, in seeking to rationalise, for presentational convenience, the many varied arrangements which may come under the general heading of 'protectorate'. Those concepts have no place in the actual practice of States. States do not establish a relationship which *they* call an 'international' or 'colonial' protectorate, and from which, having given it some such label, they deduce certain consequences: they simply establish a relationship on the basis of and in the particular terms of a treaty. How others may categorise the results of their treaties is no concern of theirs.

1.25 The notion of a colonial protectorate, in so far as it had any substance, was a political rather than a legal matter. Legally, it is a contradiction in terms: the 'colonial' element was either in conflict with the terms of the treaty of protection or, being nonetheless given effect by annexation, destroyed the 'protectorate' element. As explained by Alexandrowicz, *The European-African Confrontation: A Study in Treaty Making* (1973) (a writer correctly described by Cameroon as a "specialist on these questions": RC, 5.75):[1]

> "In fact it can hardly be maintained that the Colonial Protectorate (whatever its meaning in municipal law) could fit into the edifice of traditional international law...
>
> The 'Colonial Protectorate' was bound to remain a shadow of a legal institution which could neither take shape by intention nor by actual annexation. In the first case it was a political expectancy, in the second case there was no more room for any protectorate...
>
> The transformation of the classic protectorate into the colonial protectorate was in its essence not a legal but a political development. The texts of the treaties of protection show no trace of such development. Intention to annex the territory of the protected State could not have been stipulated by the contracting parties [to the Berlin Act 1885]. It was the arrangement adopted behind the scenes of the Berlin Conference by which the signatory powers gave each other *carte blanche* to absorb protected States, which led to a deformation of the Protectorate as such. It has been emphasised that such an arrangement could not affect the validity of the treaties of protection with Rulers, for *pacta tertiis nec nocent nec prosunt*. The colonial protectorate is the outcome of a para-legal metamorphosis and has no place in international law as a juridically justifiable institution. It was at most a political expedient."[2]

1.26 It does not help in establishing the legality of the concept of 'colonial protectorate' to argue that the 'colonial' power had, as a matter of its internal law, plenary powers in relation to the protectorate. First,

in many instances (and certainly in relation to Nigeria) it did not have plenary powers (see particularly below, paragraphs 1.32, 1.41, 1.46-1.47); second, the international rights and duties of the parties are governed by the treaty of protection; third, the treaty of protection with the Kings and Chiefs of Old Calabar, while imposing *some* limits upon the exercise of *some* of their international powers, did not deprive them of their international status (see particularly below, paragraphs 1.9-1.13, 1.31-1.32, 1.46); and fourth, the assumption of plenary powers would be a breach of the treaty of protection, and municipal law cannot be invoked as a justification for a breach of a treaty obligation.

1.27 Nor does it help establish the concept of a 'colonial protectorate' by adducing arguments based on the transfer under a treaty of protection of all or virtually all the rights of sovereignty of the protected State. Thus it is irrelevant in the present case to argue that the transfer to a protecting State of a right of cession of the protected State's territory shows that the protected State is fully under the sovereignty of its protector, thereby justifying the use of the term 'colonial protectorate' (RC, paragraph 5.89). The fact is that the Kings and Chiefs of Old Calabar granted no such right to Great Britain: see e.g. paragraph 1.46 below. At least in the case of Nigeria, the transfer of rights to Great Britain was less extensive than that which occurred in many other cases, and conclusions drawn from the situation of other protected States (even if correct in principle and in relation to them) are of no application in the present situation.

1.28 The argument comes back to the essential point: the nature of Great Britain's rights in relation to the Kings and Chiefs of Old Calabar, and their status under the protectorate, depends not upon generalisations drawn from the works of commentators examining a varied range of protectorates, but exclusively upon the precise, particular terms of the Treaty of Protection of 1884 (Annex NC-M 23). The relationship established by States through their treaties with the protected State is governed, as a matter of their internal and constitutional law, by the terms of that law as applied to the particular treaty in question; and the relationship is governed, on the international plane, solely by the actual terms of the particular treaty into which they have entered, as properly interpreted and as it may be amended from time to time. Those terms must be respected since not only do they establish the limits upon the protecting State's powers, but they are at the same time the very basis for such powers as are conferred upon it. It is those terms which must be examined in order to reach a conclusion as to the incidents attaching to any particular protectorate arrangement. The need to look at the terms of each particular treaty establishing a protectorate relationship is clearly established,[3] and is wholly consistent with the general judicial approach of considering only the facts and circumstances of the particular case before the Court and reaching decisions relating solely to those particular facts and circumstances.

1.29 Against that general background, Nigeria will now turn to the several arguments advanced by Cameroon. First, Cameroon seeks to apply its artificial classification of protectorates to the circumstances of the Nigerian protectorate in such a way as to classify it as a so-called 'colonial protectorate'. Cameroon has managed to reach that conclusion without any consideration of the terms of the 1884 Treaty between Great Britain and the Kings and Chiefs of Old Calabar. There is, however, no basis in that Treaty to justify such a conclusion. Nigeria has in its *Counter-Memorial*[4] already examined the relevant provisions of that Treaty, and nothing in those provisions serves to attribute to the Nigeria protectorate a 'colonial' character. Nigeria notes, in passing, that Cameroon has not dissented in any way

from the analysis of the Treaty's terms given in paragraphs 6.37-6.65 of Nigeria's *Counter-Memorial*.

1.30 Without repeating in detail the points there made by Nigeria, it is convenient to summarise them briefly here:

(1) the 1884 Treaty established British protection over the territories in question, and Great Britain did not acquire territorial sovereignty or other title over them (NC-M, paragraph 6.37);

(2) the notion of a 'protectorate' or 'protected State' was at that time, and is now, well known in international law (NC-M, paragraphs 6.38-6.44);

(3) the distinction between the acquisition of sovereignty over a colony and the establishment of a Protectorate was well known to the British Government at the time (NC-M, paragraphs 6.45-6.60);

(4) the legal nature of any particular Protectorate depends upon the terms by which it was established (NC-M, paragraphs 6.61-6.62);

(5) the terms of the 1884 Protectorate Treaty establish that the Kings and Chiefs of Old Calabar retained their separate international status and rights, including their power to enter into relationships with other international persons, although under the Treaty that power could only be exercised with the knowledge and approval of the British Government (NC-M, paragraphs 6.63-6.65).

1.31 It is to be noted that the negative way of expressing this last restriction (i.e. in effect, *not* to enter into international relations except with British approval) necessarily implies not only that the power to enter into such relations continues to exist and can be exercised when that approval is given, but also that the power existed before the Protectorate Treaty placed restraints upon its exercise, and further that, but for the restriction imposed, it would have continued in full even after the establishment of the protectorate.

1.32 Cameroon's assertion that in international law a so-called 'colonial protectorate' is equivalent to a colony is without foundation. Not only is the very concept of 'colonial protectorate' as something distinct from an 'international protectorate' an artificial construct without basis in the practice of States (and is thus without basis in customary international law),[5] but it flies in the face of the provisions of the 1884 Treaty, both taken literally and as read in their context. Not only did the 1884 Protectorate Treaty not take away from the Kings and Chiefs of Old Calabar their residual power to enter into international relations,[6] but, for example, it imposed no restriction on their power to alienate their territory,[7] left them largely free to settle their international differences for themselves,[8] and left essentially unaffected their sovereignty over their internal affairs.

1.33 Whatever may be said by commentators (or Cameroon) about this alleged general concept of 'colonial protectorate', it has no relevance for the Nigeria protectorate: it is what it is, namely the product

of a relationship established by a particular Treaty, the specific terms of which govern the nature of the relationship established by it. Those terms speak only of 'protection', and nowhere of anything resembling some form of colonial status.

1.34 The internationally distinct character of the Protectorate was evident from the British practice in relation to passports. Persons coming from the Protectorate were issued with a "British Protected Person" passport, and not a British passport such as was issued to persons coming from the colonial areas of Nigeria.

1.35 Similarly, the extension of treaties by the United Kingdom to its various dependent territories treated the Protectorate both as separate from the United Kingdom and as a distinct entity from the Colony. A typical example of many such instances arose in relation to an Anglo-Belgian Convention concluded in 1932 (Annex NR 2).

1.36 These last two points demonstrate the incorrectness of any argument that once a treaty of protection has been concluded it establishes a future relationship between the protected and protecting States which is exclusively internal rather than international. While in some respects their future relationship will have an internal dimension, it by no means follows that it has an *exclusively* internal character. Everything turns on the terms of the particular treaty of protection - always bearing in mind that protectorate status originates in a manifestly international act (a treaty), that the essence of protectorate status is not one of annexation by the protecting State but rather of extending its protection to a weaker (and still continuing) State, and that the presumption is always against any loss of or restrictions upon sovereignty.

1.37 The situation is no different if the Nigeria protectorate is considered from the point of view of the internal and constitutional law of Great Britain and Nigeria. This matter has been dealt with in Nigeria's *Counter-Memorial*, at paragraphs 6.72-6.89.

1.38 In English law, the exercise of Great Britain's powers in relation to the Nigeria Protectorate (and other protectorates) was regulated by the Foreign Jurisdiction Acts. As the title of those Acts provides, the powers exercised by Great Britain were those exercised in relation to a *foreign* country. The powers in question are those which, in accordance with the preamble to the Acts, the Crown has acquired by treaty, capitulation, grant, usage, sufferance and other lawful means: it is thus only *those* particular powers which are to be exercised in accordance with the provisions of the Acts, since the Acts could not unilaterally give the Crown greater powers internationally than it had been granted by the treaty of protection. It is thus only those treaty-based powers which the Crown may lawfully hold and exercise in relation to the (foreign) protected State "as if" they had been acquired by cession or conquest, i.e. as if it were a colony. This language clearly shows that a protected State is not, in English law, a colony either in law or in fact. Indeed, English legislative measures right through the period 1854-1960 carefully and consistently distinguished between British colonial territory in Nigeria and the protectorate (NC-M, paragraphs 6.66-6.83).

1.39 In applying the provisions of this domestic legislation to the British Crown's powers in relation to protected States, the Courts have acknowledged that the substantive extent of the Crown's powers is governed by the treaty of protection, and is limited.

> "In Kenya Colony the jurisdiction of the British Crown in unlimited; but in the Kenya Protectorate it is only limited. It is limited to such jurisdiction as the Crown has acquired by treaty, capitulation, grant, usage, sufferance and other lawful means": *Nyali Ltd. v. Attorney-General* [1956] 1 QB 1, 14 (Court of Appeal: quoted at NC-M, paragraph 6.82).

Moreover, in English law throughout the period of the protectorate over Nigeria, protected States not only retained their separate international personality but enjoyed sovereign immunity from the jurisdiction of the English courts: *Mighell v. Sultan of Johore* [1894] QB 149; *Duff Development Company Ltd. v. Government of Kelantan* [1924] AC 797; *Sultan of Johore v Abubakar Tunku* [1953] AC 318.

1.40 A separate question is whether, in the event of a breach by the Crown of the treaty of protection, those affected by the breach have a remedy in the English courts. The answer may well be not, because of the English procedural rule that the Crown's acts of State[9] (which include the making of treaties) are non-justiciable, and that treaties may not be relied on directly in English Courts. This essentially procedural rule of non-justiciability in domestic law is, of course, quite distinct from the separate and substantive issue of whether the act in question was in truth a breach of the treaty of protection. At the international level that substantive question *is* justiciable, and the appropriate legal consequences *can* be drawn from a finding that action taken was in breach of the relevant treaty.

1.41 An essential element in Nigeria's argument is that Great Britain had no power under the 1884 Treaty of Protection to cede territory without the consent of the Kings and Chiefs of Old Calabar. As far back as the eighteenth century it was acknowledged that the powers of the protecting State were limited by the terms of the treaty of protection: should the protector

> "assume a greater authority over the [protected] one than the treaty of protection or submission allows, the latter may consider the treaty as broken, and provide for its safety according to its discretion".[10]

1.42 In this context, a situation which arose in 1890 in relation to the British Protected State of Brunei is very relevant. Brunei became a British protected State by virtue of a Treaty concluded between Great Britain and the Sultan of Brunei in 1888.[11] That Treaty granted Great Britain more extensive rights and authority over Brunei than were granted by the Treaty of 1884 with the Kings and Chiefs of Old Calabar. In particular, so far as concerns relations with other States, the Treaty with Brunei provided, in Article III -

> "The relations between the State of Brunei and all foreign States, including the States of Sarawak and North Borneo, shall be conducted by Her Majesty's Government, and all communications shall be carried out exclusively through Her Majesty's Government, or in accordance with its directions;..."

Under the 1884 Nigerian protectorate treaty Great Britain's powers in relation to dealings with other States[12] were less than those it possessed under the 1888 Treaty with Brunei: in effect, whereas the Kings and Chiefs of Old Calabar could have their own dealings with foreign States so long as they had the consent of the British Government, Brunei's dealings with foreign States could *only* be conducted *by* Great Britain.

1.43 Yet when, in 1890, Great Britain was negotiating with The Netherlands for the settlement of a territorial dispute in Borneo by the adoption of a compromise boundary line which might have involved conceding in negotiation land which arguably belonged to the Sultan of Brunei, the Foreign Office was of the view that

> "... it would appear doubtful whether Her Majesty's Government would be justified in accepting such a definition of the boundaries on behalf of the States concerned without having previously obtained the consent of the Rulers of those States".

On consulting the Law Officers of the Crown, Great Britain's Attorney-General advised that

> "... if any of the territory proposed to be given to the Dutch under the boundary compromise is in fact part of the possessions of Brunei or Sarawak, Her Majesty's Government would not be justified in accepting such a definition, so as to bind the Rulers of those States without their consent."[13]

1.44 This attitude was consistent with that adopted by the King's Advocate, Sir Herbert Jenner, in 1833, in relation to the Ionian Islands (under British protection). He advised that the power of alienating any part of the protected territory was not such as necessarily belongs to the protecting State (see McNair, *International Law Opinions* (1956), Vol. 1, p. 39). The position was complicated by the Islands having been placed under British protection by a treaty with other States. In the event the Islands were transferred by Great Britain to Greece only after the consent of the other treaty parties *and* of the Ionian Islands had been obtained.

1.45 Given the undoubtedly correct conclusion reached in relation to Brunei, which was a protected State which had granted to Great Britain virtually complete authority over its external relations, a similar conclusion in relation to a protected State which had *not* granted to Great Britain such absolute control over its external relations is an *a fortiori* case.

1.46 Comparison between the Nigeria and Brunei treaties of protection is revealing in other respects, showing the Kings and Chiefs of Old Calabar to have been subject to a lesser degree of control than that exercised over an otherwise broadly equivalent protected State:

(1) Thus the Brunei treaty required all differences between the Sultan of Brunei and the Government of any other State to be settled by the decision of the British Government (Article III); the equivalent provision in the treaty with the Kings and Chiefs covered only disputes between the Kings and Chiefs themselves, and between them and British and foreign traders, and neighbouring tribes (Article IV).

(2) The Brunei treaty prohibited Brunei from ceding or otherwise alienating Brunei territory (Article VI); no such prohibition applied to the Kings and Chiefs of Old Calabar. Thus not only were the Kings and Chiefs able to have direct dealings with foreign States but they were also under no specific restraint in ceding their territory if they had wanted to do so: had they wanted to cede Bakassi they could have done so within the framework of the Treaty of Protection, and had no need to rely on Great Britain to do it for them.

1.47 It is thus clear from the terms of the 1884 Treaty that Great Britain's authority in relation to the Kings and Chiefs of Old Calabar did not include the power to conclude on their behalf treaties alienating their territory, that such a treaty concluded by Great Britain was not a treaty authorised in accordance with the treaty of protection, and that it was therefore not made by Great Britain within the scope of its authority. The 1913 Anglo-German Treaty was thus in relevant part outwith the treaty-making power of Great Britain, and that part was not binding on the Kings and Chiefs of Old Calabar.

1.48 Cameroon argues that the Nigerian and neighbouring protectorates had their frontiers changed by the protecting State without local consent (RC, paragraphs 5.101-5.111). This argument refers to two kinds of frontier changes: first, various changes to internal constitutional boundaries affecting the Nigerian protectorates (RC, paragraphs 5.102-5.106), and second, various changes to the international boundaries with neighbouring States (RC, paragraphs 5.107-5.110).

1.49 So far as concerns internal changes to the territorial limits of the various Nigerian territories, three considerations have to be borne in mind:

(1) The various territories in what is now Nigeria did not all have the same status: there was a distinction between colonies and protectorates, and of the latter some were under British protection by virtue of treaties with the local Rulers, while others came under British protection in other ways, such as by virtue of proclamations.

(2) The terms of the different protectorates were thus themselves different, and actions which might be inconsistent with the terms on which one protectorate was exercised would not necessarily be inconsistent with the terms of others.

(3) All the protectorates had in common that they were under the protection of Great Britain. Whatever changes might be made in internal administrative arrangements, the protectorates remained under British protection and were not being given away to some other State: whatever administrative changes might have been made, the whole territory of the Kings and Chiefs of Old Calabar placed under British protection by the Treaty of Protection of 1884 remained throughout the period up to Independence under the protection of the British Crown.

1.50 In the light of these considerations, it is quite wrong to conclude that the making of *internal* administrative changes shows that, in the particular case of Bakassi, there was nothing unlawful in making the kind of *external* territorial change involved in purporting to cede to Germany a part of the territory belonging to the Kings and Chiefs of Old Calabar. Such a purported cession was not within the powers vested in Great Britain by the terms of the particular treaty in point, namely the Treaty of Protection of 1884, and would have involved not the protection of that territory by Great Britain but its transfer out of British protection.

1.51 So far as concerns the changes to international boundaries Cameroon cites in this respect the transfer of Katanu and Appa to France by virtue of an 1889 Anglo-French Treaty (RC, paragraph 5.107) and the Anglo-French arrangements and treaties of 1890, 1898 and 1904 concerning the territorial extent of the Kingdom of Sokoto (RC, paragraphs 5.108-5.111). These territorial dispositions are beside the point in the context of the issues at present calling for decision by the Court.

1.52 By comparison with the situation of Bakassi after the conclusion of the Anglo-German Treaty of March 1913, those instances involved different protectorate arrangements, with different terms and involving different parties, and different international arrangements with different backgrounds and involving different parties. The Court is not called upon to decide upon those different matters. Contrary to what Cameroon says at paragraph 5.111 of the *Reply*, nothing which the Court may decide in the present case to the effect that the purported transfer of Bakassi to Germany was in breach of the Treaty of Protection of 1884 will have any effect upon Nigeria's borders with other States not involved in the present proceedings.

1.53 Cameroon seeks to argue that Nigeria's claim to Bakassi involves a return to an earlier (i.e. pre-protectorate) situation, and that (citing the recent Award of the Arbitral Tribunal in the *Eritrea/Yemen* case[14]) such a doctrine of 'reversion' finds no place in international law (RC, paragraphs 5.56-5.59). There are, however, significant differences between the circumstances with which that Arbitral Tribunal was dealing and the circumstances now before the Court. There, the attempt was being made to assert the revival of an earlier (Yemeni) sovereign title upon the demise of an admitted subsequent (Ottoman) sovereign title over the territory in question. In effect the Tribunal held that the earlier title had been completely extinguished by the subsequent Ottoman title, so that with the demise of that intervening Ottoman title there was nothing in the way of a Yemeni title which could thereupon be revived. In the present case the situation is different. There is no admitted intervening sovereignty over the Bakassi Peninsula: first, because Great Britain itself, being only a protecting State, never had sovereignty over protectorate territory; second, because there was no lawful transfer of territorial sovereignty to Germany;

third, because Mandatory and Trusteeship powers did not themselves possess sovereignty over the territories subject to their administration; and fourth, because no activities by Cameroon served to establish that Cameroon had acquired sovereign title to Bakassi. In summary, this is not a matter of seeking, after Independence, to upset by reference to a pre-protectorate title a territorial limit validly established by the protecting State in agreement with a third State: it is rather a matter of seeking to assert, after Independence, the ineffectiveness *ab initio* of a territorial limit and transfer of territory purportedly agreed by the protecting State, and the consequent *continuation* of (and not reversion to) the title originally vested in the Kings and Chiefs of Old Calabar.

C. The Anglo-German Treaty of March 1913

(iv) The 1913 Treaty

1.54 Nigeria first recalls that in its *Counter-Memorial* Nigeria drew attention to the fact that various Anglo-German agreements which pre-dated the Treaty of 1913 were concerned not with the distribution of territorial sovereignty but with the allocation of 'spheres of influence' only (NC-M, paragraphs 7.5-7.33). Nigeria also drew attention to the fact that, contrary to the position adopted by Cameroon in its *Memorial*, a number of the potentially relevant pre-1913 Anglo-German 'agreements' never in fact entered into force or otherwise became legally binding for Great Britain and Germany (NC-M, paragraphs 8.1-8.19), in which context it is to be noted that the Treaty of March 1913 made no reference in its preamble or elsewhere to any earlier agreement between the parties. Nigeria notes that Cameroon does not take issue with either of these points, and indeed expressly agrees with the second of them (RC, paragraph 5.119).

1.55 In its consideration of Nigeria's arguments relating to the Anglo-German Treaty of 11 March 1913 Cameroon notes, and does not dissent from, Nigeria's statement that no boundary pillars were erected in the Bakassi area by the 1905-1906 Boundary Commission (RC, paragraphs 5.115-5.116). Cameroon seeks to reject the drawing of any conclusion from that fact, contending instead that as the boundary was defined by means of natural landmarks there was no need to erect artificial boundary markers (RC, paragraph 5.116): and Cameroon goes on to assert that it was not aware of any precedent requiring the erection of pillars in the bed of a boundary river. However, the erection of boundary pillars *in the bed of* a boundary river is not the only way of erecting markers to show the course which a boundary follows along the course of a river. Thus markers may be placed on the bank of a river, with an inscription that the course of the boundary follows a specified course through the middle of the adjacent river. Examples, of which Cameroon is well aware, are afforded by pillar 101, referred to in paragraph 18 of the Anglo-German Demarcation Agreement of April 1913, where the boundary itself is in the thalweg of the Magbe River, and pillars 89 and 91 (referred to in paragraph 16 of the same Agreement) which mark river junctions where the boundary itself follows the thalweg. Consequently, the absence of boundary markers further south, in the Bakassi area, *is* relevant, since it shows that there was no precise agreement as to the course of the boundary in that area.

1.56 Cameroon seeks to argue that in any event Great Britain and Germany were fully agreed upon the

course of the boundary from Cross River to the sea (RC, paragraph 5.117). However:

(1) both the British and German statements relied upon in this context by Cameroon assert that the boundary in that region had already been marked with boundary pillars by the 1905-1906 Boundary Commission, whereas as just noted those pillars did *not* extend into the Bakassi area; and

(2) the Anglo-German 'agreements' underlying this alleged unity of intention on the part of the two Governments never entered into force and were never legally binding for the two States (above, paragraphs 1.5(6), 1.54).

1.57 Cameroon further seeks to argue that, although admitting that it was only with the Treaty of 11 March 1913 that Anglo-German understandings as to the course of the boundary became legally binding,[15] nevertheless previous Anglo-German behaviour was sufficient to give their understandings legal force (RC, paragraphs 5.120-5.121). Nigeria cannot share the view that where draft treaty texts are expressly stated to be subject to ratification but in the event are not ratified, nevertheless those texts and actions taken in connection with them are to be treated as if they had been ratified and had acquired full legal force and effect. Whatever the reasons may have been for their non-ratification - and they were various in each case, and differed for the two States involved - the incontrovertible fact is that they were unratified. It was *only* when the Treaty of 11 March 1913 was ratified that a legally binding text came into existence, and it was accordingly only then that the legal deficiencies of the part of that text dealing with the Bakassi Peninsula came into the open as the legal basis for this part of the present case. Those legal deficiencies centre on the application of the rule that *nemo dat quod non habet*.

(v) *Nemo dat quod non habet*

1.58 Cameroon's attempt to deal with this argument is singularly unpersuasive. It may be noted that Cameroon refers to this argument in the *Reply*, paragraph 5.125, and says that in substance it is dealt with elsewhere in the *Reply*, citing paragraph 2.24 *et seq.* and paragraph 5.19 *et seq.*, and referring to a limited (but unspecified - simply "below") subsequent treatment of the topic, which appears to be the passage at paragraphs 5.162-5.169. Several points about this treatment "elsewhere" of this matter may be made.

(1) Paragraph 2.24 *et seq.* do not deal at all with the substance of Nigeria's argument. It merely sets out Nigeria's argument, and then goes on to deal with certain consequential matters (which are themselves dealt with below, at paragraph 1.60 *et seq.*) without at any point addressing the merits of the *nemo dat* argument itself.

(2) Paragraph 5.19 *et seq.* concern the application (or as Cameroon would have it, non-application) of the *nemo dat* rule, rather than the rule itself. Thus Cameroon

(a) seeks to show that Nigeria has failed to establish a "Calabar" title to Bakassi by questioning whether the "Kings and Chiefs of Old Calabar" constituted an entity in international law and whether the Bakassi

Peninsula fell under their authority (RC, paragraphs 5.19-5.48): Nigeria has refuted these Cameroonian arguments in this *Rejoinder*, at paragraph 1.6 *et seq*.;

(b) argues the irrelevance in principle of pre-colonial titles (RC, paragraphs 5.49-5.60): Nigeria has rejected this Cameroonian argument in this *Rejoinder* (above, paragraph 1.17 *et seq.)*; and

(c) relies on certain alleged distinctions in the natures of different kinds of protectorate (RC, paragraphs 5.61-5.111): Nigeria has demonstrated the incorrectness of Cameroon's arguments in this *Rejoinder* (above, paragraph 1.22 *et seq.*).

1.59 Thus Cameroon's arguments may be summarised as being in effect that -

(1) The "Kings and Chiefs of Old Calabar" did not have international personality and did not have territorial sovereignty over Bakassi;

(2) Great Britain as the protecting power did have territorial sovereignty; and

(3) therefore Great Britain had the legal power to agree with Germany a boundary which left Bakassi on the German side of the boundary.

It seems implicit in this line of reasoning that in Cameroon's view the *nemo dat* argument does not apply to the 'Bakassi provisions' of the March 1913 Anglo-German Treaty.

1.60 The unsoundness of this reasoning has been amply demonstrated by Nigeria in the various paragraphs of this *Rejoinder* referred to in paragraph 1.58 above. But in addition Nigeria notes that Cameroon nowhere denies

(1) that "*nemo dat quod non habet* is a well-established principle of law and of legal logic - one of the general principles of law recognised by civilised nations", as shown by Nigeria in NC-M, paragraphs 8.28-8.40; or

(2) that where that principle applies it leads to the consequences which Nigeria attributes to it, namely that the ensuing Treaty "was to that extent ineffective to achieve the purported transfer of territorial sovereignty" (NC-M, paragraph 8.40).

1.61 Since Cameroon does not dispute the existence of the *nemo dat* rule and has failed to establish that it is inapplicable in the present circumstances, it follows that the rule, and the consequences flowing from its application as described by Nigeria, hold good in relation to the Anglo-German Treaty of March 1913.

(vi) Severability of defective treaty provisions

1.62 Cameroon devotes considerable space to disputing Nigeria's argument that the defective provisions of the Anglo-German Treaty of March 1913 are to be severed from the rest of the Treaty and regarded as in law ineffective.

1.63 Thus Cameroon argues (RC, paragraph 2.22) that "Le droit international présume que les traités délimitant une frontière posent une frontière permanente, définie et complète en l'absence de preuves manifestes du contraire".[16] However, no such presumption exists.

(1) A boundary fixed by treaty is "permanent" only in the sense that it lasts until it is lawfully changed. The same may be said of virtually any state of affairs established by a treaty. In particular, a treaty-based boundary may be changed by the express or implied consent of the parties (including their subsequent practice), or by a subsequent process of historical consolidation (as to which, see below, Chapter 3).

(2) Similarly, a treaty-based boundary is only as "defined" as the terms of the treaty stipulate. If those terms do not define the boundary adequately, then the boundary is in fact and in law ill-defined and is not by virtue of some alleged presumption rendered well-defined.

(3) So too, a treaty-based boundary is only as "complete" as the terms of the treaty prescribe. If a treaty fails, either by its terms or by virtue of some legal defect, to deal with the boundary in its entirety, then the treaty's prescription of the boundary will be incomplete, and the resulting lacuna is not filled by some such presumption of completeness as that postulated by Cameroon.

In all these respects it is the actual terms of the boundary treaty which are important, not some alleged presumption.

1.64 In pursuit of that opening fallacious argument, Cameroon also suggests that Nigeria's argument that the defective provisions of the Anglo-German Treaty of March 1913 must be severed from the rest of the Treaty amounts to Nigeria 'picking and choosing' amongst the treaty provisions by which it now regards itself as bound: it is said that parties to a treaty "ne peuvent choisor les dispositions du traité qui doivent être appliquées et celles qui ne doivent pas l'être, elles ne saurient faire un tri ("pick and choose")"[17] (RC, paragraph 2.27), that Nigeria cannot "choisir parmi les dispositions d'un traité frontalier celles qui lui conviennent, alors qu'il reconnaît ce traité comme un document juridique valide"[18] (RC, paragraph 2.34), and that Nigeria's position is of "chercher à amputer certaines dispositions d'un traité en vigueur afin de se libérer des obligations qu'il choisit de ne pas respecter"[19] (RC, paragraph 2.35). The impression which Cameroon gives of Nigeria seeking, on some arbitrary basis, to 'pick and choose' amongst applicable treaty provisions is a wilful misrepresentation of Nigeria's position. Nigeria is not exercising some arbitrary 'choice' in this matter: rather, Nigeria is, in one particular respect affecting some 36 kilometres of a 1800 kilometre boundary, drawing a very specific legal consequence from the legal situation which it considers exists. Moreover, that specific legal consequence - namely, the severability of the defective treaty provisions from the remainder of the treaty - is one which is accepted in the Vienna Convention on the Law of Treaties 1969 in the provisions of

Article 44 which Cameroon regrettably failed to draw to the Court's attention (below, paragraph 1.71).

1.65 Cameroon claims that this alleged Nigerian 'pick and choose' argument raises a point of principle, to the effect that treaties must be considered in their entirety (RC, paragraph 2.24). In support of such a principle, Cameroon quotes a passage from Lord McNair, *The Law of Treaties* (1961), p. 484. That passage, however, is not in point: it concerns the scope for making reservations, not the consequences which flow from a fundamental defect in part of a treaty. More to the point is Lord McNair's general conclusion to his Chapter on 'Severence of Treaty Provisions' that

> "circumstances frequently arise which make it necessary to regard one or more of the provisions of a treaty as forming a self-contained unit and requiring separate legal treatment; for instance, in considering ... the effect of its illegality upon the remainder of the treaty, or the question of its elimination for the purpose of curing the invalidity of other provisions that might be affected by it" (at p. 484).

1.66 Cameroon then invokes Articles 26 and 44 of the Vienna Convention on the Law of Treaties 1969. However, Cameroon fails to note that by virtue of Article 4 of the Vienna Convention, that Convention does not apply to the March 1913 Anglo-German Treaty. For a rule embodied in the Convention to be applicable to the Anglo-German Treaty of March 1913 it must be shown that that rule reflects also a rule of customary international law. Nigeria accepts that, for example, Article 26 does represent a rule of customary international law.

1.67 Article 26 of the Vienna Convention stipulates that

> "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

In the light of this provision Cameroon concludes that since both parties accepted the Treaty of March 1913 as valid and in force it must therefore be performed by the parties in good faith.

1.68 First Nigeria must observe that no amount of 'acceptance' by Great Britain can give it a power or right in international law to dispose by treaty of territory not belonging to Great Britain but instead belonging to someone else. Were it otherwise, any State

could by 'accepting' a treaty manifestly at odds with the rights of other States confer upon itself the right to do that which is beyond its lawful powers (*cf.* the example given in the *Counter-Memorial*, paragraph 8.41, of a hypothetical treaty between France and Ireland purporting to dispose of sovereignty over the Channel Islands and Isle of Man).

1.69 But more than that, Article 26, which states a general principle of very broad application, cannot be taken to be asserting that even an invalid treaty, or invalid part of a treaty, must nevertheless be performed by the parties in good faith.

1.70 Cameroon, however, turns to the issue of the possible partial inapplicability of treaties by invoking Article 44 of the Vienna Convention, to the effect that defects in treaties may only be invoked with respect to the whole treaty, and not with respect to parts only (RC, paragraph 2.26). This Cameroonian argument is wrong - and, in being highly selective and omitting relevant provisions of the Vienna Convention, is highly inconsiderate of the Court.

1.71 Cameroon quotes Article 44, paragraphs 1 and 2.

(1) Paragraph 1 is irrelevant. It concerns only those cases where the right of a party to denounce, withdraw from or suspend the operation of a treaty is provided for in the treaty itself or arises under Article 56 of the Convention. There is no such provision in the Anglo-German Treaty of March 1913. As for the reference to Article 56, it only concerns denunciation of or withdrawal from treaties containing no provision regarding termination, denunciation or withdrawal: while the March 1913 Treaty is among those which contain no such provision, there is no question in the present case of Nigeria seeking to denounce or withdraw from that Treaty.

(2) Paragraph 2 is relevant, but Cameroon's quotation of it is disgracefully incomplete. The full text, with the omitted words emphasised, is -

> "2. A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognised in the present Convention may be invoked only with respect to the whole treaty *except as provided in the following paragraphs or in Article 60*".

(3) Not only did Cameroon omit to mention that there were express exceptions to the rule which it relied on, but it also omitted to set out the terms of those exceptions themselves. They are listed in paragraph 3 of the Article (the reference to Article 60, which relates to termination or suspension as a consequence of a breach of treaty, is not relevant in the present context). Paragraph 3 reads -

> "3. If the ground relates solely to particular clauses, it may be invoked only with respect to those clauses where:
>
> (a) the said clauses are separable from the remainder of the treaty with regard to their application;
>
> (b) it appears from the treaty or is otherwise established that acceptance of those clauses was not an essential basis of the consent of the other party or parties to be bound by the treaty as a whole; and
>
> (c) continued performance of the remainder of the treaty would not be unjust."

(4) As Nigeria has shown in its *Counter-Memorial* (paragraph 8.56 *et seq.*), the 'Bakassi provisions' of the March 1913 Treaty are separable. Their acceptance was not an essential basis of Germany's consent to be bound by the treaty as a whole - indeed, their acceptance, involving as it would a cession of territory to Germany, would have been contrary to Germany's own undertakings and understandings (see NC-M, paragraphs 8.44-8.45). Nor would continued performance of the rest of the Treaty be in any way unjust.

(5) For completeness Nigeria notes that paragraph 4 of Article 44 concerns only cases involving fraud or corruption, which are not relevant to the present proceedings, and paragraph 5 concerns only cases involving coercion or a conflict with *jus cogens*, which also are not presently relevant.

1.72 Thus Cameroon's attempted argument against the severability of the legally defective provisions of the Anglo-German Treaty of March 1913, based on the terms of the Vienna Convention, is seen to be both misleadingly presented and wrong. The conclusions to which this Cameroonian line of argument are said to lead (RC, paragraph 2.27) must therefore be disregarded in their entirety.

1.73 Cameroon then seeks to support its otherwise unsupported conclusions by reference to observations made in three Judgments of the Court and its predecessor (RC, paragraphs 2.28-2.31) and in one arbitral award. None provides the support which Cameroon seeks.

1.74 The *dictum* in the Permanent Court's Advisory Opinion in the *Case concerning the Treaty of Lausanne, Article 3, paragraph 2* (1925)[20] is unhelpful for Cameroon.

(1) It states, first, that "the very nature of a frontier and of any convention designed to establish frontiers between two countries imports that a frontier must constitute a definite boundary line throughout its length". This statement must be understood in the light of the question being addressed by the Court, which concerned the meaning of a treaty provision concerning the *future* delimitation of "the frontier between Turkey and Iraq". The Court was saying that such a formulation called for establishment of a definite boundary along the entire length of the boundary in question. The Court was not saying that every existing boundary treaty has to be understood as covering the whole boundary: that depends on the terms of the treaty. Thus even taken at face value, the Anglo-German Treaty of March 1913 did not seek to prescribe the boundary between the British and German protectorate territories "over its entire extent" - those terms were limited to the stretch between Yola and the sea; and although the Court stated that it was inherent in boundary treaties that they must provide "a precise delimitation" of the boundary, it depends on the terms of the treaty whether in any particular case the delimitation is indeed precise.

(2) The Court then went on to observe, second, that it "is, however, natural that any article designed to fix a frontier should, if possible, be so interpreted, that the result of the application of its provisions in their entirety should be the establishment of a precise, complete and definitive frontier". The Court was here addressing a question of interpretation, rather than a question of substance; and it was concerned with the particular situation where a treaty itself specified part of a boundary but left the rest to be

determined through some other procedure. The Court was, in effect, saying how that combined approach should be looked at overall. The desirable end-result, namely a precise, complete and definitive boundary, is to be obtained "if possible" through interpretation: in other words, the actual terms of the treaty govern, and if such an end-result is not possible by way of interpretation, so be it.

(3) Moreover, the Court's *dictum* was in no way addressing the issue of a boundary treaty which was wholly or in part invalid or ineffective.

(4) The Court's dictum must be seen in the light of the general context of the case. The Court was not being called on to determine a particular boundary in dispute between the States concerned, but to give an Advisory Opinion as to the nature of the decision on that matter taken by the Council of the League of Nations,[21] a task to which it said that it would strictly confine itself, without prejudicing the merits of the problem.[22]

1.75 As for the Court's *dictum* in *Sovereignty Over Certain Frontier Lands*,[23] it is again dealing with a matter of interpretation of the particular Boundary Convention before it, and not with issues of general application to all boundary treaties. The Court was concluding that any interpretation of the Convention which left part of the boundary in suspense "would be incompatible with [the parties'] common intention". This has no bearing upon the interpretation to be given to some other treaty, or upon any question affecting the treaty's validity or effectiveness.

1.76 Turning to the passages cited from the Court's Judgment in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*,[24] they too do not relate to issues arising in the immediate context of the present proceedings. The Court's observations as to the aim of Article 3 of the Franco-Libyan Treaty of 1955 were self-evidently related to the terms of that particular treaty, both as regards the parties' wish to settle all boundary questions and the resulting permanence of the resulting frontier. To take those *dicta* as suggesting a much broader proposition regarding a general presumption that a boundary treaty is "définitif, complet et précis"[25] (RC, paragraph 2.30) is unwarranted in principle, and unjustified by the language actually used by the Court. To continue with a selection of further *dicta* about the principle of the stability of boundaries (RC, paragraphs 2.31, 2.33-2.34) does nothing to help resolve questions which arise as to the invalidity of a boundary treaty, whether in part or as a whole. The general principle that peace, stability and finality are to be encouraged in boundary settlements does not decide particular issues which call for determination in relation to specific boundary treaties, as a result of their particular terms or the particular circumstances of their conclusion. To uphold, in the name of stability, an unlawful and invalidly established boundary would be to invoke stability in order to produce precisely its opposite.

1.77 The last *dictum* relied on by Cameroon, from the 1966 Award in the *Argentine-Chile Frontier Case* (referred to by Cameroon as the *Andean Boundary* case),[26] is manifestly irrelevant: it states that "[s]ince the 1902 Award was a valid Award, it must be assumed to have settled the entire boundary ... in the area covered by it". The Tribunal's conclusion takes as its premise that the 1902 Award was a valid Award; in

the present proceedings it is precisely that equivalent issue which is in question as regards the relevant part of the March 1913 Anglo-German Treaty.

1.78 Moreover Cameroon has, yet again, quoted a passage from a Judgment while omitting an important and relevant part of it. The text of the passage cited by Cameroon, with the omitted words emphasised, is:

> "Since the 1902 Award was a valid Award, it must be assumed to have settled the entire boundary between Argentina and Chile in the area covered by it ... *except to the extent to which it is impossible to apply the Award on the ground*".

This passage, in full, is clearly more limited in its scope than Cameroon asserts: it shows that a boundary is only settled in the area covered by the instrument delimiting it, that that instrument must be valid, and that there is an exception where delimitation does not make sense on the ground.

1.79 So far as judicial authority for the severance of treaty provisions is concerned, more relevant than the cases cited by Cameroon are the decisions of the Court in the *South West Africa Cases*[27] and the *Fisheries Jurisdiction Case,*[28] in both cases the Court accepted that treaty provisions could be severed - in the context (in the first case) of provisions of a mandate affected by the disappearance of the League of Nations, and (in the second) of provisions of a treaty affected by changes in the law.

1.80 Cameroon's final argument in this section of its *Reply* is that since Great Britain and Germany had the intention, as shown in the preamble to the Treaty of March 1913, to settle the frontier from Yola to the sea, this means that the Treaty must be interpreted as implying a precise, complete and definitive boundary (RC, paragraphs 2.32-2.33). But the issue is not the interpretation of the 1913 Treaty, but its limited substantive effectiveness. It cannot be sufficient for a party to a treaty to "intend" something and then for that something to be regarded as having been achieved notwithstanding whatever defects in the treaty there may be.

1.81 In considering possible grounds for the partial invalidity of the 1913 Treaty as alleged by Nigeria, Cameroon observes that "le seul fondement ayant un semblant de vraisemblance juridique à cette fin serait une erreur commise par la Grande-Bretagne, Etat prédécesseur du Nigéria, quant à sa capacité juridique à conclure ce traité frontalier"[29] (RC, paragraph 5.163).

1.82 Nigeria notes, first, that Cameroon, in re-stating Nigeria's alleged argument, appears not to have noticed that Nigeria talks of the 1913 Treaty being partially "ineffective", rather than as being partially "invalid". The two terms are not synonymous.

1.83 Second, Nigeria notes that any search for a legal basis for partial ineffectiveness having even "a semblance of legal probability" would not ignore, for example, (i) the possibility that what is here in

question is not so much the search for a basis on which to find a treaty partly invalid or ineffective, but rather a subject-matter falling beyond what the parties could lawfully concern themselves with, or (ii) the possibility that the rule prohibiting a State from disposing of what lawfully belongs to someone else has the status of a rule of *jus cogens*, or (iii) the possibility that a State may not effectively conclude a treaty with another party which is inconsistent with the first State's existing treaty commitments to a third party. The view that "only" an error by Great Britain as to its legal capacity to conclude the Treaty could afford a possible basis for its partial ineffectiveness is therefore incorrect.

1.84 Exclusive concentration by Cameroon on this particular aspect of the matter is thus misconceived. All the same, Nigeria would note that the question does not concern the invocation by Great Britain of its own error in concluding the 1913 Treaty, but rather the invocation by Nigeria, after becoming independent, of error on the part of Great Britain. Great Britain had no interest in invoking that error on its own part, and indeed the March 1913 Treaty was, possibly already by 1914 but in any event after 1919 at the latest, abrogated (see below, paragraph 1.83 *et seq.*). It was Nigeria, under British 'protection', which was injured by its protector's error; but Nigeria did not contribute to the error, and did not become independent until 1960.

1.85 Cameroon makes much of Nigeria's alleged failure to raise the question of the effectiveness of the 1913 Treaty until the 1990s (RC, paragraph 5.167). But the fact is that Nigeria's continuing authority over the Bakassi Peninsula after attaining independence in 1960 was sufficiently effective and peaceful to make it unnecessary for Nigeria to consider deficiencies in the 1913 Treaty. It was only as Cameroon gradually sought to expand its presence into Nigerian territory in the Bakassi region that the legal situation needed to be given closer attention and the doubts about the 'Bakassi provisions' of the 1913 Treaty needed to be addressed, and were given public expression.

1.86 Among the relevant considerations, of course, was the purported exercise by Great Britain of a power which it did not have, namely to cede to Germany territory which belonged to the Kings and Chiefs of Old Calabar. But that was not the only consideration requiring attention. There was, for example also the failure of Germany to comply with its own legal requirements for the approval of treaties providing for the acquisition or cession of colonial territory.

1.87 Section 1, paragraph 2, of the *Schutzgebietsgesetz* ("Protected Territory Act") (at Annex NR 5) required parliamentary approval (in the form of a statute) for any acquisition or cession of colonial territory, unless what was involved was a mere boundary rectification. This requirement was added to the *Schutzgebietsgesetz* on 16 July 1912. The drafting history of this addition shows that it was intended to limit the external treaty-making power of the German Government.

1.88 Although officials in German Government Departments took the view that the provisions of the Anglo-German Treaty of March 1913 involved only boundary rectifications (NC-M, paragraph 8.45), there is room for considerable doubt about that conclusion so far as concerns the provisions affecting Bakassi.

(1) 'Rectification' means a minor alteration of a boundary of only local importance; an area the size of Bakassi cannot be seen in that light;

(2) rectification in the African context was typically a process characterised by the replacement of lines drawn in diplomatic negotiations (often without knowledge of the factual situation on the ground) by lines following a more topographically appropriate course: with Bakassi, however, what was involved was the replacement of one well-understood natural line by another, different, but equally well-understood, natural line - in both cases, the line of a river;

(3) before the March 1913 Anglo-German Treaty, the only two colonial boundary treaties concluded by Germany after the 1912 amendment to the *Schutzgebietsgesetz* and before the end of the German colonial era, namely those with France (1912)[30] and Portugal (1913),[31] 28 concerned only minor deviations from an already agreed boundary; the transfer of Bakassi was, by comparison with that practice, clearly much more than such a rectification;

(4) the March 1913 Treaty shows - by its provision that if the natural boundary line in the Akpa Yafe were to change to the Rio del Rey, Bakassi would still remain German (Article 20) - that the purpose of this part of the Treaty was regarded not as a boundary rectification but as the acquisition of a specific area, i.e. Bakassi;

1.89 Consequently, as a treaty incorporating provisions involving the acquisition of colonial territory by Germany, German law at the time required the March 1913 Treaty to be approved by the German Parliament, at least so far as its Bakassi provisions were concerned. No such approval was given. This view of the German constitutional position is supported by contemporary writers (Annex NR 6).

(vii) Treaty of Versailles

1.90 Nigeria, in its *Counter-Memorial*, stated that in accordance with Article 289 of the Treaty of Versailles the Anglo-German Treaty of 11 March 1913 was abrogated, and that Cameroon did not therefore succeed to the Treaty itself (NC-M, paragraph 8.53).

1.91 Cameroon contends that this argument is unfounded, since (a) the 1913 Treaty does not fall within the scope of Article 289 of the Treaty of Versailles, (b) if the 1913 Treaty were to be regarded as falling within the scope of that Article the result would be to deny the legal effects deriving from the loss by Germany of its colonies under the Treaty of Versailles, and (c) Nigeria's argument is inconsistent with the rules on the succession of States to legal instruments with a territorial scope, in particular those fixing boundaries (RC, paragraph 5.127). These Cameroon arguments are themselves without legal foundation.

(viii) Article 289 of the Treaty of Versailles

1.92 Article 289 of the Treaty of Versailles provides in effect that bilateral treaties have to be the subject

of a notification procedure if they are to be revived, and that bilateral treaties which have not been the subject of such a notification "are and shall remain abrogated". Cameroon notes (and Nigeria agrees) that Article 289 of the Treaty of Versailles is included within Part X of that Treaty, which contains the 'economic clauses' of the Treaty. Cameroon argues that the Anglo-German Treaty of 11 March 1913 is not a treaty of an economic character, and that therefore it does not come within the scope of Article 289. Nigeria disagrees with this conclusion.

1.93 The provisions of Article 289 reflected much careful consideration on the part of the allied States. In the United Kingdom a Committee was established to examine what should be the fate of bilateral and multilateral treaties with Germany. The Committee submitted a First Report on 7 August 1918,[32] and a Final Report on 31 August 1918.[33]

1.94 In its First Report the Committee[34] dealt with certain matters of general approach to the issue before it. In particular, the Committee considered the question whether the outbreak of war automatically put an end to all bilateral treaties with an enemy State (which the Committee referred to as Class I treaties). The Committee was of the opinion that the "view most generally entertained in this country hitherto has been that the effect of war was to put an end to all such treaties" (paragraph 9). Although noting that in more modern thinking there were some exceptions (such as treaties determining what should happen in time of war - and it may be noted that the Committee did not mention boundary treaties as a possible exception), the Committee concluded that "[p]ractice, however, is overwhelmingly in favour of the older view". Consequently,

> "After carefully studying the authorities and precedents on the subject, the Committee are satisfied that in the case of Class I treaties it will be convenient to adopt this rule in the general settlement at the end of the war, and to provide that only such treaties as may be specifically revived shall continue in force, all others being regarded as at an end" (paragraph 9).

This was, of course, the principle eventually enshrined in Article 289 of the Treaty of Versailles. With regard to boundary treaties, the Committee said:

> "In order to avoid any questions arising as to the continued existence of boundaries as settled under previous treaties which are not revived, we recommend that a general saving should be inserted in the Treaty of Peace that, in cases where the boundaries so settled are not altered by the Treaty of Peace, the non-renewal of any treaty should not affect any such boundary" (paragraph 7).

Thus by implication the Committee was clearly of the view that although settled boundaries survived, boundary treaties themselves did come to an end as a result of war between the parties. The Committee's view thus demonstrates the falsity of Cameroon's assertion that the non-abrogation of boundary treaties

was "ce qui était conforme à l'opinion juridique unanime de l'époque"[35] (RC, paragraph 5.139).

1.95 In its Final Report the Committee applied the general principles which it had identified in its First Report to the individual treaties falling within the scope of its remit. It put the various treaties into groups, and each treaty was given a number. Group 25 was headed "Africa". The Anglo-German Treaty of 11 March 1913 was Treaty No. 79. The Committee was

> "aware that Germany may not retain her colonies, and, as the great majority of the treaties in this group are Class I treaties, the disappearance of the colonies *will naturally entail the disappearance of the treaties*. The Committee have, however, thought it desirable to consider each treaty on its merits and to report accordingly." (paragraph 45; emphasis added)

The Committee continued by observing that if the recommendation made in paragraph 7 of its First Report (above) were approved,

> "it would be unnecessary to revive in the Treaty of Peace a great many of these instruments. This applies to .....**79**, which are mainly boundary treaties" (paragraph 46).

The Committee noted that if any of those treaties were to stand, special provision should be made to protect provisions in those treaties regarding the upkeep of boundary posts and provisions in them for joint use of boundary rivers for fishing and navigation. The Committee continued:

> "The only provisions in the treaties mentioned above which would not be covered by the three general saving clauses suggested are ... parts of **79**, viz., sub-section 23, dealing with mutual rights of navigation between Akwayafe and the sea, and another part wholly in favour of Germany relating to the navigation on the Cross River. None of these provisions should be revived." (paragraph 46)

In the Appendix to the Committee's Report the entry for Treaty No. 79 concludes with the recommendation "Not to be revived", and as the reason "Boundary".

1.96 It is thus apparent that the British Government, *in accordance with their understanding of the law as it stood at that time*, intended to ensure that the Anglo-German Treaty of 11 March 1913 should be treated in the Treaty of Versailles as having been terminated. The terms of Article 289 are entirely consistent with that clear intent. Far from Cameroon being correct in asserting that "il n'a jamais été sérieusement avancé que le Traité anglo-allemand de 1913 ou que tout autre traité ayant un contenu similaire entraient dans le champ d'application de l'article 289 du Traité de Versailles"[36] (RC, paragraph 5.130), it was expressly the view and intention of the British Government that that should indeed be the

result to be achieved. Nor was it the view of the British Government alone: Sir Cecil Hurst, who had been the Chairman of the Committee which had considered what should be the fate of Anglo-German treaties, wrote,

> "speaking from memory, that committee recommended the adoption of the policy which was acted on by His Majesty's Government in the peace negotiations at Paris in 1919, *and was accepted by all the other Allies*".[37]

1.97 Although Article 289 is included within Part X of the Treaty of Versailles, this does not mean that the Anglo-German Treaty of 11 March 1913 was excluded from its provisions:

(1) In the first place, it is not uncommon to regard treaties of almost any character as being essentially economic in their import, in so far as they can, as a general rule, be seen to facilitate relations, and particularly economic relations, between the parties.

(2) Second, if 'economic' treaties are regarded as a strictly limited group, then there would be many treaties which would fall outside the scope of Article 289 and the fate of which would not elsewhere be determined in the Treaty of Versailles - an omission so surprising as to imply that the placement of Article 289 in Part X of the Treaty was not intended to have any such effect.

(3) Third, not even Cameroon, however, suggests that the concept of 'economic' treaties is to be narrowly construed: "Il ne fait aucun doute que la notion de traité "économique" ou "commercial" a été entendue dans un sens large",[38] and "La disposition était même destinée à couvrir des traités de caractère économique au sens le plus large du terme, tels que ceux traitant de procédure civile ou de la protection des mineurs"[39] (RC, paragraph 5.142); further, "Il est ...indéniable que le champ d'application de cette disposition se limitait aux seuls traités à caractère économique, au sens large du terme"[40] (RC, paragraph 5.144). By acknowledging - correctly - that the notion of an economic treaty is to be understood in very broad terms, Cameroon's assertion that the 1913 Anglo-German Treaty was outside the scope of Article 289 loses all cogency, since -

(4) fourth, given Cameroon's acceptance of such a very broad meaning of 'economic' or 'commercial' treaties, it is clear that the Anglo-German Treaty of 11 March 1913 contained provisions of economic significance which brought it within such a broadly defined concept. That it was not solely a boundary treaty is apparent from its preamble which states that the parties were

> "desirous of arriving at an Agreement respecting (1) the settlement of the frontier between Nigeria and the Cameroons, from Yola to the sea, and (2) the regulation of navigation on the Cross River."

The British Commission which examined Anglo-German treaties in 1918 noted this mention of navigation on the Cross River (set out in a separate part of the Treaty) and also the provision in Article

XXIII for navigation rights on the Akwayafe River, and thought that neither should be revived (above, paragraph 1.95): this is one of the topics which Cameroon expressly accepts are included within its broad category of economic or commercial treaties (which notion, it acknowledges, included, "entre autres, des traités portant sur des questions telles que le traitement des ...communications (par ...voies navigables...)"[41] (RC, paragraph 5.142). The Treaty also included provision for native fishing rights, which was clearly of economic significance (Articles XXVI and XXIX).

(5) As noted by Cameroon (RC, paragraph 5.147), Article 282, dealing with multilateral treaties, in terms deals only with certain "conventions and agreements of an economic or technical character". If Part X was, by definition, limited to economic treaties, there was no need for this express stipulation in Article 282. But having included that limitation expressly in that Article, it is all the more significant that Article 289 not only contained no such limitation, but in terms referred to "the" (i.e. all) bilateral treaties which Allied powers wished to revive, "all others" being and remaining abrogated, and ending with the express statement that "The above regulations apply to *all* bilateral treaties or conventions ... [with] Germany ..." (emphasis added). Cameroon's attempt (RC, paragraph 5.149) to explain away the difference in wording between Articles 282 and 289 is singularly unconvincing, mostly based on hypothesis and supposition - "on peut en conclure que les rédacteurs ont estimé qu'il était inutile", "il est possible que", "le résultat d'une rédaction hâtive", "il semble que la raison principale qui a guidé cette formulation", "Si les rédacteurs du Traité de paix étaient confiants".[42] Cameroon's conclusion (RC, paragraph 5.150) that "La terminologie utilisée à l'article 289, paragraphe 7 .... s'explique donc aisément"[43] is correct as an abstract proposition, but wrong as applied to the situation with which Cameroon is trying to deal. In drawing the distinction between Article 282, which specified the multilateral treaties with which it was dealing, and Article 289, which "ne contenait aucune disposition sur la remise en vigueur ou l'abrogation de traités bilatéraux à caractère économique"[44] (RC, paragraph 5.149), Cameroon wilfully misrepresents the provisions of the Treaty of Versailles. Article 282 dealt with specific multilateral treaties; by contrast Article 289 did not specify which bilateral treaties it was dealing with *because it was, according to its terms, dealing with "all" of them*: since it was dealing with all such treaties, there was no need to specify each individually. *This*, not Cameroon's convoluted and exaggerated argument, is the simple, clear and "easily explained" reason for the difference in language of the two provisions.

(6) The fact that the *travaux préparatoires* of the Treaty of Versailles show, in the passages referred to by Cameroon (RC, paragraphs 5.134-5.136, 5.140-5.141), that manifestly commercial treaties were included within the scope of Part X of the Treaty, does not show that that Part, let alone Article 289 which is within that Part but which contains contrary language, is limited to such manifestly commercial treaties. Cameroon's acknowledgement that the notion of 'economic and commercial treaties' must be broadly interpreted (above, sub-paragraph (3)) demonstrates that any such argument is untenable, and renders the passages quoted by Cameroon devoid of purpose in the present context.

(7) Cameroon draws attention (RC, paragraphs 5.130-5.131) to the recent proceedings in the case of *Kasikili/Sedudu Island (Botswana/Namibia)* in which no question was raised as to the legal validity of an Anglo-German Treaty of 1 July 1890 (sometimes referred to as the Treaty of Berlin: Annex NC-M

26). In Article I of the Special Agreement the parties asked the Court to determine the relevant part of the Botswana-Namibia boundary "on the basis of the Anglo-German Treaty of 1 July 1890". For the Court, therefore, the relevance of that Treaty was a 'given' and questions as to its continuing validity would not have been appropriate. As to the parties' reasons for invoking the Treaty in their Special Agreement, Nigeria (and presumably Cameroon) is in no position to comment upon the motivation of the parties in dealing with the Treaty in the way they did. Nigeria would, however, observe that if the treaty was the root of title to territory on either side of the boundary and if the parties accepted that its terms correctly delimited the boundary, then irrespective of its continuing validity there was nothing to stop them referring to it in their Special Agreement as containing the governing language for the case (in addition, of course, to their specific further mention of the rules and principles of international law).

(8) As to the quotations from the works of Lord McNair upon which Cameroon relies, it is to be noted that in his book on *The Law of Treaties* he was, in general, stating the law as it stood, in his view, in 1960, and not as it was at the time of the outbreak of the First World War in 1914. Moreover, he did not always make the distinction, which is nowadays clear and accepted (see below, paragraphs 1.102-1.103), between the *treaty* giving rise to a permanent state of affairs (such as a boundary treaty) and the *rights and obligations* to which that treaty had given rise.[45]

(ix) Succession to boundary treaties

1.98 Cameroon argues that Nigeria's view that, by virtue of Article 289 of the Treaty of Versailles, the Anglo-German Treaty of 11 March 1913 was abrogated is inconsistent with the rules of international law relating to boundary treaties. Nigeria does not accept that there is any such inconsistency.

1.99 Much of Cameroon's argument as to the effect of Article 289 of the Treaty of Versailles appears to be based on the misapprehension that Nigeria is asserting that by virtue of the Treaty of Versailles the boundary established by the Anglo-German Treaty of 11 March 1913 was abrogated. Nigeria has advanced no such argument. Nigeria has simply drawn attention to the fact that, by virtue of Article 289, the *Treaty* was abrogated and that therefore Cameroon could not have succeeded to the *Treaty* itself. Cameroon has failed to take into account the distinction to be drawn between succession to the *treaty* and succession to the *boundary* established by the treaty.

1.100 If Cameroon were correctly to understand Nigeria's argument in this respect, it will be seen that much of the effort devoted by Cameroon to this issue is irrelevant. In particular, Cameroon's assertions that Nigeria's argument involves inconsistency with the provisions of the treaty concerning Germany's renunciation of its overseas territories and leads to instability (RC, paragraphs 5.152-5.156), are unfounded: it is Nigeria's contention that even though a boundary *treaty* is abrogated, the boundary itself (if lawfully established) continues to have legal force.

1.101 Cameroon's misunderstanding on this point is particularly evident in relation to its observations on Article 125 of the Treaty of Versailles, relating to the Franco-German agreements of 1911 and 1912 (RC, paragraphs 5.158, 5.160). As Cameroon notes (RC, paragraph 5.160) these agreements "included"

a new delimitation of the border between French Equatorial Guinea and Cameroon. But they did more than that: they resulted in the cession to Germany of very large areas of land to the east and south of Germany's Kamerun protectorate. By Article 125 France appears to have secured the return to itself of those territories (and thus their exclusion from the area of Kamerun which was to become the French mandated territory of Cameroon). Moreover, the two agreements also contained non-territorial provisions. Thus it is apparent from the terms of Article 125 that those agreements gave rise to deposits, credits and advances in favour of Germany, and Article 125 provided that such payments made to Germany under the 1911 and 1912 agreements should be paid to France. It was therefore not a question of providing simply for the abrogation or revival of those 1911 and 1912 agreements, and it was therefore insufficient to leave them to be dealt with solely under Article 289: rather they had to be dealt with specifically and in their particular circumstances in some special provision, i.e. in Article 125. Far from demonstrating, as Cameroon suggests, that the provisions of Article 125 show the incorrectness of Nigeria's argument about the scope and effect of Article 289, in fact the provisions of Article 125 are entirely consistent with Nigeria's view, for without some provision like Article 125 the intentions of France would not have been realised: it was one of the "special subjects" dealt with as a "particular" consequence of Germany's general renunciation of its overseas rights and interests under Article 118 (see paragraph 3 of that Article: "In particular Germany declares her acceptance of the following Articles relating to certain special subjects").

1.102 The general point about the termination of boundary treaties but not of the boundaries created by them was well made by the British Committee which was appointed to consider what should happen as regards Anglo-German treaties in the peace treaty to be concluded at the end of the First World War (above, paragraph 1.93 *et seq.*). As already noted, in paragraph 7 of its First Report, the Committee accepted that non-renewal of a boundary treaty does not affect the continuation of the boundary as such. The same view was adopted by the International Law Commission when preparing what was to become Article 11 of the Vienna Convention on Succession of States in respect of Treaties 1978. That Article provides:

"A succession of States does not as such affect:

(a) a boundary established by a treaty; or

> (b) obligations and rights established by a treaty and relating to the regime of a boundary."

1.103 In its Commentary on the draft version of this Article the International Law Commission made clear that its proposed language (which in this respect was the same as that eventually adopted in the Vienna Convention) distinguished between the treaty and the boundary established by the treaty.[46] Nigeria accepts this distinction, and said so in its *Counter-Memorial*, where it observed, immediately after its assertion that Article 289 of the Treaty of Versailles confirmed the abrogation of the 1913 Anglo-German Treaty, that

> "in accordance with well-established rules of international law, in so far as a boundary was lawfully established by [the 1913] Treaty, the boundary survives until lawfully changed by some subsequent act binding upon the States concerned." (NC-M paragraph 8.54).

1.104 Of course, the survival of the boundary is conditional upon the boundary having been lawfully established in the first place: the rule of survival does not serve to legitimate that which was previously illegitimate. This view was clearly expressed by the International Law Commission[47] and was also stated by Nigeria in its *Counter-Memorial* in the following terms:

> "For the reasons already given, the boundary purportedly established by that Treaty in relation to Bakassi was not lawfully established, and there was therefore no consequent lawful boundary which could survive the lapse of the Treaty purportedly establishing it." (NC-M paragraph 8.54)

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1 But Cameroon has incorrectly given the references to this work as cited in n. 40: the references cited in nn. 40 and 41 should be transposed.

2 At pp. 70, 70-71, 80-81.

3 See NC-M, paras. 6.39 and 6.61-6.62, citing *Oppenheim's International Law*, Vol. 1, 9th ed., 1992, pp. 267, 268, 269, and the *Tunis and Morocco Nationality Decrees* case (PCIJ, Ser. B, No. 4, at p. 27). As long ago as 1905, when the 1st edition of *Oppenheim* was published, the position was expressed in essentially the same terms as it is in the most recent edition. Thus: "Protectorate is ... a conception which ... lacks exact juristic precision, as its real meaning depends very much upon the special case... The position of a State under protectorate within the Family of Nations cannot be defined by a general rule, since it is the treaty of protectorate which indirectly specializes it by enumerating the reciprocal rights and duties of the protecting and the protected State. Each case must therefore be treated according to its own merits". (*Oppenheim* Vol. I 1st ed., 1905, p. 138).

4 NC-M, paras. 6.37-6.65.

5 No basis for that concept in treaty law has been advanced by Cameroon, nor does Nigeria know of any such treaty basis for the concept.

6 Above, para. 1.30(1).

7 Below, para. 1.46(2).

8 Below, para. 1.46(1).

9 It is to be noted that this English law rule of 'act of State' is different from the rule commonly referred to by that name, particularly in the context of decisions by US Courts.

10 Vattel, *The Law of Nations*, Book I, Chapter XVI, p. 95, New York 1863.

11 British and Foreign State Papers, Vol. 79, 1887-1888, p. 240; Parry, Consolidated Treaty Series, Vol. 171, 1888-1889, p. 207 (Annex NR 3).

12 See NC-M, paras. 6.63, 6.65. For comparison with the terms of the Treaty with Brunei, it may be recalled that the equivalent provision of the 1884 Treaty with the Kings and Chiefs of Old Calabar provides: "The Kings and Chiefs of Old Calabar agree and promise to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government".

13 Sir Philip Currie (Foreign Office) to the Law Officers, 12 August 1890, and Attorney-General (Sir Richard Webster) to Sir Philip Currie, 13 August 1890 Annex NR 4.

14 Award of 9 October 1998, Phase One: Territorial Sovereignty and Scope of the Dispute, I.L.R. Vol. 114, p. 1.

15 Nigeria, of course, does not admit that the Treaty was legally binding in respect of its 'Bakassi provisions'.

16 "International law presumes that the treaties delimiting a boundary establish a permanent, defined and complete boundary, in the absence of clear proof to the contrary".

17 "may not choose the provisions of the treaty which do have to be applied and those which do not, they cannot 'pick and choose'".

18 "choose amongst the provisions of a boundary treaty those which suit it, whilst at the same time it recognises this treaty as a valid legal document".

19 "seeking to amputate certain provisions from a treaty in force in order to free itself from obligations which it chooses not to respect".

20 PCIJ, Ser. B, No. 12, at p. 20.

21 *ibid., a*t pp. 6-7.

22 *ibid.,* at p. 18.

23 I.C.J. Reports 1959, at pp. 221-222.

24 I.C.J. Reports 1994, at p. 24.

25 "definitive, complete and precise".

26 I.L.R., Vol. 38, p. 81.

27 I.C.J. Reports 1962, p. 319.

28 I.C.J. Reports 1973, p. 3.

29 "the only basis having a semblance of legal probability for this purpose would be an error by Great Britain, Nigeria's predecessor State, in respect of its legal capacity to conclude this boundary treaty".

30 Agreement Regarding the Delimitation between Togo and the French Possessions in Dahomey and in the Sudan, 12 September 1912, and the Additional Provisions of 28 September 1912.

31 Agreement Concerning the Affiliation of the Islands Situated on the Rowurna River (East Africa), 20 March 1913.

32 Annex NR 7.

33 Annex NR 8.

34 The Committee's membership included Mr C J B (later Sir Cecil) Hurst, legal adviser at the Foreign Office (and later to be a Judge, and President, of the PCIJ). At the conclusion of its work Mr Hurst was the Chairman of the Committee.

35 "in line with the unanimous legal opinion of the time".

36 "it has never been seriously suggested that the 1913 Anglo-German Treaty or any other treaty with a similar content should fall within the scope of Article 289 of the Treaty of Versailles".

37 Annex NR 9.

38 "There is no doubt that the notion of an "economic" or "commercial" treaty was understood in broad terms".

39 "The provision was even intended to cover economic treaties in the broadest sense of the term, such as those dealing with civil procedure and the protection of minors".

40 "It is ... undeniable that the scope of this provision was limited to treaties of an economic nature in the broad sense of the term".

41 "amongst others, treaties relating to questions such as the treatment of ... communications (by ... navigable waterway...)".

42 "one can conclude that the authors considered it unnecessary", "it is possible that", "the result of hasty drafting", "it appears that the principal reason which guided this wording", "If the authors of the Peace Treaty were confident".

43 "The terminology used in Article 289, paragraph 7, is therefore easily explained".

44 "did not contain any provisions on the revival or abrogation of bilateral treaties of an economic nature".

45 The first passage quoted in RC, para. 5.137, illustrates this confusion, in stating that "*rights* of a permanent character... such as .. a boundary *treaty* ... are not affected by the outbreak of war between the contracting parties".

46 Yearbook of the Int. Law Commission, 26th Session, 1974, Vol. II Pt. 1, Commentary on Draft Article 11, p.196 *et seq*., esp. paras. 18-20 at pp. 201-202.

47 See below, para. 15.47(9).

PART I

BAKASSI

CHAPTER 2

SUBSEQUENT ACTS OF ADMINISTRATION

IN BAKASSI 1913-1960

A. Subsequent acts of administration in Bakassi

(i) Non-implementation of the 1913 Treaty by Germany before 1919

2.1 Germany did not submit the March 1913 Treaty to its Parliament for approval as required by German law (above paragraphs 1.87-1.89). There is no evidence that Germany took steps to implement those provisions of the Treaty which called for further action (Article 24 *et seq.*). Nigeria has already shown[1] that "The weight of the evidence strongly suggests that there was no German occupation or administration of Bakassi, and no significant pattern of German activities there, in the period between March 1913 and May 1916"[2] (when the occupation of German Kamerun by British, French and Belgian forces was completed). By virtue of that war-time occupation, there was no opportunity for German administration of Bakassi between 1916 and 1919, when the Treaty of Versailles was concluded: it entered into force on 10 January 1920.

2.2 There is no evidence of any expressions of concern by the Kings and Chiefs of Old Calabar that, after March 1913, part of their territories were now supposed to be under the administration of Germany; German activities in the area were thus either non-existent or, at most, so minimal as not to be noticeable. There is certainly no evidence that the Kings and Chiefs gave their approval to any transfer of their territory to Germany *post hoc*.

(ii) British, Nigerian and other Allied administrative activities, 1916-1920

2.3 There is no evidence of any administration of the Bakassi area by British, French or Belgian administrations *acting in right of Germany*, as the occupying authorities in the period 1916-1920.

2.4 However, during that same period (i.e. *before* the Mandate entered into force, so that British and Nigerian activities could not have been based on authority derived from the Mandate but flowed from original British/Nigerian authority over Bakassi as part of the Protectorate), the pre-War administrative, legal and other ties between Bakassi and the rest of Nigeria continued unbroken and uninterrupted (as indeed they did right through to Nigeria's attainment of Independence in 1960, and thereafter).

2.5 Moreover in April 1919 the British District Officer at Ossidinge, in Southern Cameroons, in official correspondence with the British Resident at Buea, stated that the boundary with the Nigerian protectorate fell on the right bank of the Rio del Rey.[3]

(iii) The significance of acts of administration and other acts of sovereignty (*effectivités*)

2.6 In the years after the War the practical administration of, and other manifestations of sovereignty over, the Bakassi Peninsula become very relevant to, and perhaps decisive for, the question of sovereignty over that area. The legal significance of these administrative activities (*effectivités*) needs to be seen in the right perspective. In this respect it is necessary to correct Cameroon's explanation of the role of *effectivités*.[4]

2.7 Cameroon asserts that:

> "Le rôle des effectivités est évident dans une situation où le titre juridique est établi. C'est un rôle confirmatif et non pas contradictoire.... Les effectivités ne peuvent prévaloir sur un titre conventionnel établi."[5] (RC, paragraph 2.63)
>
> Again:
>
> "Ainsi, les 'effectivitiés' peuvent jouer un rôle dans la détermination de la frontière établie à un moment donné, soit du fait du manque de clarté du titre juridique, soit pour la confirmation de ce titre. Elles ne peuvent toutefois prévaloir sur un titre juridique conventionnel."[6] (RC, paragraph 2.64)

2.8 Cameroon's error lies in applying that kind of analysis to the present situation, *on the assumption that the Anglo-Treaty of March 1913 is wholly valid and effective*. But as Nigeria has demonstrated,[7] that assumption is incorrect: that Treaty is ineffective in relation to those parts of it which purported to transfer title to Bakassi to Germany, and there is thus no treaty-based boundary between Nigeria and Cameroon in the Bakassi area.

2.9 Seen in that light, acts of effective administration in relation to Bakassi are of undoubted importance. They may be significant for at least:

> (1) the determination of the established boundary at a given time, where there is lack of clarity in the legal title, and *a fortiori* where a treaty purporting to establish a boundary is ineffective for that purpose;[8]
>
> (2) the determination of a former administrative boundary where it was ill-defined or its position

disputed;[9] and

(3) the historical consolidation of title (as to which see below, Chapter 3).

2.10 In all three contexts the post-independence *effectivités* may be relevant to shed light on the pre-independence situation. As the Chamber said in the case concerning the *Land, Island and Maritime Frontier Dispute*,

> "Where the relevant administrative boundary was ill-defined or its position disputed, in the view of the Chamber the behaviour of the two newly independent States in the years following independence may well serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other"[10]

2.11 Against that general background, Nigeria will now consider the various acts of effective administration in the Bakassi region. The administration of the Bakassi Peninsula can be most conveniently considered in two periods, the first from 1920 up to the attainment of Independence in 1960 (the next following paragraphs), and the second from 1960 up to the present time (Chapter 3 below).

(iv) Absence of French or Cameroonian activities 1920-1960

2.12 There is no evidence of any French (or local Cameroonian) acts of administration in the short period from 1920 to 1922 when the Mandate entered into force.

2.13 Given the historical and legal developments, there was no room for either French (or local Cameroonian) acts of administration in Bakassi from 1922 onwards. Cameroon advances no evidence of any such acts.

(v) British and Nigerian administrative activities, 1920-1960

2.14 With the entry into force of the Treaty of Versailles on 10 January 1920, Germany renounced all its rights and titles over its overseas possessions.[11] Until the entry into force of the Mandate in 1922 the practical administrative arrangements in the area continued as they were previously.

2.15 From 1922 until Independence in 1960, the situation as regards Bakassi was complicated. First, the former German possession of Kamerun (now called Cameroon, or Cameroun) became Mandated Territories in 1922, and thereafter Trust Territories (from 1946, when Trusteeship Agreements entered into force), administered as to part by the United Kingdom and as to part by France.[12] The Mandate granted to the United Kingdom in 1922 affected the western strip of the former German Kamerun. Subsequently this same strip became a British Trust Territory. During the period of both the Mandate and Trusteeship there was, lying alongside and to the west of the southern part of that strip, the

Protectorate established by the Agreement of 1884; and further to the west still was the territory of the British Colony of Nigeria in and around Lagos.

2.16 Moreover, the Mandated Territory, and later the Trust Territory, comprised land which it was impracticable to administer as a separate unit, distinct from Nigeria. Cameroon acknowledges this, in quoting from a British Colonial Office Report for 1949:[13]

> "The terrain is generally mountainous and difficult and contains a wide variety of ethnic and linguistic groups among its estimated population of 1,030,000; for these reasons, the administration of the Trust Territory as a separate unit, distinct from Nigeria, is impracticable."

2.17 In these circumstances it was inevitable that the Mandated Territory, and later the Trust Territory, should be administered as part of a generally British/Nigerian region. So far as concerned the Bakassi area, and given in particular the original (and continuing) links between Bakassi and the Kings and Chiefs of Old Calabar,

> "the distinction between mandated and protectorate territory, while acknowledged in principle, had virtually no practical significance for the people of Bakassi and Calabar. There was no practical day-to-day need for the British or local administration to distinguish between what might have been former German territory and what was British protected Nigerian territory. ....
>
> There was in any event no question of non-British rule, and no question of putting an end to the traditional authority of the Kings and Chiefs of Old Calabar... Effective authority continued to be exercised by the traditional source of power and authority in the Peninsula, namely by the Kings and Chiefs of Old Calabar." (NC-M, paragraphs 9.11-9.12)

2.18 In its *Counter-Memorial* Nigeria set out a series of events and activities which demonstrated the nature of British and Nigerian activities in relation to Bakassi in the period between 1919 and 1960.

2.19 In the present context several of those examples are particularly striking, in that they show that matters arising in Bakassi were handled as part of the legal structure of the Nigeria Protectorate. Thus, the customary law courts in the region were maintained and regulated by modern legislation in Nigeria. As part of that control, in June 1941 the Effiat-Mbo Native Court issued a warrant for the Effiat-Mbo (Oron Clan) Court, sitting in Jamestown, which included within its jurisdiction the Bakassi village of Abana (Annex NC-M 141). Additionally it is to be noted that the Customary Court of Effiat/Mbo, also sitting in Jamestown, heard cases involving parties from Bakassi villages in the years leading up to Independence. Cases involving parties from Ine Odiong and Ine Atayo were heard in March 1956: see Annex NR 10. In June 1958 the same Court was hearing a case between Chief Etim Oron Ntuen of Abana and the Ekpe Society of Abana Village: see the Court records in Annex NR 11.

2.20 A population census of Nigeria was held in 1953. It included as part of Akpabuyo Rural District Council, as the area was then known, within Calabar Province, the following villages located on the Bakassi Peninsula:

Ine Akpa Ikang

Ine Ekoi

Ine Nkani Ekure

Ine Utan

Ine Utan Asukwo. (Annex NC-M 142)

2.21 In the 1959 Federal election, Mr Okon John Eminue, a Methodist School head teacher, was elected member representing Eket East Constituency, which included some of the Bakassi villages.

2.22 In the period before the 1960s the people of Bakassi, if they were able to afford the cost of transport, tended to send their children to Duke Town Primary School in Calabar, which had first been established in 1846.

2.23 Before October 1, 1960, the Bakassi Peninsula was administered under Calabar in accordance with Akpabuyo County Council (Establishment) Instrument 1953, published in the Eastern Region Public Notice No. 86 of 1953 as amended (Annex NC-M 137).

2.24 The flexible attitude to territorial limits was evident in the grant by Nigeria in 1955 of an oil exploration licence extending along the eastern coastal areas of Nigeria (including Bakassi) as well as (without differentiation) along the coastal areas of the Trust Territory of British Southern Cameroons (see further below, Chapter 3).

2.25 The practical reality in the Bakassi region was such that it was administered with little regard to boundary formalities but rather in whatever way made most administrative sense. This was overwhelmingly as part of Nigeria in general and the Nigeria Protectorate in particular.

2.26 A ready example is the use of Nigerian postage stamps in the British Mandated and Trust Territories throughout the period up to Nigeria's independence on 1 October 1960. Thereafter, until British Southern Cameroons became part of Cameroon a year later, the stamps used in that region were Nigerian stamps overprinted "Cameroon UKTT".

2.27 In fact, the overall pattern of Nigerian and British official conduct in relation to the Bakassi Peninsula has been remarkably consistent for over a century. Whether as originally part of the domains

of the Kings and Chiefs of Old Calabar, or subsequently as part of their domains but subject to rights of Great Britain under the Protectorate Treaty of 1884, or during the Mandate and Trusteeship periods up to the time of independence in 1960, Bakassi has consistently been administered from Nigeria and as part of the Nigerian political entity. Bearing in mind the geographical and physical nature of the Bakassi region, the then relatively sparse and thinly-spread population, and, consequently, the limited administrative resources devoted to the region, it is not surprising that at times those responsible for taking action did not bother too much about the precise legal basis or capacity in which they were acting: for them the important practical thing was to get the job done as effectively as possible.

2.28 In reality the history of the Bakassi Peninsula shows it to have been administered as part of Nigeria, in continuation of the authority exercised over it by the Kings and Chiefs of Old Calabar. The pre-independence administrative boundary was effectively on the eastern side of the Peninsula (at the Rio del Rey), and in the absence of any valid and effective treaty determining the boundary in that region that administrative boundary was the boundary on which *uti possidetis juris* operated.

2.29 For the purposes of the present proceedings, the decisive factor was that those administering Bakassi and those living or working there overwhelmingly looked westwards to Nigeria for the source of authority, and not eastwards to Cameroon.

B. Conclusion

2.30 For the foregoing reasons set out in this Chapter and Chapter 1, Nigeria sees no reason to change the views which it expressed in Chapter 9, paragraphs 9.73 *et seq.*, of its *Counter-Memorial*. In brief -

(1) Before 1884 the Kings and Chiefs of Old Calabar possessed sovereignty over Bakassi;

(2) their sovereignty was unaffected by the Protectorate Agreement of 1884;

(3) the Anglo-German Treaty of 11 March 1913 was ineffective to transfer territorial sovereignty over Bakassi to Germany: the *status quo ante* was accordingly undisturbed, and title accordingly remained vested in the Kings and Chiefs of Old Calabar;

(4) the 'Bakassi provisions' of the 1913 Treaty are severable from the rest of the 1913 Treaty, so that the boundary as delimited by the rest of the Treaty remains effective;

(5) nothing in the history of Bakassi after 1913 and up to the time of Nigeria's Independence in 1960 served to transfer the sovereignty which the 1913 Treaty was itself ineffective to transfer;

(6) that subsequent history, on the contrary, confirmed that the Bakassi Peninsula remained in practice effectively part of Nigeria throughout the period up to Independence in 1960;

(7) given the fundamental defect in the 'Bakassi provisions' of the 1913 Treaty, *uti possidetis*

juris was, on Independence, inapplicable in relation to the boundary purportedly established by those provisions; it was, rather, applicable in relation to the effective legal and administrative boundary running through the Rio del Rey;

(8) after Independence, Nigeria exercised sovereignty in Bakassi, demonstrating the continuity of its administration of the area since before the establishment of the Protectorate (see further Chapter 3 below);

(9) Nigeria's sovereignty over Bakassi extended up to the boundary described in Chapter 11 of Nigeria's *Counter-Memorial*, which Nigeria hereby confirms.

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1 NC-M, paras. 9.1-9.4.

2 NC-M, para. 9.3.

3 NC-M, para. 9.15; Annex NC-M 113.

4 RC, paras. 2.63-2.67.

5 "The role of *effectivités* is clear in a situation where the legal title is established. It is a confirmatory and not a contradictory role.... The *effectivités* cannot prevail over an established title based on agreements or treaties."

6 "Thus *effectivités* may play a part in the determination of the established boundary at a given time, either because of a lack of clarity in the legal title or for the confirmation of that title. They cannot, however, prevail over a legal title based on agreements or treaties."

7 NC-M, paras. 8.1-8.59.

8 See *Land, Island and Maritime Frontier Dispute*, I.C.J. Reports 1992, at pp. 398-399, paras. 61-62.

9 *ibid.*, p. 565, para. 345.

10 *ibid.*, p. 565, para. 345.

11 See NC-M, para. 9.5-9.6.

12 See NC-M, paras. 18.19-18.21.

13 RC, para. 5.179.

PART I

BAKASSI

CHAPTER 3

THE INDEPENDENT CONFIRMATION OF THE ORIGINAL TITLE OF NIGERIA ON THE BASIS OF HISTORICAL CONSOLIDATION, ACQUIESCENCE AND RECOGNITION

A. Introduction

(i) The Nigerian Title to Bakassi: The Legal Situation at the Time of Independence

3.1 As Nigeria pointed out in the *Counter-Memorial*, the title of Nigeria to Bakassi was originally a title vested in the Kings and Chiefs of Old Calabar. The original title of Old Calabar was not affected by the Anglo-German Treaty of 11 March 1913 and was eventually absorbed in the emerging entity of Nigeria. By the time of Independence in 1960 the original title to Bakassi vested in Nigeria as the successor to Old Calabar.

(ii) The Bases of the Nigerian Title

3.2 As a preface to responding to the *Reply* of Cameroon it is necessary to restate the position of Nigeria.

3.3 The four bases of the Nigerian claim to title over the Bakassi Peninsula are as follows:

(1) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960.

(2) Effective administration by Nigeria, acting as sovereign, and an absence of protest.

(3) Manifestations of sovereignty by Nigeria together with acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

(4) Recognition of Nigerian sovereignty by Cameroon.

3.4 These four bases of claims apply both individually and jointly. In particular, the title on the basis of historical consolidation, together with acquiescence and recognition, in the period since the Independence of Nigeria, constitutes an independent and self-sufficient title to Bakassi.

3.5 At this stage it is necessary to present a statement of the legal position on which Nigeria relies. The evidence indicates two stages in the post-Independence period.

3.6 Stage 1. From the time of Independence until 1968 Nigeria had peaceful possession of the Bakassi Peninsula, which continued to be administered as part of the Eastern Region of Nigeria. In 1968 there were acts of harassment from Cameroonian soldiers which were aimed at some of the Nigerian fishing ports. However, Cameroon had no system of administration in place.

3.7 Stage 2. From 1972 there were Cameroonian initiatives concerning the renaming of villages which were ineffective but which clearly indicated the absence of any Cameroonian administration in the region. From 1972 onwards there were sporadic Cameroonian activities but Cameroon did not exercise overall or exclusive control.

3.8 The significant characteristics of the situation can be now identified:

(1) At least until 1968 Nigeria exercised peaceful possession of Bakassi and Cameroon acquiesced in this *status quo*.

(2) At no stage did Cameroon exercise peaceful possession.

(3) The effective possession of Bakassi by Nigeria after Independence confirmed the original title which subsisted as a consequence of the ineffectiveness and non-implementation of the 1913 Treaty in the Bakassi region.

(4) Quite apart from the proof of original title, the effective possession of Nigeria is to be found in acts manifesting a continuous and peaceful display of sovereignty over the territory. Although this sovereignty must be continuous in principle, it need not be exercised at every moment, so long as there is an intention and will to act as sovereign. How extensive the acts of sovereignty need to be depends on the nature of the territory.

3.9 As Nigeria will demonstrate, the evidence shows that at no stage did Cameroon exercise *peaceful* possession and at no stage did Cameroon exercise control in the region as a whole. The key stages in the chronology set forth above are essentially confirmed by the contents of the Cameroon *Reply*.

3.10 In general the Cameroon *Reply* offers very little evidence of *effectivités* and fails to comment in detail on the evidence set forth in the Nigerian *Counter-Memorial*.

(iii) The Relevance of *Uti Possidetis*

3.11 The legal arguments advanced by Nigeria in the written pleadings are in all respects compatible with the principle of *uti possidetis* adopted by the OAU in its resolution of 21 July 1964. Both in the *Memorial* and now again in the *Reply*, the Government of Cameroon misrepresents the legal regime of *uti possidetis* and the OAU resolution. Thus the *Reply* (paragraphs 2.100-2.115) contends that the principle of *uti possidetis* prevents any modification of boundaries based upon treaties. This contention is accompanied by an acceptance of the position that the principle of *uti possidetis* does not freeze a boundary for all time (paragraph 2.107). However, Cameroon is reluctant to apply this logic to the case in hand.

3.12 The doctrine clearly recognises that boundaries established at the time of decolonisation may be changed by lawful means. As Professor Bardonnet observed in his masterly course at The Hague Academy in 1976:

> "2. La signification de ces principes necessaires et fondamentaux est parfaitement claire: il est contraire au droit international d'employer la force pour remettre en cause les frontières d'un Etat et porter ainsi atteinte à son territoire en le démembrant. Mais on ne saurait aller au-delà et étendre, par un glissement insensible et parfois voulu, la portée des principes de l'intégrité territoriale et de l'inviolabilité des frontières et les confondre, les brouiller avec les concepts distincts d'immutabilité et d'intangibilité des lignes divisoires. En un mot, si les frontières sont inviolables, elles ne sont pas immuables et leur intangibilité ne peut constituer, en aucune manière, une règle impérative de *jus cogens*.
>
> Affirmer, comme on l'a fait fréquemment, que la Charte de l'OUA et la résolution du Caire consacrent le principe de l'intangibilité des frontières est un abus de langage. Les rédacteurs de ces textes n'ont jamais dit que les frontières des Etats africains, telles qu'elles existaient au moment de leur accession à l'indépendance, étaient fixées une fois pour toutes et ne pouvaient jamais être modifiées par des procédés pacifiques; ils ont seulement dit qu'elles devaient être « respectées », c'est-à-dire qu'elles ne pouvaient, en aucun cas, conformément au principe de l'intégrité territoriale, être remises en cause par la force.
>
> Faut-il rappeler qu'en droit international la soumission au texte est la règle cardinale de toute interprétation et que, comme le notait Anzilotti, « toute règle doit être prise pour ce qu'elle contient réellement, sans en étendre ou en restreindre le sens »."[1]

3.13 This position, that the principle of *uti possidetis* does not prevent lawful changes in title, subsequent to the original transmission of title at Independence, is supported by the jurisprudence of the Court. As the Judgment of the Chamber of the Court in the *Land, Island and Frontier Dispute* case makes clear, when the dispensation on the basis of *uti possidetis* produces no decisive outcome, the conduct of the parties since Independence is "of particular importance".[2]

3.14 The Cameroon Government relies on various passages from the Judgment of the Chamber in the *Case Concerning the Frontier Dispute* (Burkina Faso/Republic of Mali): see the *Reply*, paragraphs 2.102-2.103. But these passages simply affirm the principle of *uti possidetis* in general terms and are thus inconclusive. Indeed, the Judgment contains the following passage:

> "It should again be pointed out that the Chamber's task in this case is to indicate the line of the frontier inherited by both States from the colonizers on their accession to Independence. For the reasons explained above, this task amounts to ascertaining and defining the lines which formed the administrative boundaries of the colony of Upper Volta on 31 December 1932. Admittedly, the Parties could have modified the frontier existing on the critical date by a subsequent agreement.

> If the competent authorities had endorsed the agreement of 15 January 1965, it would have been unnecessary for the purpose of the present case to ascertain whether that agreement was of a declaratory or modifying character in relation to the 1932 boundaries. But this did not happen and the Chamber has received no mandate from the Parties to substitute its own free choice of an appropriate frontier for theirs. The Chamber must not lose sight either of the Court's function, which is to decide in accordance with international law such disputes as are submitted to it, nor of the fact that the Chamber was requested by the Parties in their Special Agreement not to give indications to guide them in determining their common frontier, but to draw a line, and a precise line."[3]

3.15 This passage, which is relied on by Cameroon, accepts the principle that the boundary could have been modified by subsequent agreement, and points to the constraints resulting from the Special Agreement. In other words, the Chamber recognises that, as a matter of general international law, the boundary as at Independence may be modified as a consequence of the subsequent conduct of the parties.

(iv) The Relevance of the Critical Date

3.16 The question of the critical date is analysed at some length in the *Counter-Memorial* pp. 218-220. There it is pointed out that the Cameroon *Memorial* (paragraphs 3.382-3.384) selects 1 October 1961 as the critical date, the date when the boundary was allegedly 'frozen' and links this proposition with the application of the principle of *uti possidetis*. Nigeria criticised this reasoning on several grounds. In the first place the Cameroon Government implies that the critical date is determined by the application of the principle of *uti possidetis*, which, it is alleged, involved the creation of a permanent regime. This position is erroneous in law: see above, paragraphs 3.13-3.15. In the second place, this approach avoids any identification of the date *at which the dispute crystallised*. As Nigeria pointed out in the *Counter-Memorial* (paragraph 10.19), the evidence suggests that the dispute did not emerge definitively until January 1994.

3.17 In conclusion, Nigeria affirms her submissions relating to the critical date presented in the *Counter-Memorial*, pages 218-220, paragraphs 10.16-10.20.

(v) The Entitlement of Nigeria is not affected by the Maroua Declaration

3.18 In the period beginning in 1970 the Governments of Nigeria and Cameroon engaged in a series of bilateral meetings for the purpose of settling outstanding maritime boundary issues. The following instruments resulted from the series of talks:

(1) Declaration of the Joint Nigeria/Cameroon Boundary Commission, Yaoundé, 12-14 August 1970 (Annex NPO 14).

(2) Report by the Nigeria-Cameroon Joint Boundary Commission, Lagos, 15-23 October 1970 (Annex NPO 16).

(3) Declaration of the Joint Nigeria-Cameroon Boundary Commission, Yaoundé, 4 April 1971 (Annex NPO

19).

(4) Declaration of the Joint Nigeria-Cameroon Boundary Commission, Lagos, 14-21 June 1971 (Annex NPO 21).

(5) Joint Communique, Heads of State Meeting at Garoua, 4-6 August 1972 (Annex NPO 23).

(6) Joint Communique, Heads of State Meeting at Kano, 1 September 1974 (Annex NPO 24).

3.19 This sequence of meetings is significant in that it establishes clearly the consistent and constructive contacts between the two Governments, both at the Head of State level and at the level of experts.

3.20 The Government of Cameroon is now contending that the Declaration adopted by the Heads of State at Maroua on 1 June 1975 (Annex NC-M 143) is conclusive of the question of title to Bakassi. In the first place it was not binding legally upon Nigeria because under the Constitution in force at the time the relevant provision (s.84(1)) of the Constitution of 1963, as amended by the Constitution (Suspension and Modification) Decree 1967,[4] stipulated that "the executive authority of the Federation shall be vested in the Supreme Military Council". General Gowon did not have the power to commit his Government without the approval of the Supreme Military Council, which constituted the Government of Nigeria.

3.21 In the circumstances, and in view of the series of important meetings involving the two Heads of State and General Gowon's earlier denial of the binding character of the chart signed by him at Yaoundé on the ground that it had not been approved by the Supreme Military Council, the President of Cameroon must have been aware by 1975 of the constitutional constraints under which General Gowon was exercising his authority.

3.22 In this context, the letter sent by General Gowon to President Ahidjo on 23 August 1974 (Annex NR 12) is of substantial probative value. The Nigerian Head of State began by saying that he was writing "on the subject of the difficulties that arise from time to time on the border areas of Nigeria and Cameroun". In paragraph three of the letter, Gowon informed Ahidjo:

> "You will recall, Mr. President, that the important question of demarcating the borders between our two countries was discussed at length during our meeting in Garoua. I will believe that the function of the joint commission of experts established to delineate the international boundary between our two countries, was to make recommendations on the basis of their technical examination of the situation, for consideration by our two Governments. As a technical commission, their views and recommendations must be subject to the agreement of the two Governments which appointed them in the first place. You will also recall that I explained in Garoua that the proposals of the experts based on the documents they prepared on the 4th April 1971, were not acceptable to the Nigerian Government. It has always been my belief that we can, both, together re-examine the situation and reach an appropriate and acceptable decision on the matter".

3.23 In this letter, as the Court will readily appreciate, General Gowon was emphasising the following points

to President Ahidjo:

(1) the question of boundary demarcation between Nigeria and Cameroon is an "important question";

(2) the function of the commission of experts was to make recommendations for the consideration of the two Governments;

(3) the proposals of the experts based on the documents they prepared on 4th April, 1971 were not acceptable to the Nigerian Government;

(4) both Governments must re-examine the situation and reach an appropriate agreement on the matter; and

(5) that the arrangements which might be agreed between them were subject to the subsequent and separate approval of the 'Nigerian Government'.

3.24 In the light of this sequence of meetings, and particularly in view of the terms of General Gowon's letter, when President Ahidjo participated in the talks at Maroua, he must have appreciated the constitutional constraints under which General Gowon was acting. Under the Nigerian Constitution in force at the relevant time (June 1975), executive acts were in general to be carried out by the Supreme Military Council or subject to its approval. States are normally expected to follow legislative and constitutional developments in neighbouring States which have an impact upon the inter-State relations of those States. Few limits can be more important than those affecting the treaty-making power.

3.25 There is a strong analogy here with the view expressed by the Court in the *Anglo-Norwegian Fisheries* case. In relation to the question of the knowledge of Norwegian legislation on the part of the United Kingdom, the Court observed:

> 'The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889 relating to the delimitation of Romsdal and Nordmöre which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.'[5]

3.26 The arrangements prevailing within Nigeria were familiar to President Ahidjo, as there had been a series of previous dealings with Nigeria (see paragraph 3.18 above). As the Court will readily recall, Article 46 of

the Vienna Convention on the Law of Treaties provides as follows:

> '1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.'

Even if there is a presumption that a Head of State is fully competent to commit his State, Article 46 shows that that presumption is rebuttable.

3.27 Both Cameroon and Nigeria are parties to the Vienna Convention which, in any event, represents the standard of general international law. In the circumstances President Ahidjo and his Government would be familiar with the prevailing practice in the military government of Nigeria and it would have been 'objectively evident' that General Gowon did not have unrestricted authority.

3.28 Cameroon suggests (RC paragraph 8.43) that Nigeria's denial that any international commitment resulted from the Maroua Declaration is inconsistent with Article 7 of the Vienna Convention on the Law of Treaties. Cameroon is mistaken as to the significance of this Article.

3.29 Article 7 reads, in relevant part, as follows:

> '1. A person is considered as representing a State for [certain specified purposes] if:
>
> (a) he produces appropriate full powers; or
>
> (b) ......
>
> 2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State:
>
> (a) Heads of State, Heads of Government, ...'

3.30 This Article is solely concerned with the way in which a person's function as a *State's representative* is established. It does not deal with the separate question of the extent of his powers when exercising that representative function (which is the matter dealt with in Article 46).

3.31 Article 7 provides that a person's *representative* capacity is normally established by the production of "full powers". Despite its name, "full powers" is the name given to a *document*, being a document which concerns only the question of representative capacity. This is clear from Article 2.1 (c), which reads:

> '(c) 'full powers' means a document emanating from the competent authority of a State designating a person or persons to represent the State for [certain specific purposes].'

3.32 Article 7.2 does not provide that a Head of State necessarily and as a matter of substance possesses the fullest possible range of powers to commit his State; it only provides that he (like certain other high officials of State), because of his office, does not need to produce this particular documentary evidence of his representative capacity. His *representative* capacity, normally established by producing such a document, is evident from the office he holds. His *powers* as a representative are a separate matter.

3.33 The Government of Nigeria has at no stage, whether within the Federal Executive Council or at the meetings of the Supreme Military Council or of its successor, the Armed Forces Ruling Council, accepted that Nigeria was bound by the Maroua Declaration.

3.34 In this connection it is necessary to refer to the initialled Minutes of the meetings held in Yaoundé between 28 and 29 August 1991 and from 11 to 13 August 1993. In the *Minutes* of the 1991 meeting the following passages appear:

> "La Partie Nigériane a relevé l'importance de cette question; elle a estimé que la position du gouvernement Nigérian sur cette question est connue du gouvernement Camerounais. La partie Nigériane a precisé que tous les accords signés dans le domaine des frontières avant la création en 1987 de la commission nationale du frontiers du Nigéria ont été remis a cette commission. S'agissant en particulier de la déclaration de Maroua, la partie Nigériane a souligné que celle-ci n'a pas été ratifiée par le Nigéria et que par consequent elle ne constitute pas pour elle, un instrument légal.
>
> La partie Camerounaise a pris note de cette déclaration tout en précisant que pour elle tous les accords sont valables et qu'elle n'a jamais été notifée de cette position de la partie Nigériane.
>
> La partie Nigériane a souligné la necessité pour les deux pays de s'accorder sur un cadre réaliste de négociations en vue de la réunion prévue à Abuja."[6]

3.35 On page 5 of the Minutes of the August 1993 meeting, the third and fourth paragraphs are clear:

> 'As regards the Maritime Sector of the border, the Nigerian Delegation re-affirmed its non-recognition of the Maroua Declaration of 1975 on the ground that it was not ratified. The Cameroonian Delegation re-affirmed the validity of the Maroua Declaration. For her, the Declaration was a result of a long negotiation and detailed work by experts.
>
> After a long and inconclusive discussion, which re-established the parallel

> positions of the two parties, it was agreed that the matter [be] submitted to the two Heads of Delegation for consideration.[7]

It is clear from these minutes that Nigeria has never accepted that she is bound by the Maroua Declaration.

3.36 The Declaration of Maroua must be assessed in the general context of the bilateral relations between Cameroon and Nigeria. In the relevant period, and since Independence, Nigeria had considered Bakassi to be Nigerian.

3.37 In the light of the circumstances, and the general course of dealing between the two Governments in the periods concerned, the Government of Cameroon, according to an objective test based upon the provisions of the Vienna Convention, either knew or (conducting itself in a normally prudent manner) should have known that General Gowon did not have the authority to make legally binding commitments without reference back to the Nigerian Government.

3.38 The Cameroon Government makes the claim, in somewhat obscure terms, that the Heads of State had concluded a binding agreement at Yaoundé II on 4 April 1971: see the *Memorial*, pages 130-1, paragraphs 2.219-2.225; and the *Reply*, pages 361-2, paragraphs 8.10-8.12 and pages 365-6, paragraphs 8.26-8.28. Nigeria does not accept this construction of the meeting at Yaoundé and it is contradicted by the terms of the letter from General Gowon to President Ahidjo dated 23 August 1974: see above, paragraphs 3.22-3.23. The language of the second Declaration of Yaoundé (Annex NPO 19) makes it very clear that the meeting formed part of an ongoing programme of meetings relating to the maritime boundary, and that the matter was subject to further discussion at subsequent meetings.

3.39 It is surely significant that the text of the Declaration makes no reference to a disposition of land territory This construction of the transaction is confirmed by the text of the contemporaneous Joint Communiqué (Annex NC-M 145) and also by the internal Nigerian brief on the forthcoming meeting, dated 20 May 1975 (Annex NC-M 144). The map annexed to the Maroua Declaration (Cameroon *Memorial* p.526, Carte M23) does not have any characteristics conclusive of the issue.

3.40 In assessing the significance of the Maroua Declaration, it is necessary to see the episode in the general context of relations between the two States and the impressive evidence of a long existing Nigerian administration in the Bakassi Peninsula. There can be no presumption in favour of relinquishment of title to territory. More particularly, there can be no presumption that, as an incidental result of the series of meetings concerning the maritime boundary, Nigeria was surrendering a significant tract of territory in her lawful possession and populated by 100,000 Nigerians.

(vi) There is no evidence of Nigerian Acquiescence

3.41 In the *Reply* the Cameroon Government alleges that Nigeria has acquiesced in the claim of Cameroon to Bakassi: see the *Reply*, pp. 89-91, paragraphs 2.140-2.145. This is a very weak contention. In face of open and continuous activity by the Nigerian public authorities in Bakassi, the Government of Cameroon had failed to make any protest relating to Bakassi as a whole, and there is very little evidence of any administration in the

area by Cameroon. The general question of the alleged acquiescence on the part of Nigeria will be examined fully below in Section F of this Chapter.

B. Historical Consolidation of Title: the Legal Concept Reaffirmed

3.42 Nigeria relies on historical consolidation of title in relation to Bakassi. The *Reply* (pp. 62-5, 77) seeks to challenge the relevance of historical consolidation. The challenge is overall unconvincing but it takes several forms and the resulting confusion must be eradicated.

3.43 In paragraph 2.57 of the *Reply* the Cameroonian Government questions whether the doctrine of historical consolidation really exists. This is an egregious reaction in face of the authorities cited by Nigeria (*Counter-Memorial*, pp. 221-3), which involve the period 1953 to 1997 and experts of different nationalities.

3.44 The quotation from the work of Jennings (*Reply*, paragraph 2.57) does not help Cameroon. Jennings (in the same book) helped to establish the concept (this in 1963) and it has a prominent place in the recent edition of *Oppenheim*, of which the senior editor is Jennings. Jennings is a distinguished authority and a former President of the International Court. In the quotation (from his work of 1963) he is saying (which is obvious) that the doctrine has certain limits.

3.45 The passages in which Sir Robert Jennings examines the doctrine cover more than four pages of *The Acquisition of Territory* (at pages 23-28). Writing thirty-seven years ago, Jennings had this to say (in addition to the *short* passage selected by Cameroon) (at page 25):-

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

3.46 The quotation by Cameroon from the work published in 1963 is eccentric in view of the fact that in 1992 Jennings, as editor of the ninth edition of *Oppenheim* (co-edited with Sir Arthur Watts) gave historical consolidation of titles a prominent place: see the *Counter-Memorial*, p. 221 for the relevant passage.

3.47 In the second place, the *Reply* (pp. 62-3) makes the unfounded assertion that treaty titles cannot be affected by historical consolidation. No authority is given for this assertion. A treaty-based title has no particular *cachet* as compared with other titles. Like any other title, it can be modified as a consequence of express or implied consent or as a consequence of historical consolidation of title. The elements of consolidation are described with great particularity in the ninth edition of *Oppenheim*, quoted in the *Counter-Memorial* at page 221, paragraph 10.21.

3.48 None of the authorities suggests that historical consolidation cannot apply in the presence of a treaty-based title.

3.49 The attempt of the Government of Cameroon to challenge the status of the principle of historical consolidation is astounding. Apart from the authorities presented in the *Counter-Memorial*, it would be easy to produce others. Thus, the eminent French jurist, Paul Reuter, stated the law as follows (in 1983):

> "On a également pensé, à la suite d'un *dictum* de la CIJ dans l'affaire des Pêcheries (1951, p. 116) et des travaux de C. de Visscher, pouvoir présenter une autre analyse juridique des faits d'exercice de la souveraineté en s'appuyant sur la *consolidation historique* basée sur le long usage. Elle se distinguerait de la *prescription* parce que celle-ci ne peut jouer qu'à l'encontre d'une prétention adverse, de l'*occupation* parce qu'elle s'applique également à des espaces maritimes, et de la *reconnaissance* dont l'effet est instantané. Elle reposerait sur une absence suffisamment longue d'opposition des Etats intéressés; le facteur temps jouerait ici un rôle essentiel. La consolidation jouerait à la fois pour le maintien et pour l'acquisition de la souveraineté territoriale; elle permettrait de rendre parfaite une souveraineté imparfaitement établie (*inchoate* title, affaire de l'île Palmas précitée).
>
> *Cette conception a été exposée par C. de VISSCHER, notamment dans Les effectivit*és *en DI public, p.107, et Le régime des confins, p. 128, ainsi que par d'autres auteurs comme Y. Z. BLUM, Historic titles in IL (Den Haag, Nijhoff, 1965). Elle a tous les mérites d'une conception d'ensemble qui s'applique à toutes les hypothèses en soulignant l'importance de l'exercice effectif de la souverainté quand celui-ci est possible. Elle ne donne aucun droit à cet exercice quand il recontre une opposition.*"[8]

3.50 Similarly, in the general course at the Hague Academy in 1983, Michel Virally expressed the position thus:

> " d) *La consolidation des titres*

Face aux prétentions contradictoires à la souveraineté sur un territoire, s'appuyant sur des titres très divers et parfois difficiles à départager, la jurisprudence internationale, arbitrale et judiciaire, a toujours attaché la plus grande importance à l'exercice paisible et continu des compétences étatiques, c'est-à-dire à l'effectivité de l'autorité étatique, se manifestant dans la durée.

L'exercice continu de l'autorité étatique permet ainsi de consolider un titre qui, à lui seul, n'aurait pas permis d'acquérir la souveraineté territoriale (découverte, contiguïté), ou de purger un titre de son vice initial (conquête). Il peut prévaloir même sur un titre résultant d'un traité ou d'un autre acte juridique (affaire de *l'Ile de Palmas*, RSA, II, pp. 845 ss.)."[9]

3.51 Title on the basis of historical consolidation is well-established in the sources of the law and in the professional milieu of international law. As Dr. Marcelo Kohen has pointed out, it is commonplace for reference to be made to such title in pleadings before international tribunals: Kohen, *Possession Contestée et Souveraineté Territoriale*, Genève, 1997, pp. 57-59. The concept of consolidation is almost routinely accepted by international tribunals. A recent example is to be seen in the *Arbitration between Eritrea and Yemen.*[10] The distinguished Court of Arbitration expounded the relevant law as follows:

"450. Both Parties, however, also rely upon what is a form of historic claim but of a rather different kind; namely, upon the demonstration of use, presence, display of governmental authority, and other ways of showing a possession which may gradually consolidate into a title; a process well illustrated in the *Eastern Greenland* case, the *Palmas* case, and very many other well-known cases. Besides historic titles strictly so-called the Tribunal is required by the Agreement for Arbitration to apply the 'principles, rules and practices of international law'; which rubric clearly covers this kind of argument very familiar in territorial disputes. The Parties clearly anticipated the possible need to resort to this kind of basis of decision - though it should be said that Yemen expressly introduces this kind of claim in confirmation of its ancient title, and Eritrea introduces this kind of claim in confirmation of an existing title acquired by succession - and the great quantity of materials and evidences of use and of possession provided by both Parties have been set out and analysed in Chapter VII above, together with Chapter VIII on maps and Chapter IX on the history of the petroleum agreements. It may be said at once that one result of the analysis of the constantly changing situation of all these different aspects of governmental activities is that, as indeed was so in the *Minquiers and Ecrehos* case where there had also been much argument about claims to very ancient titles, it is the relatively recent history of use and possession that ultimately proved to be a main basis of the Tribunal decisions. And to the consideration of these materials and arguments this Award now turns.

Evidences of the Display of Functions of State and Governmental Authority

> 451. These materials have been put before the Tribunal by the Parties with the intention of showing the establishment of territorial sovereignty over the islands, in Judge Huber's words in the *Palmas* case, 'by the continuous and peaceful display of the functions of state within a given region'. But the kind of actions that may be deployed for this purpose has inevitably expanded in the endeavour to show what Charles de Visscher named a gradual 'consolidation' of title." (footnotes omitted)

C. The Specific Components of the Historic Consolidation of Nigerian Title

(vii) Introduction

3.52 In the sections which follow Nigeria will present the evidence to establish the specific components of Nigeria's title to the Bakassi Peninsula on the basis of the historical consolidation of title. These elements are diverse precisely because the legal concept has been designed to reflect the various strands of legitimacy involved in relation to title to inhabited territory.

3.53 The Government of Nigeria finds it necessary to remind the Court of the highly important codification of the concept of consolidation by Jennings and Watts in the ninth edition of *Oppenheim's International Law*:

> "Consolidation of historic titles. Yet continuous and peaceful display is a complex notion when applied to the flexible and many-sided relationship of a state to its territory and in relation to other states. The many and varied factors which it may comprise were felicitously subsumed by Charles de Visscher under the convenient rubric of 'consolidation by historic titles'; of which he says:
>
> > 'Proven long use, which is its foundation, merely represents a complex of interests and relations which in themselves have the effect of attaching a territory or an expanse of sea to a given State. It is these interests and relations, varying from one case to another, and not the passage of a fixed term, unknown in any event to international law, that are taken into direct account by the judge to decide in *concreto* on the existence or non-existence of a consolidation by historic title.'
>
> In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following: recognition, acquiescence and preclusion; possession and administration; affiliations of inhabitants of disputed territory; geographical considerations; economic considerations; historical considerations. Of these several factors it has been said that: 'Recognition is the primary way in which the international community has sought to reconcile illegality or doubt with political reality and the need for certainty'." (footnotes omitted)[11]

3.54 In the opinion of the Nigerian Government the evidence of historical consolidation of title in the period since Independence serves two distinct but related purposes:

First: to provide a confirmation of the original title of the City States of Calabar, which title was eventually absorbed in the emerging entity of Nigeria. By the time of Independence the original title to Bakassi vested in Nigeria as the successor to the City States of Old Calabar. The evidence of historical consolidation since Independence thus confirms the original title of Nigeria.

Second to provide, if this were to prove legally necessary, an independent source of title based upon the process of peaceful possession, acquiescence, and historical consolidation in the period since Independence.

3.55 The question of title to Bakassi is a matter of considerable concern to the Government of Nigeria and, indeed, to several States of the Federal Republic, and to the peoples of south-eastern Nigeria. Given the significance of the legal issues, it has been found necessary to present in a single and integrated form the evidence of State activities, together with other components of the historic consolidation of title, and thus avoid too much cross-reference. It is hoped that this procedure will prove convenient for the Court.

3.56 The specific components of title will now be reviewed.

(viii) The Original Title of the City States of Old Calabar

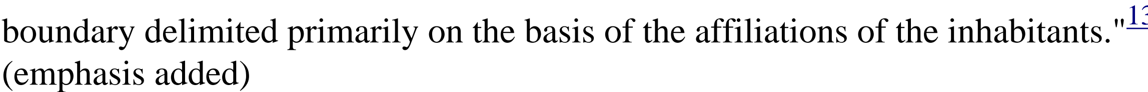
3.57 The first component of title by historical consolidation, and appropriately the first element, is the legal personality of the City States of Old Calabar and the original title which they had in accordance with the pertinent inter-temporal law, prior to the imposition of colonial rule.[12] This component interacts with several other components.

3.58 In the passage quoted above from the ninth edition of Oppenheim, reference is made to 'historical considerations' and this element is given prominence in the classic study by Munkman in the *British Year Book* (Vol. 46 (1972-73), pp. 99-100, 108-9).

(ix) The Affiliations of the Population of Bakassi : the Legal Significance of Social Organisation

3.59 The same passage quoted from the ninth edition of Oppenheim refers to relevance of the "affiliations of inhabitants of disputed territory". On the operation of this factor Munkman observes:

> "*Where the territory is inhabited, the affiliations of the inhabitants will be of great - but, probably, because of the considerations militating in favour of the State in actual possession, secondary - importance. Where the administration is itself disputed and doubtful, the affiliations of the inhabitants will probably be decisive.* In inhabited areas considerations of geography, strategy, etc., will usually be a very secondary consideration. Economic, historical, cultural and social factors, and considerations of convenience will usually correspond to the affiliations of the inhabitants. But these considerations, even if they do not all weigh on the same side, will probably only call for some adjustment of a



> boundary delimited primarily on the basis of the affiliations of the inhabitants."[13] (emphasis added)

3.60 The majority of the fishermen and farmers living in the Bakassi Peninsula have for centuries belonged to the Efik and Effiat ethnic groups, which have always had strong links with the City States of Calabar. The principal mainland towns and villages of the Efik, which are shown at Fig. 3.1, are as follows:

Calabar

Ikang

Itu

Ikot Nakanda.

3.61 The principal towns and villages of the Effiat, which are also located on Fig. 3.1, are as follows:

Uyo

Eket

Oron

Ikot Ekpene.

3.62 The permanence of the Efik and Effiat settlements in Bakassi and their social and ethnic links to Calabar and Eket are confirmed by the historical sources. This has been examined in detail in Chapters 3, 4 and 5 of the *Counter-Memorial*.

3.63 A particularly striking feature, for example, is the relation between Effiat villages in the Mbo Local Government Area of Akwa Ibom State and their affiliated villages in (what is now) the Bakassi Local Government Area. A table of such villages and their affiliates in Bakassi is set forth below, paragraph 3.76.

3.64 A further significant element in the pattern of association consists in the indigenous and ancient society known as Ekpe. This is described (from the outside, as it were) in the section entitled "Societies" (paragraph 48 *et seq*.) in the Report by Mr. Anderson, Assistant District Officer (Annex NR 13). The Ekpe Society represented the strongest traditional administrative and judicial organisation. Each main village has its own Ekpe house and the Ekpe Society has strong links with Calabar. Adherence to this Society is compatible with the practice of Christianity and co-exists with church membership. The Effiat ethnic group also use the Ekpe Society as a form of social administration: see below, paragraphs 3.70-3.71.

3.65 It is very significant that Cameroon has not been able to produce any evidence of affiliations of the communities on Bakassi with Cameroon. Cameroon has not alleged that any Cameroonian nationals have been

displaced as a consequence of Nigerian actions. No claim has been presented on behalf of Cameroonian nationals resident in the Bakassi region: see the Conclusions of the Republic of Cameroon in the *Memorial* and in the *Reply*.

3.66 In the passages in the *Memorial* in which some reference to Cameroonian nationals might have been expected, reference is made conclusively to communities of Nigerian origin 'residant au Cameroun': see the *Memorial*, page 490, paragraph 4.433; and see also page 491, paragraph 4.434.

(x) The Indigenous Peoples of South-Eastern Nigeria: Ethnic Groups and the Related Toponymy

3.67 This section will examine the history of settlement and the toponymy of the Bakassi villages. This will assist in understanding the pattern of the development of local government administration in Bakassi and the role of the Efik and Effiat tribes in the pattern of settlement.

3.68 The chief tribe in the region of Old Calabar in the period after 1700 were, and still are, the Efiks and the Effiat (who are often classified as Ibibio). The Nigerian Ethnic Groups Survey map of 1972 at Fig. 4.1 of the *Counter-Memorial* shows the areas inhabited by these two tribes. Historically the predominant people in the area north of Bakassi, in terms of numbers and influence, were, and still are, the Efiks, while to the west of the peninsula, the Effiats predominate.

3.69 There are extensive oral traditions as to the early migrations of the Efik people before they came to Old Calabar, and these are discussed in some detail in A K Hart, *Report of the Enquiry into the Dispute over the Obongship of Calabar*, published in 1964 by the Government Printer, Enugu, Eastern Nigeria.[14] The Efiks gradually established themselves on the coast and became active fishermen and traders, ultimately setting up something of a sea-borne empire, with City States up and down the Guinea Coast from the Niger Delta to the Rio del Rey, and settlements even beyond. Many of their towns - Duke Town, Creek Town, Henshaw Town, Obutong Town - were clustered together in the heart of the area which became known as Old Calabar. This area included other Efik settlements such as Arsibon's Town (Archibong) (near the northern edge of the Bakassi Peninsula). The modern Tom Shot island, on the western side of the Cross River estuary, and Jamestown are traditionally Effiat. Jamestown is situated just to the north of Tom Shot and was formerly known as Tom Shot Town. The Chief of the town was James Bassey, and hence the town became known as James' Town.

3.70 The Efiks of this unique polity were governed by a patriarchal "House" system, under which each of the above communities was headed by its own King or Chief, elected by that House. The ruling oligarchy was united by a highly organised society already referred to at paragraph 3.64 above, the Ekpe Society (commonly referred to simply as "Ekpe"), which played an important part in the religious and civil life of the Efik polity and is still important today.[15] The local activities of the Ekpe Society centre on the Palaver House. All the major towns of the area have a Shrine known as the Palaver House, including Calabar, Jamestown, Ikot Nakanda, Archibong, Abana and West Atabong (see Fig. 3.2).

3.71 The Effiat people have certain similar cultural and social trends to the Efiks. In particular, both tribes use Ekpe as a means of social administration. The main Effiat Ekpe Palaver House, and seat of the Effiat clan head, is at Jamestown in Akwa Ibom State. The people of the southern Bakassi villages regard this as their

ancestral centre and there is still much interaction between the people living on both sides of the Cross River estuary. The Effiats are nonetheless distinct from the Efiks. They originally inhabited the riverine areas to the west of the Cross River estuary. Becoming principally fishermen, they migrated across the estuary to set up fishing settlements on the creeks of Bakassi, which over the last hundred years have increased in number and become permanent. These settlements include Abana and East and West Atabong.

3.72 As the population on mainland Nigeria grew, fishermen and farmers from the area south of Calabar, around Ikang and Ikot Nakanda, moved across the Akpa Yafe in increasing numbers. They settled in the existing villages of Archibong and Akwa, and created new settlements such as Ine Akpa Ikang, Mbenmong and Nwanyo. Villages were named after the founders or after the place of origin of the first settlers. The word "Ine" in Efik means fishing settlement. Hence Ine Akpa Ikang and Ine Ikang were both fishing villages named after settlers from Ikang, and Ine Effiom is a fishing village founded by the head of the Effiom family (see Fig. 3.3).

3.73 The earliest Efik settlements in the region were sited for the most part at the northern end of Bakassi. Arsibon's Town, which became known as Archibong, was referred to as early as 1786 in Antera Duke's Diary.[16] It was re-populated by Prince Asibong Edem III, a descendant of Duke Ephraim of Calabar, as his own family colony, in the early part of the 19th century.

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

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

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

ORIGINAL HOMES OF EFFIAT IN MBO LOCAL GOVERNMENT OF AKWA IBOM STATE	AFFILIATED SETTLEMENTS IN BAKASSI	FOUNDING FATHERS (where known)
Esuk Enwang	Ine Atayo Inua Mba Obio Iyonkpong Ekpri Ine Atayo	Obong Atayo Ossosi Obong Iyonkpong Eda Atayo Umoh Nkponta
Obong Nim	Ine Odiong Ine Ekoi Ine Edem Ntong Edem Abasi	Udo Nkok Ekung Udo Nkok Ekung
Utan Brama	Akpa Nkanya Onosi	Obong Efah
Ibuot Utan	Ine Akpak Ine Ekong	Akpak Nte Odiong Obong Ekong Mba
Utan Efiong	Ine Utan Afa Iyobo	Iyobo Nte Odiong Iyobo Nte Odiong

3.77 These names and affiliations clearly do not derive from any settlement, family or other association with Cameroon.

3.78 It is clear that the settlement of the villages on Bakassi by Nigerian nationals of the Efik and Effiat tribes has been a steady process over the course of the last century. This pattern of settlement has been reflected in the ever-increasing level of administration over the villagers and their populations by successive Nigerian local government organisations (see Section (viii) below).

(xi) The Close Relationship Between the Economic Life of Bakassi and the Economy of the Mainland of Nigeria.

3.79 As the distinguished editors of *Oppenheim's International Law* observe :

> "In an important examination of the criteria applied by tribunals to resolve territorial disputes, Munkman identified *inter alia* the following... economic considerations; ...".[17]

3.80 The editors, Sir Robert Jennings and Sir Arthur Watts, were describing the practical and evidential content of the concept of the consolidation of historic titles. In this connection it is not unusual for the Court, and other tribunals, to take the economic usage of the local inhabitants into account.

3.81 In the Judgment in the *Anglo-Norwegian Fisheries* case the Court stated the following:

> "Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage."[18]

3.82 In the *Rann of Kutch* arbitration the President gave particular legal significance to the use of grazing grounds by the inhabitants of Sind. In the opinion of Judge Lagergren, the President :

> "With reference to Dhara Banni and Chhad Bet, I deem it established that, for well over one hundred years, *the sole benefits which could be derived from these areas were enjoyed by inhabitants of Sind*. It is not suggested that the grazing as such was subject to British taxation. Such limited evidence as there is on record seems, however, to justify the assumption that the task of maintaining law and order was discharged by the Sind authorities; it is not even suggested that the authorities of Kutch at any time viewed such a task as forming part of their duties. The Kutch Tajvijdar of Chhad Bet stated in a revealing letter of 26 March 1940 that
>
> > "it is seen that the people of foreign territory have assumed a form of administration on this bet and have for a long time established their foothold" (see Chapter IX, Section 15.10.3).
>
> Whatever other Government functions were required with respect to these outlying grazing grounds, on which herds of cattle were from time to time shepherded, were apparently undertaken by Sind. Thus, the births, deaths and epidemics occurring there were recorded by the taluka office in Diplo. It is not shown that Kutch at any time established a thana on Chhad Bet." [19] (emphasis added)

3.83 In response to evidence that Kutch attempted to collect grazing fees in the period before 1845 and after 1927, the President observed:

> "at no time were these tax levies effective, as is evidenced by the small amounts

> recovered, which fell far short of the expenditure occurred in the collection. More significantly, ... the imposition of the levy was opposed, not only by the local villagers, but by the British Government authorities concerned ... Taken in all, these activities by Kutch cannot be deemed to have constituted continuous and effective exercise of jurisdiction. By contrast, the presence of Sind in Dhara Banni and Chhad Bet comes as close to effective peaceful possession and display of Sind authority as may be expected in the circumstances. *Both the inhabitants of Sind who used the grazing grounds, and the Sind authorities, must have acted on the assumption that Dhara Banni and Chhad Bet were British territory.*"[20]
> (emphasis added)

3.84 The fishing communities long established on Bakassi have strong economic links with the mainland of Nigeria. Their building materials come from the mainland. They use Nigerian currency and sell their products in Nigerian markets. The villages on Bakassi have names which are derived from settlements on the Nigerian mainland (see above paragraphs 3.75, 3.76).

3.85 The existence of co-operatives and other voluntary associations linked with the bigger Nigerian community evidence the pattern of social and economic links. In particular, the private dwellings forming the villages in Bakassi belong to Nigerian nationals and the materials for their construction come from the mainland. As Mr. Harrison, Counsel for the United Kingdom, pointed out in the oral argument in the *Minquiers and Ecrehos* case :

> "Naturally, we agree that if an Englishman owns property in France, that does not make his property English soil, any more than a private French property in England is French soil. But when you find houses on an island, all of which are owned by the subjects of a certain country, and there is no concrete evidence on the island of the sovereignty of, or of administration by, any other country, then a strong and almost irresistible presumption arises that the sovereignty is vested in the country whose nationals own those houses. In such circumstances the presence of the houses, while it might not be *per se* conclusive evidence of sovereignty, is, I submit, very forcible presumptive evidence of it."[21]

(xii) The Use of the Nigerian Currency by the Administrators and Population of the Bakassi Peninsula

3.86 It is customary for the population of the Bakassi villages to use the Nigerian naira as currency. In the early years after Independence, the currency used was the Nigerian pound, shilling and pence. The Clan Heads of the principal villages attest to this practice: see paragraph 3.139 below and the statements relating to Archibong, Akwa, Atabong East, and Abana in Appendix to this Chapter.

3.87 Defendants in criminal cases who were residents of Bakassi fishing ports are faced with charges based upon valuations of stolen property in Nigerian naira: see Annex NR 14. Canoe landing fees are fixed in naira: see Annex NR 15. General rates imposed by Akpabuyo L.G.A. are assessed and paid in naira (see paragraph 3.168 below).

3.88 In correspondence in 1968 between the Bakassi village chiefs and one of the Etuboms (Chief Okon Ita) in Calabar, the references to sums of money were to Nigerian pounds: see Annex NC-M 151. The same reference to Nigerian currency appears in the correspondence between the Obong of Calabar and the Bakassi chiefs in the same period: see Annex NC-M 152.

3.89 The salary of the head teacher of the primary school in Abana in the period 1980 to 1992 was paid in naira: see Annex NC-M 185.

3.90 The habitual use of Nigerian currency is an inevitable concomitant of the close economic and social relations between the mainland of Nigeria and the Bakassi region. Cameroon has failed to produce any evidence that her currency was in use in the Bakassi region.

(xiii) The Administration of Bakassi as part of Nigeria in the Period 1913 to 1960

3.91 Nigeria has, in Chapter 9 of the *Counter-Memorial*, and in Chapters 1 and 2 of this *Rejoinder* contended that the 11 March 1913 Treaty was ineffective in relation to Bakassi and never implemented there, and that Bakassi continued to be administered by Nigeria, as part of the Eastern Region of Nigeria, throughout the period 1913 to Independence.

3.92 Evidence of such administration included the recognition by the British of the strong links between Calabar and Bakassi, the inclusion of Bakassi villages in Laws and Orders throughout the 1950s, and the continuing role played by the Obong or by Calabar in the administration of the Bakassi Peninsula. Furthermore, during this period, the settlements on Bakassi remained within the jurisdiction of the Nigerian Native Court system based in the Calabar and Eket Divisions of Eastern Region, and schools set up in some of the Bakassi settlements were administered within the Eket/Opobo School Board of Eket Division.

(xiv) The Local Government Administration in South-Eastern Nigeria after Independence

3.93 Prior to Independence in 1960, Bakassi was under the administration of Akpabuyo Rural District Council and Ibaka Rural District Council. These were both within the Eastern Region. At Independence, the northern half of Bakassi (including Archibong, Akwa and Ine Akpa Ikang) was administered by Akpabuyo Local Council, within Calabar Division of the Eastern Region of Nigeria. The southern part of Bakassi (including Abana and East and West Atabong) was administered by Ibaka Local Council within Eket Division of the Eastern Region (see Fig. 3.4). This division of the peninsula reflected the affiliations of the population (see Section (iv) above).

3.94 In 1967, the northern part of Bakassi was administered by Akpabuyo County Council, within Calabar Division of the newly-created South-Eastern State. However the southern part of Bakassi was now being administered by Oron East County Council of Oron Division, within South-Eastern State (see Fig. 3.5).

3.95 In 1976, the then South-Eastern State was re-named Cross River State. Cross River State was divided into Local Government Areas. The northern part of Bakassi was administered by Odukpani Local Government Area while the southern part of Bakassi was administered by Oron Local Government Area (see Fig. 3.6).

3.96 In 1987, Akwa Ibom State was created and the Local Government Areas were again reorganised. The northern part of Bakassi was now administered by Akpabuyo Local Government Area within Cross River State. The southern part of Bakassi was administered by two Local Government Areas within Akwa Ibom State: Effiat/Mbo Local Government Area and Okobo Local Government Area. Effiat Mbo Local Government Area administered, *inter alia*, Abana, Onosi, Ine Akpak and Ine Odiong. Okobo Local Government Area administered, *inter alia*, East and West Atabong (see Fig. 3.7).

3.97 This remained the situation until 1996, when Bakassi Local Government Area was created as part of Cross River State. This Local Government Area encompassed the whole of the Peninsula (see Fig. 3.8).

(xv) The Clan system and the Exercise of Authority by Traditional Rulers

The location of places mentioned in this Section is shown on Fig.3.9 at the end of the Section

Place names on Bakassi in this and the following sections are highlighted in bold

3.98 The role of traditional rulers in Nigerian society has been recognised and maintained within the framework of the post-Independence Constitution. This role has been maintained even during periods of military rule. In relation to the Bakassi Peninsula the historical position of the Obongs of Calabar and the Paramount Chiefs of Eket/Oron is reflected in the cultural pattern which has obtained since Independence.

3.99 The relationship is maintained through the Council of the Obong of Calabar where all cognate Efik Clans are represented. Set out below is a schedule[22] naming the existing members of the Council, some of whom are also natives of the Bakassi area:

NAME	MEMBERSHIP STATUS IN COUNCIL	STATUS IN BAKASSI	OCCUPATION
Etubom Itam Eyo Ibitam	Present Chairman of Council	Amoto Clan	Farming
Etubom Oyo Orok Oyo-Ita	Former Chairman of Council	Akwa Clan	FIFA Official
Etubom Ukorebi Ukorebi Asuquo	Former Secretary of Council	Odon Ambai Ekpa Clan	Immediate Past Deputy Rector, Calabar Polytechnic

Chief Ekpo Eyo	Present Secretary of The Obong's Council	(a) Present Secretary General Of Bakassi Natives Assembly (b) Clan Head Elect of Amoto Clan (c) Direct Descendant of Founders of both Amoto And Akwa Clans	Political Scientist and Lecturer in Public Administration
Etubom Ekpo E.E. Archibong	Vice Chairman of Council	Direct Descendant of Archibong Clan	Businessman
Chief Micah Eniang Ededem Archibong	Adviser	Archibong Clan	Broadcaster
Chief Eniang Esien	Secretary, Etuboms' Traditional Council	Abana clan	Former Hon. Commissioner of Cross River State
Chief Efiom Eyamba	Adviser	Odon Ambai Ekpa Clan	Engineer
Chief Mrs Cecilia Ekpenyong	Ada Idaha Ke Efik Eburutu	Direct Descendant of Founder of Mben Mmong Ekanem Esin Village of Akwa Clan	Present Chairman, CRSLG Service Commission; Former Deputy Governor of Cross River State Govt.
Chief Dr Sama Ekpo Sama	Ada Idaha Ke Efik Eburutu	Akwa Clan	Medical Doctor
Chief Okon Edet Usim	Ada Idaha Ke Efik Eburutu	Direct Descendant of Founders of Odon, Amoto and Efut Inwang Clans	Serving Nigerian Diplomat in Iraq

Chief Mrs Florence Ita Giwa	Ada Idaha Ke Efik Eburutu	Ekpot Abia Atabong Clan	Politician
Chief Mrs Ekanem Ikpeme	Ada Idaha Ke Efik Eburutu	Odon Clan	Medical Matron
High Chief Dr. Emmanuel Nyong Nsan	Ada Idaha Ke Efik Eburutu	Atabong Clan	Medical Consultant; Former Federal Government Minister of Health
Chief Dr Archibong Edem Young	Ada Idaha Ke Efik Eburutu	Direct Descendant of Founder Of Amoto Clan	Engineer
Chief (Engr) Richard Ekanem	Ada Idaha Ke Efik Eburutu	Efut Inwang Clan	Former Rector of Calabar Polytechnic
Etubom Okon Etim Okon Asuquo	Etubom of Atabong Clan	Present Antai Ema Atabong Clan. Head Elect	Retired Superintendent of Police
Chief Etim Okon Edet	Ada Idaha Ke Efik Eburutu	Native of Abana Clan - Former Akpabuyo/Bakassi Local Govt Chairman	Politician
Chief Dr Emmanuel Efiong-Fuller	Ada Idaha Ke Efik Eburutu	Native of Community Leader In Akwa Clan	Senior Lecturer, Dept. of Geography in University of Calabar
Chief Barrister Andem Attah	Adviser	Native of Atabong Clan	Lawyer

3.100 Examples of the Certificate of Recognition by Cross River State Government for two of the above listed Chiefs, Chief Okon Etim Okun Asuquo and Chief Ekpo Edem Archibong, are annexed at NC-M 150. These documents, issued pursuant to section 13 of the Traditional Rulers Law of 1978 (see paragraph 3.107 below), reveal that these Chiefs are the village heads respectively of Atabong West and Archibong Town in what is now Bakassi Local Government Area.

3.101 Customary procedure for the appointment of Clan Heads and Heads of Cognate Efik families is similar throughout Calabar and Bakassi. The attendant criteria are also similar. They are:

(1) Ability to prove one's birth and speak Efik;

(2) Must not be a charlatan;

(3) Must be a house owner;

(4) Must be a full initiate of Ekpe Society;

(5) Appointment must be made by the acknowledged king-makers.

3.102 The role of the Etuboms (Elders) and Chiefs must not be under-estimated. The inhabitants of the area have great allegiance to their leaders and rely on them for their safety, welfare and good administration. In an area as remote as Bakassi from the centre of Federal Government, originally in Lagos and then in Abuja, the role played by the traditional rulers is very important.

3.103 Correspondence between Etubom Okon Ita, Etubom of the people of Atabong, and the Chiefs of local villages on Bakassi in 1968 reveals an interesting insight into their position in society. During the Nigerian civil war, a letter dated 5 April 1968 (Annex NC-M 151) from the Etubom to the Chiefs of Abana, Ine Odiong, Ine Atayo, Ine Akpak and Ine Atabong stated his concern that their villages had been taken over and occupied by Cameroonian soldiers and police acting under the orders of the Cameroonian Government, and that the villagers were being forced to change their nationality from Nigerian to Cameroonian. He requested the attendance of the Chiefs at the meeting to discuss the situation. This letter was followed by correspondence in Efik (translations are also provided) in which the Etubom arranged the meeting and requested that the villages pay some of the cost of a visit by the Etubom and his lawyer, Barrister Anwan, to Lagos to bring the situation to the attention of the relevant Federal Authorities (Annex NC-M 152). It shows that the Etubom and his Chiefs were concerned by the appearance of Cameroonian soldiers and police and the threat that this constituted to their people, their society, their culture and their allegiances.

3.104 The correspondence further shows that the Obong and Etuboms' rule was paramount. In the letter dated 1 May 1968 (Annex NC-M 152), the Obong tells his Chiefs in the Bakassi villages that they should inform the Cameroonian police that anything done in the villages without the consent of the Etubom is null and void.

3.105 On 28 December 1973 the South-Eastern State Traditional Rulers Edict No. 17 was promulgated (Annex NC-M 153).[23] Its Schedule 2 listed the Divisions, Clans, Village Groups and villages in South-Eastern State to which the respective Paramount Rulers, Clan Heads, Group Heads or Village Heads were restricted in the performance of their traditional functions. The village groups listed under the Efik Clan in Calabar Division include Archibong. Under Oron Division it reveals the following Bakassi villages in the "Fishing Settlements with no Common Name" Village Group in Effiat Clan:

Abana Ntuen

Akpa Nkaya

Onosi

Ine Ekpo

Ine Ekoi.

It also reveals the following Bakassi villages in the Ntekim Village Group:

Ine Odiong

Edem Abasi

Ine Ibekwe Atabong [East Atabong]

Ine Atabong [West Atabong]

Ine Akpak

Ine Atayo.

3.106 Cross River State promulgated the Traditional Rulers Law in 1978 *(*Cross River State Edict No.14 of 1978) which included Archibong within the Efik Clan of Calabar Municipality.[24] The Efik Clan included the following villages in Bakassi:

Ine Nkan Okure No. 1[25]

Ine Nkan Okure No. 2

Ine Utan

Ine Utan Asuquo

Ine Ikang

Ine Akpa Ikang

Ine Efiom

Ine Ukpono

Ine Ekoi.

3.107 Under this legislation of 1978 the Local Government Clans, Villages (Variation) Order of July 1983 was made (Annex NC-M 155) designating various local government clans.

3.108 The Order provides as follows:

> "I, Schedule 1 of the Traditional Rulers Law, 1978 is hereby varied in respect of the Local Governments named below by adding in columns (1) and (2) as regards the Local Governments and Clans named below the following new items:
>
> Variation of Schedule 1 to the Traditional Rulers Law, 1978 (Edict No. 14 of 1978)
>
> ORON LOCAL GOVERNMENT
>
> Clan Villages
>
> Atabong Ikot Ema Antie
>
> Ikot Iquo
>
> Ikot Itabinya
>
> Ikot Odiong
>
> Ikot Osukpon
>
> Ikot Etim Ntung
>
> Ikot Antal Oko
>
> Ikot Okokon
>
> Ikot Ema Andem Inyang
>
> Ikot Ema Andem Ema
>
> Ikot Ekpenyong
>
> Itung Fishing (Settlement)
>
> Aqua Ine Itung

Ikot Antai Okon

Ibiong Utan Itung

Ufot Ine Itung

Aqua Ine Ibekwe

Ibiong Utan Ibekwe

Ishie"

3.109 In 1990 the State of Akwa Ibom adopted the Traditional Rulers Edict (the relevant pages of which are contained in Annex NC-M 156), which made provision for the establishment in each local government area of a traditional council to act as an advisory body on the customs and traditions of the local government area.

3.110 The Schedule to the Edict lists the villages designated for the purposes of the Edict as follows:

"Section 4

NAMES OF VILLAGES IN MBO LOCAL GOVERNMENT AREA

Local Government Area of Authority Headquarters

MBO Clans/Villages ENWANG

.....

EFFIAT VILLAGES IN BAKASSI

Aya (Inua Abasi)

Abana Ntuen

Onosi

Akpa Nkanya

Ini Adiong

Ine Inua Abasi

Ibuot Efe

Ine Ekoi

Ine Iyoso

.....

OKOBO ATABONG VILLAGES OKOPEDI IN BAKASSI

Itung Fishing Settlement

Aqua Ine Itung

Ibiong Utan Itung

Aqua Ine Ibekwe

Ufot Ine Itung

Ibiono Utan Ibekwe

Ishie"

3.111 The Cross River State Clans Creation Edict (No. 1 of 1996) (Annex NC-M 157) created clans in villages in the Akpabuyo L.G.A. including the following villages in the Bakassi region:

Ikang Clan: Ine Ukpong

Ine Effiom

Ine Akpa Ikang

Ine Ikang

Ine Utan Asuquo

Ine Utan

Ine Nkan Okure I

Ine Nkan Okure II

Archibong Clan: Archibong Town

Akwa Clan: Akwa Town

Nwanyo Otto

Mbenmong Ikot Ekanim Esin

Abana Clan: Abana Ntuen

Akpa Nkanya

Onosi

Ine Ekoi

Ine Mba

Ine Effiom

Odiong Clan: Edem Abasi

3.112 The appointment and official recognition in legislation of Village Heads within the Efik Clans confirms the existence of the authority of the traditional rulers in Bakassi. The pertinent official lists such as The Traditional Rulers Register (Odukpani Local Government) and the list of recognized Names of Clans, Villages and Village Heads contain an impressive number of Bakassi villages (Annex NR 16).

3.113 The Cameroon *Reply* fails to provide any contradiction of the evidence produced by Nigeria in the *Counter-Memorial* on the role of the traditional rulers in the administration of the Bakassi region. In this context it is to be emphasised that at no stage have the traditional rulers recognised any claims to sovereignty made on behalf of Cameroon.

3.114 In conclusion on the role of the traditional rulers, two points must be stressed. The first is the ongoing character of the exercise of power and influence by the traditional authorities. The fishing villages of Bakassi are grouped under the aegis of six Clan Heads. Further information on the Clan Heads will be found in Appendix. The second point is that the Clan is an aspect of an active mode of social organization and is not a mere ethnological and academic concept.

(xvi) Jurisdiction of Customary Law Courts

The location of places mentioned in this Section is shown on Fig. 3.10.

3.115 Modern legislation in Nigeria has maintained and regulated the customary law courts. As early as 17

June 1941, the Effiat-Mbo Native Court issued a warrant for the Effiat-Mbo (Oron Clan) Court, which included within its jurisdiction the Bakassi village of Abana (Annex NC-M 141).

3.116 As mentioned in Chapter 2 the Customary Court of Effiat-Mbo, sitting in Jamestown, heard cases involving parties from Bakassi villages in respect of land on Bakassi in the years before Independence. Cases involving parties from Ine Odiong and Ine Atayo were heard in March 1956: see Annex NR 10. In June 1958 the same Court was hearing a case between Chief Etim Oron Ntuen of Abana and the Ekpe Society of Abana Village: see the Court records in Annex NR 11. In September 1963 the Court heard a case involving assault and battery in which the respondent was a resident of Ine Atayo, a village in the south-eastern corner of Bakassi: see the Court records in Annex NR 17.

3.117 Within this framework, courts were also established by virtue of the South-Eastern State Customary Courts Edict of 1969.[26] By means of a Warrant dated 29 October 1970 (Annex NC-M 158) the Effiat-Mbo District Court was created replacing the Native Court, with jurisdiction in the area comprising the villages set out in the Schedule thereto. This included the Bakassi village of Abana Ntuen.

3.118 In the period immediately after Independence the Akpabuyo Native Court continued to deal with civil claims involving residents of Bakassi villages, including Ine Ekoi and Koloni Fishing Port (Annex NR 18).

3.119 Criminal cases from Bakassi were heard in the District Court (Grade A) of Akpabuyo, including cases involving parties from Nkan Okure (1966) and Ine German, now called Ine Akpa Ikang (1968) (Annex NR 19). The District Court at the relevant time formed part of the Customary Court of Eastern Nigeria.

(xvii) Regulation of Land Use

3.120 The Government of Akwa Ibom State regulates land use in the southern part of the Bakassi Peninsula by virtue of the Land Use Decree, 1978. In this context a Certificate of Occupancy was issued to the Ministry of Defence in 1993 in respect of a military camp situated in Mbo Local Government Area at Atabong (known as Isaac Boro Military Camp): see Annex NR 20.

3.121 A similar Certificate of Occupancy was issued by Akwa Ibom State to the Ministry of Defence in 1994 in respect of the army camp at Abana Ntuen: see Annex NR 21.

(xviii) The Settlement of Nationals of the Claimant State

3.122 As Nigeria has stated in the *Counter-Memorial,* in the formulation of title by a process of historical consolidation there can be no doubt that the existence of long-established settlements of the nationals of the claimant state plays a significant role. It is helpful in this respect to recall the views of Sir Gerald Fitzmaurice expressed in 1957:

> "The element of racial or national affinity between the population of the claimant State and the inhabitants of the territory claimed, can never in itself be a legal ground of title. As with historical factors, it might assist in supporting a claim based on other grounds, or as an evidential factor - for instance it might assist in

> showing that certain acts were carried out *animo occupandi* with the intention of asserting sovereignty. But, especially, if the territory is, or has passed into the effective control of another State, affinities of race or country can never be a substitute for effective control, or for continuity, or in themselves give title. *Different considerations arise where it is not merely a question of racial or national affinity, but of actual nationals of the claimant State, for, if settlers in a territory have a certain nationality, that may be an element (though not necessarily a conclusive one) in showing the existence of effective control by their parent State*."[27] (emphasis added)

3.123 The settlement of nationals has been treated as relevant in the jurisprudence of international tribunals. The relevant material is set forth in the *Counter-Memorial*, pages 234-37, paragraphs 10.50-10.55.

3.124 The Government of Cameroon has not advanced any evidence to suggest that the region is inhabited by nationals of Cameroon, whereas Nigeria has shown in its *Counter-Memorial* and sets out in this *Rejoinder* overwhelming evidence that Bakassi is inhabited by Nigerians.

(xix) Local Voluntary Associations

3.125 There is evidence of the existence and activities of typical local voluntary associations in the Bakassi region. Thus the Ntakaba Fishermen Association, based in Archibong (in Bakassi) promulgated a loan scheme in 1980 and a list is available of the individuals who collected loans from the Association in 1980 and 1981 (Annex NR 22). A similar group, based in Archibong, was operating a loan scheme in 1982. There was also the Archibong Women Co-operative Society which was active in 1989 (Annex NR 23). Other examples of the activities of local Co-operative Societies and Loan Schemes appeared at Annexes NC-M 65 and NC-M 66.

3.126 This evidence reflects the bonds of social and political attachment of the villages in Bakassi and the larger community of Nigerians. Such associations were formed by Nigerians and this evidence represents a natural consequence of the existence of long-established communities of Nigerian nationals with the concomitant national outlook.

(xx) The Exercise of Military Jurisdiction

3.127 The manifestation of sovereign authority may take the form of the exercise of military jurisdiction, as part of a generalised system for maintaining public order. Such evidence was regarded as in principle admissible by the Chamber in the *Land, Island and Maritime Frontier Dispute*.[28]

3.128 There has always been a Nigerian military presence on the Bakassi Peninsula. The Isaac Boro military camp has been situated near West Atabong since the Nigerian civil war. Major Isaac Adaka Boro was a military commander in 3 Marine Commando (of the Nigerian Army) who gained fame for his exploits fighting against the rebel Biafran forces in the riverine areas of Calabar Division. In March 1968 he led his men, known as the "Seas School Boys", up the Cross River estuary and liberated Atabong, Abana and Ikang from rebel hands. He set up the army camp on Bakassi which still bears his name. He died in action in May 1968. These details are based on information available to the Government of Nigeria. Furthermore, the Nigerian

Navy also have a base, situated at Jamestown on the mainland, from where regular patrols are sent out to patrol the creeks and shores of the Bakassi Peninsula.

3.129 In terms of the assertions of Cameroon, in 1981 and in subsequent years, Nigerian forces were patrolling the Bakassi region on a regular basis. The Government of Cameroon has referred to the existence of the Nigerian patrols in a series of documents, as follows:

(1) Note dated 9 February 1981; Annex MC 257.

(2) Note dated 16 April 1981; Annex MC 258.

(3) Note dated 15 March 1984; Cameroon Memorial page 577, paragraph 6.56.

(4) Message dated 2 December 1985; Annex MC 277.

(5) Documents relating to an Incident taking place in March 1990; Annexes MC 296, MC 297, MC 299 to MC 302.

(6) Message dated 29 September 1990; Annex MC 304.

3.130 Contemporary records and incident reports prepared by the Nigerian Navy indicate that routine patrols took place and were involved in the maintenance of public order and national security. The types of operation are evident from the following examples:

(1) The arrest of three Cameroonian security personnel and a civilian boat driver at Abana in March 1990: see Annex NR 24.

(2) The arrest of smugglers within the Calabar channel in December 1999: see Annex NR 25.

(3) The arrest of an unlicensed fishing trawler in the Calabar Estuary in January 2000: see Annex NR 26.

(4) The arrest of an unlicensed fishing trawler off Akpa Ikang in March 2000: see Annex NR 27.

(5) The rescue of forty-two passengers from a vessel which foundered and eventually sank off Abana in July 2000: see Annex NR 28.

(xxi) The Enhancement of Public Order within the Bakassi Region by Nigerian Security Forces in December 1993

3.131 The Government of Nigeria has already affirmed that there has always been a Nigerian military presence on the Bakassi Peninsula. In addition, the Nigerian Navy has a base at Jamestown, on the mainland, from which patrols are sent to the creeks and coasts of the Bakassi Peninsula.

3.132 In spite of the presence of Nigerian forces, incursions by Cameroonian agents occurred from time to time which went undetected because of the relatively remote character of the region and the cover provided by the mangrove swamps and creeks. These incursions were the subject of repeated complaint by the Nigerian communities. By 1993 a further threat to public order had emerged in the form of territorial rivalry between two Nigerian States in respect of the Bakassi Peninsula.

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

> "I wish, on the instructions of my Government to refer to the letter dated 28 February 1994, addressed to you by the Permanent Representative of Cameroon (S/1994/228), and to convey to you the following information.
>
> On 31 December 1993, Nigerian troops were dispatched to the Nigerian fishing villages of Abana and Atabong on the Nigerian Bakassi Peninsula in order to avert a violent clash between those who lay claim to the settlements from two Nigerian States, namely the Akwa Ibom State and the Cross River State. The pre-emptive action had the desired effect. However, following the concern expressed by the Cameroonian Government on the Nigerian troops' movement, I visited Yaoundé on the instructions of my Head of State, Gen. Sani Abacha, to explain to President Paul Biya the reason for the Nigerian move. Early in 1994, the Cameroonian Foreign Minister also visited Abuja with a message to the Nigerian Head of State from President Biya. Both sides pledged to resolve the issues peacefully" (Annex NC-M 347).

3.134 The same concern was expressed in a letter dated 20 April 1994 from the Nigerian High Commission in London to the Foreign and Commonwealth Office and to all the diplomatic missions accredited to the Court of St. James and to all international organizations with headquarters in London (Annex NR 29; also Annex NPO 80).

3.135 The background to these statements of a special security problem is provided by the internal rivalry between two States of the Federal Republic of Nigeria in respect of the Bakassi Peninsula. This aspect of the matter is examined more fully below, Section (p) paragraphs 3.246-3.249.

3.136 However, there was another significant source of concern lying behind the measures taken. The Clan Chiefs of the groups of villages in the Bakassi Peninsula confirm that during and after the civil war, from 1970 onward, the Cameroon *gendarmes* (armed police) consistently carried out acts of harassment in the Bakassi region. The particulars of those acts of harassment are set forth in the Nigerian *Counter-Memorial*, pp. 267-9, paragraphs 10.157-10.161.

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

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

3.138 This pattern of harassment and the atrocities committed by Cameroonian gendarmes and soldiers were the subject of complaint in the letter of the Nigerian Government to the President of the Security Council dated 4 March 1994 (Annex NC-M 347). This letter refers to six serious recorded incidents in 1991, six in 1992, and thirteen up to September 1993. References to acts of harassment, plunder and murder also appear in the letter dated 20 April 1994 from the Nigerian High Commission in London (see paragraph 3.133 above and Annex NR 29).

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

> "1. ... During Nigerian Civil War, the 3rd Marine Command Division led by Brigadier Benjamin Adekunle established a Military base at Atabong Commanded by the late Major Isaac Adaka Boro and Cameroun Gendarmes dared not trespass into Nigerian territory. After the withdrawal of Major Boro and his men from Atabong on the 10th March, 1968, Cameroun Gendarmes arrived Atabong on the 19th March, 1988. Since then Atabong people and indeed the entire residents of Bakassi Peninsula have had no peace.
>
> 2. [......]
>
> 3. ECONOMIC BLOCKAGE: Cameroun Gendarmes are now forcing indigenes of Atabong, Abana, Edem Abasi, Ine Odiong, Ine Atayo and Ine Akpak, all residents of Bakassi Peninsula to stop coming to Nigeria to sell their fish, crayfish and shrimps but rather to take them to the Cameroun and sell thereby strangulating Nigeria economically. They also do everything possible to intimidate our people from trading with our legal tender, the naira notes in preference to the CFA Franc. They even go to the extent of seizing naira notes from our people and burning them in fire. All these actions of Cameroun Gendarmes amount to economic blockade and strangulation, hence the scarcity of

fish and crayfish in our markets.

[......]

5. MOLESTATIONS, BEATINGS, RAPINGS AND KILLINGS: Cameroun Gedarmes have a field day molesting, beating, raping and killing our people. One Mr. Etim Andem Okon of Atabong was beaten to death by Cameroun Gendarmes in 1969. On 16th January, 1973, one Mr. Mbuk Sereke was beaten to the point of death by Cameroun Gendarmes and was unconscious for three days. Recently, one Mr. Etim Effiong Ekop was severely beaten by Cameroun Gendarmes to the point of death. As at the time of writing this report, Mr. Etim Effiong Ekop was in a state of coma. Five Nigerian soldiers were brutally murdered by Cameroun Gendarmes in the same area. Two fishermen were cold-bloodedly murdered in that same area by Cameroun Gendarmes.

We, the people of the area, have consistently protested vehemently against Cameroun atrocities and vandalism to the Federal Government of Nigeria.

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

3.140 This Report is in fact an appeal to the Governor of Cross River State from the traditional leader of the community, Chief Okon Etim Okon Asuquo, a member of the Council of Etuboms in Calabar, and head of the Atai Ema clan of West Atabong. The initiatives taken by the Nigerian forces in 1993 were a response to such appeals. Petitions from communities on Bakassi have been made on various occasions since May 1968: see Annex NC-M 205 (Petition addressed to the Federal Ministry of External Affairs of Nigeria). Thus in 1973 the Etuboms' Council in Calabar protested against Cameroonian intrusions in a "Protest notice against the forceful ejectment by the Cameroons Government of Nigerians of Efik origin from land formerly the jurisdiction of the Obong of Calabar now by law territory of the Federation of Nigeria": see Annex NC-M 211.

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

(xxii) Acts of Administration by Nigeria after Independence in 1960

(a) The Evidential Sources

3.142 A major component in the process of historical consolidation is the evidence of peaceful possession and administration, consisting of acts involving "a manifestation of sovereignty"[29] in respect of the Bakassi Peninsula (*cf. Minquiers and Ecrehos* case), or "acts of such a character that they can be considered a manifestation of State authority"[30] in respect of Bakassi.

3.143 In the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* case, there is repeated reference to the requirement of "effective administration."[31]

3.144 The various types of evidence of administration by Nigeria will be reviewed in the sections following. The headquarters of the relevant Local Government Areas are as follows: Ikot Nakanda (Akpabuyo L.G.A.), Okopedi (Okobo L.G.A) and Enwang (Mbo L.G.A.). Bakassi L.G.A. was created in 1996 (see above paragraph 3.97): its headquarters is at Abana

(b) The Maintenance of Public Order: the Investigation of Crime and the Exercise of Criminal Jurisdiction

3.145 Occupying a leading position in any chronicle of "acts of such a character that they can be considered a manifestation of state authority" are the maintenance of public order and the investigation of crime. In this context it may be recalled that in the *Rann of Kutch Arbitration* account was taken of the exercise of police and criminal jurisdiction.[32]

3.146 The relevant evidence includes the exercise of jurisdiction by Customary Law Courts acting by virtue of Nigerian legislation. This aspect has been examined above in paragraphs 3.115-3.119.

3.147 The documents available provide evidence of the following acts of law enforcement by Nigerian police officials in the Bakassi region:

(1) In 1963 a Nigerian police launch intercepted a Cameroon government launch in the territorial waters of Nigeria near Abana. This incident, on 16 November 1963, was the subject (along with other similar incidents) of a Nigerian protest dated 1 April 1964 (Annex NC-M 159).

(2) On 29 October 1965 a Nigerian police officer arrested members of a Mobil Oil survey team in the delta of the Cross River. The relevant Cameroon Note (dated 22 November 1965) reserves the position of the Cameroon Government but no protest is made (Annex NC-M 160).

(3) In 1970 Nigerian officials were sent to the village of Eket to investigate a murder case. The intervention of Cameroon officials at Atabong prompted a Nigerian protest in the following terms:

> "The Embassy of the Federal Republic of Nigeria presents its compliments to the Ministry of Foreign Affairs of the Federal Republic of Cameroon and has the honour to bring the following to the attention of the latter.

On the 28th of May, 1970, two Nigerian Police Constables, Edem Asanga No. 114302 and Okon Willie No. 122304 were arrested by the Cameroon authorities at ATABONG, a fishing village while on their way to EKET to investigate a murder case.

The Embassy would be grateful if the Ministry would be good enough to cause the immediate release of these men who were on official duty.

The Embassy of the Federal Republic of Nigeria avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Federal Republic of Cameroon the assurances of its highest consideration." (Annex NC-M 161)

(4) The two Nigerian detective constables involved were employed by the State Criminal Investigation Department at Calabar. The relevant report, dated 17 June 1970, prepared by the Nigerian police officers, includes the following passages.

"We, Nos. 11431 Detective constable Edem Asanga and 12234 Detective constable Okon Willie are of the State Criminal Investigation Department, Calabar, South Eastern State of Nigeria. There was a petition from one Okon Ononoedi Etto against Eket Police alleging of the bad handling of a murder case which his late brother Sunday Ononoedi Etto was the victim. Therefore, we from the State C.I.D., Calabar were scheduled to take up the investigation.

2. The petitioner alleged that some people from Ntak Inyang, Eket, fishing at Ine Odiong murdered his brother Sunday Ononoedi Etto their co-fisherman and buried the corpse in the mud. We left Calabar on the 18th May, 1970 to Ine Odiong on investigation. On our way we called at Eket Police Station and at Etebi, Eket the village of the deceased. In order to allay suspicion as to the condition of the corpse during exhumation, at Etebi and Ntak Inyang we collected some of the deceased's relatives and the suspects and proceeded to Ine Odiong in two canoes.

3. We arrived Ine Odiong on 22nd May, 1970. After necessary enquiries, on 24th May 1970, we exhumed the corpse for Post Mortem Examination. It was only the skull which was in order but other parts of the body had been rotten and decomposed. So far there was a statement to the effect that the head was broken, we had to carry the skull still to be examined by a medical officer. We left Ine Odiong for Eket the same date but we were intercepted by the Cameroon soldiers and Navy at Edem Abasi water near to Atabong Fishing Port ...

[...........]

6. We have put in over 12 years in the Nigeria Police Force and have investigated

> cases in Abana, Atabong, Ibekwe, Akpa Nkanya, Ine Odiong Fishing Ports etc. We had also done tax assessment and tax drive in these areas before the war, but there had never been any interruption by the Cameroon. We are very much embarrassed about this incident." (emphasis added) (Annex NC-M 162).

3.148 The final paragraph of this report provides clear evidence of the existence of a *status quo*, subsisting (in the experience of the two witnesses) for twelve years and more, involving the maintenance of law and order in the Bakassi region by Nigerian police officers. Prior to this incident this peaceful state of affairs had not been interrupted by Cameroon.

3.149 The crime rate on Bakassi is not high, but the following incident reports appear in the Police Crime Diary held at the police station in Ikang and were investigated by the police from that police station (the location of the incidents is shown on the map at Fig. 3.11):

(1) On 27 April 1984 there was a complaint of a case of grievous bodily harm from the Colony Fishing Port [also known as Koloni Fishing Port] of Akpabuyo. (Annex NR 31)

(2) On 24 March 1986, there was a complaint by Nickson MacLean that Chief Iyabo Agagbelewi had obtained money under false pretences in Inua Mba, Bakassi. (Annex NC-M 163)

(3) On 24 September 1991, Effiong Edet from Abana complained that a person had gone missing. (Annex NC-M 163)

(4) Also on 24 September 1991, Effiong Okon Ayakang from Nwanyo on Bakassi complained that Etim Oto Nwayang, also of Nwanyo, stole 3,600 Naira in cash, a fishing net worth 3,200 Naira and three paddles all valued at 50 Naira. (Annex NC-M 163)

(5) A complaint on 9 December 1991 by Joseph Okon Ima of assault occasioning harm at Ine Ekoi. (Annex NR 32)

(6) On 21 February 1993, Chief Ita Okon Ekpenyong from Abana complained that Odiong Inyang, also from Abana, had threatened violence against him, and assaulted him. (Annex NC-M 163)

(7) On 20 June 1994, Laurence Obiene Wiehne of Koloni Fishing Port complained that Juliana Anthony John stole a wrist watch valued at 700 naira. (Annex NC-M 163)

(8) On 18 October 1993 Etim Eyo Ekpo of Ine Unya Fishing Port in Akpabuyo L.G.A. complained of theft by various named individuals from the same village at Ikang Market Beach. (Annex NR 33)

(9) On 28 September 1994, Ime Johnson Jimmy of Iso Ikot Ama Owo near Abana on Bakassi complained that Samuel Jackson of the same address had committed a negligent act. (Annex NC-M 163)

3.150 These incidents show that the Nigerian police based at Ikang police station were responsible for law and order throughout the Bakassi Peninsula over a long period of time. A report dated 28 December 1992 on the

investigation by Ikot Nakanda police into the possibility of arson being the cause of a fire incident at Abana is at Annex NR 34. In 1994 a police station was established at Abana with the approval of the Head of State. (Annex NC-M 164)

3.151 The Magistrates Court at Ikot Nakanda, presently within the Akpabuyo Local Government Area, heard criminal cases from various Bakassi villages, including Mbenmong, Inua Mba and Abana Fishing Port. Records available relate to the period 1981 to 1983: see Annex NR 35.

3.152 In 1995 Akpabuyo Local Government (Cross River State) was concerned to restrain threats to public order arising from a chieftancy dispute affecting Archibong Town and neighbouring villages: see the letter of the Chairman dated 23 August 1995: (Annex NR 36).

3.153 The Government of Cameroon is unable to produce any reliable evidence concerning the administration of justice in the Bakassi region. This is clear from a perusal of the *Memorial*, pages 490 to 496 and the *Reply*, pages 307 to 312. No fact is alleged and no document invoked to prove the existence of a system of criminal justice.

3.154 In respect of the existence of a police presence, the *Memorial* confines itself to some general assertions as follows:

> "Il en existe, conformément au régime du déploiement des services publics, et plus précisément des services de sécurité sur le territoire camerounais, au chef-lieu du département (Mudemba) et aux chef-lieux des arrondissements (Bamuso, Idabato, Ekondo Titi, Mundemba, Kombo Itindi). Au niveau des districts, comme celui d'Idabato, il existe seulement une unité de gendarmerie."[33] (*Memorial*, p. 493, paragraph 4.444)

3.155 In the list of names only West Atabong (named Idabato) refers to a village in Bakassi. No dates are indicated and no document cited.

3.156 The *Reply* of Cameroon makes no reference to the administration of justice or the presence of police in the Bakassi region: *cf. Reply*, pages 307-12.

(c) The Exercise of Civil Jurisdiction

3.157 It has already been pointed out that civil cases were heard by the customary courts: see above, paragraphs 3.115-3.119. Civil suits were also heard by the District Court at Ikang. Cases were heard from the following villages in Bakassi: Clear Heart Fishing Port (1970), Ine Ekoi (1970), Inua Mba (1970) Nkan Okure (1970), Ine German/Ine Akpa Ikang (1971), Ine Ekoi (1971), Koloni Fishing Port (1974), Ine Ekpo and Ine Ntakaba (1975), Nkan Okure (1977), Ine German/Ine Akpa Ikang (1979), Ine Nwayo (1982), Abana Fishing Port (1982), Nkan Okure (1983), Nkan Okure (1983), Ine Akpa Ikang (1983), Ine Akpa Ikang (1984), Ine Akpa Ikang (1991), Ine Ekpo (1992) (See Annexes NR 37 to NR 57 and Fig. 3.12).

3.158 The pleadings of Cameroon provide no precise evidence of the exercise of civil jurisdiction in the

Bakassi region. The relevant paragraphs in the *Memorial* (paragraphs 4.450 and 4.451) do not cite any documents to support the assertions made. The *Reply*, pages 307 to 312, makes no claims relating to the exercise of civil jurisdiction. The text of the *Memorial* (paragraph 4.451) refers to a Customary Court sited in Mundemba, which is not located in the Bakassi region. No evidence is given to indicate that this Court actually exercised jurisdiction over any part of Bakassi or its residents.

(d) The Granting of Letters of Administration to Applicants in Respect of the Property of Deceased Persons

3.159 The High Court of the South-Eastern State of Nigeria had the jurisdiction to grant letters of administration to applicants in respect of the property of deceased persons who were residents of the Bakassi region. Such a grant was given in the case of Miss Margaret Etim Ekpo, 'late of Archibong Town' on 2 September 1975: see Annex NR 58.

(e) Taxation

The location of places mentioned in this Section is shown on Fig. 3.13

3.160 Of particular evidential value is the collection of tax from residents of the Bakassi Peninsula by Cross River State of Nigeria (Calabar Tax Division) and Mbo Local Government (Akwa Ibom State). The evidence takes the form of the Nominal Roll of tax payers who paid their taxes in Akpabuyo Tax District in Calabar Tax Division of South-Eastern State. Copies of this information (both in manuscript and in typescript) and a selection of related individual tax receipts, relating to the fiscal year 1967-68, can be found at Annexes NC-M 165 and NC-M 166. The evidence was provided by the Office of the Governor of Cross River State.

3.161 The Bakassi villages involved are as follows:

Akwa Town

Archibong Town

Mben Mong

Nwanyo

Atabong

Abana

3.162 Evidence in the form of the Internal Revenue Stock and Distribution Register (Eastern Nigeria) establishes that, in the fiscal year 1969-70, income tax was being collected in Abana village on the Bakassi Peninsula (Annex NC-M 169 and Annex NR 59).

3.163 The taxable Population register for Effiat Mbo Clan in Oron LGA (within Akwa Ibom State) for the year 1987 includes the Bakassi villages of Ine Ekpo, Abana, Ine Atayo, Ine Akpak and Ine Odiong (Annex NR

60).

3.164 There can be no doubt that the imposition of taxes is recognised by tribunals as evidence of sovereignty. This Court accepted evidence of the imposition of local and other taxes as evidence of title in the *Minquiers and Ecrehos* case.[34] Evidence of taxation was regarded as admissible by the Court in its Advisory Opinion concerning *Western Sahara,*[35] and also by the Court of Arbitration in the *Rann of Kutch* case.[36]

3.165 The evidence available indicates that the inhabitants of the Bakassi region habitually paid taxes to the Nigerian authorities of the Cross River State. This appears from the following contemporary report of an attempt by officials of Cameroon to collect taxes from residents of Archibong and Akwa. The report, addressed to Force Headquarters in Lagos, and dated 28 September 1984 reads, in material part, as follows:

> "NIGERIAN/CAMEROON BORDER
>
> I wish to bring the following incident to your notice for urgent attention.
>
> 2. On the 26th of September, 1984 at 1500 hours, seven persons of Archibong and Akwa villages in Odukpani Local Government Area of Cross River State reported to the Police at Ikang with a document addressed to each of them by a Cameroonian Divisional Officer stationed at Isangele. A photo-copy of the said document is attached. These villages are just eight kilometres from Ikang town. From their names "Archibong" and "Akwa" which are Nigerians, I have the feeling that the villages are part of Nigeria. In nutshell, the content of the document is an official invitation by the Cameroon government official.
>
> 3. The seven Nigerians who are recipients of this invitation are law abiding citizens and ordinarily reside in these villages. They have nothing to do whatsoever with the administration of the Cameroon government. It is hazard however that the invitation of the Nigerians to Isangele may be for the payment of taxes. But I will want it known that hitherto, these Nigerians pay their taxes to Nigeria authority. The villagers expressed surprise and fear at the invitation and regard it as a calculated attempt by Cameroon government to extend its influence and control over the area.
>
> 4. Although I am not detailed in the geographical boundary data of the area, but I am of the view that the presence of the Cameroon officials in these villages violates our territorial integrity. " (Annex NR 61)

3.166 This report was signed by the Commissioner of Police, Cross River State.

3.167 In spite of a degree of interference from Cameroon officials, the authorities of Cross River State have continued to exercise the power of taxation in the Bakassi region on a routine basis. Tax was collected by Cross River State and Akpabuyo LGA between 1989 and 1994: see the receipts ("Minimum Income Tax Tickets" and "General Rate Tickets") relating to Abana in Annex NR 62 for example.

3.168 The Effiat-Mbo Local Government Area imposed taxes on Bakassi villages through its Brama Task Force: see the Register for General Rate Tickets issued in 1990, Annex NR 63.

3.169 Recent information from the six Clan Heads having authority in the Bakassi villages confirms that the villagers originally paid taxes to Akpabuyo LGA, Mbo LGA and Okobo LGA. Since 1996, they have all paid to the Bakassi LGA - see Appendix.

3.170 The Cameroon Government accepts that the power to levy taxes is one of the most significant manifestations of title to territory: *Memorial*, page 493, paragraph 4.446. In support of its assertion that this power had been exercised in the Bakassi region only two documents are produced. The first is a Poll Tax Roll for the fiscal year 1981-82. In the text of the *Memorial* (page 494, paragraph 4.448) this document (at Annex MC 255) is used as the basis for the following assertion:

> "Le rôle des impôts collectés dans diverses pêcheries, notamment celles d'Idabato I, Idabato II, Jabane I, Jabane II, Naumsi Wan, Kombo a Mpungu, Forisane, Kombo a Ngonja, Kombo a Monjo, Kombo a Jane, Ine Akarika, Kombo a Kiase, Kombo Abedimo, Kombo a Billa, s'élevaient, pour l'exercice budgétaire 1980-1982 à 9,450,000 FCFA."[37]

3.171 Two points stand out. In the first place, no evidence is provided relating to the period 1960 to 1980. And, secondly, only five of the villages specified have been identified by Cameroon as being within the Bakassi region (Idabato I and II, Jabane I and II and Kombo Abedimo).

3.172 The Cameroon *Reply* invokes a second document, a list of tax collectors for the commune of Tiko for the year 1972-1973: Annex RC 34. The problem with this document is that none of the villages specified is located in the Bakassi region.

3.173 In the result there is only one document which refers, at least in part, to the taxation of villages in Bakassi, and this relates to a single tax year (1981-82). This does not constitute evidence of a consistent pattern of activity. Moreover, the fragmentary and unreliable evidence offered by Cameroon contrasts with the evidence of Nigerian tax collection *since the 1960s*.

3.174 The evidence supports the view that Cameroon efforts to collect taxes were episodic, deeply resented by the inhabitants of Bakassi, and constituted no more than acts of harassment. As the Clan Heads indicated, the villagers have never paid taxes to Cameroon except in consequence of threats of force.

(f) Census Taking

The location of places mentioned in this Section is shown on Fig. 3.14

3.175 The taking of a census is a classic form of exercising sovereignty in respect of territory. In its Judgment in the *Minquiers and Ecrehos* case the Court took account of the visit of an official census enumerator to the

islets as "a manifestation of sovereignty".[38]

3.176 There was a population census of Nigeria in 1953, during the period of the trusteeship. This included as part of Akpabuyo Rural District Council, as the area was then known, within Calabar Province, the following villages located on the Bakassi Peninsula:

Ine Akpa Ikang

Ine Ekoi

Ine Nkan Okure

Ine Utan

Ine Utan Asukquo (Annex NC-M 142)

3.177 There was also a population census in Nigeria in 1963, in which the Eastern Region phase included a return for Abana Ntuen within Ibaka Council (Annex NC-M 175).

3.178 In 1991 the National Population Commission visited Abana and made a report, dated 14 November 1991, to the control centre, Mbo Local Government Area, in which they counted the number of buildings in the village and drew a sketch map (Annex NC-M 176). They also sketched and delimited a number of Nigerian villages on Bakassi (Annex NC-M 177). Population Statistics available from the National Population Commission are based upon the 1991 Census (Annex NR 64).

3.179 Evidence provided by the Clan Heads exercising authority over the villages of the Bakassi establishes that the people took part in the census of 1953 and more recent censuses - see Appendix.

3.180 The pleadings of the Government by Cameroon contain a reference to a census conducted in the region by the Cameroon authorities, but no evidence is supplied: see the *Memorial*, page 493, paragraph 4.443.

(g) Non-participation of Bakassi Villages in the Plebiscite of 1961

3.181 There is no documentary evidence which indicates that the population of the Bakassi villages took part in the United Nations plebiscite which decided the future status of the Southern Cameroons. Reference may be made to the following official documents (among others):

(1) Report of the United Nations Commissioner for the Supervision of the Plebiscites in the Southern and Northern Parts of the Trust Territory of the Cameroons under United Kingdom Administration, Doc. T/1556, 3 April 1961.

(2) Report on the Plebiscite held in the Southern Cameroons on 11th February 1961 (by the Plebiscite Administrator, H. Childs).

3.182 There is no single item in these two Reports which indicates that the plebiscite was held in the villages of Bakassi. In paragraph 99 of the Report of 3 April 1961 there is a description of the plebiscite district known as Victoria South West. In the description of this area reference is made to the Bakolle Clan, Bambuka, Bota, Bimbia and Victoria Village Groups. As Map M9 of the Cameroon *Memorial* indicates, none of these areas is sited in the Bakassi peninsula. Map M9 does not show Bambuka, but there is no such settlement in the Bakassi region. The tribal affiliations of all these areas are not Efik, unlike the Bakassi people: see E. Ardener, in Ardener, Ardener and Warmington, *Plantation and Village in the Cameroons*, London, 1960, p.272 (and table, p. 412).

3.183 The Report of 3 April 1961 confirms that there were thirteen polling stations in Victoria South West. However, there is no evidence of the existence of polling stations in Bakassi.

3.184 In addition, there is evidence from the Clan Heads with authority in respect of the Bakassi villages that the villages did not participate in the plebiscite - see Appendix.

3.185 The issue of the plebiscite is given prominence in the Cameroon *Memorial* (paragraphs 3.230-3.239 and 3.35) and it is necessary to keep the question in an appropriate legal perspective. The plebiscite held on 12 February 1961 in the Southern Cameroons, like other plebiscites, could not affect the alignment of the relevant boundaries as such: see the Cameroon *Memorial*, p. 157, paragraph 3.35. Nor could such a plebiscite present a conclusive impediment to a process of consolidation of title or, if such a process were beginning, to its development in the future.

3.186 When the question of the plebiscite is properly related to the development of title by consolidation, the absence of participation in the Bakassi region is consistent with the overall picture of affiliation, political, social and economic, with the mainland of Nigeria.

(h) Delimitation of Electoral Wards

The location of places mentioned in this Section is shown on Fig. 3.15

3.187 In 1976 the programme for distribution of seats in the Odukpani Local Government Area included the following Bakassi villages in Ikang Central Ward, as follows:

1. Ine Nkan Okure No. 1

2. Ine Nkan Okure No. 2

3. Ine Utan

4. Ine Utan Asuquo

5. Ine Ikang

6. Ine Akpa Ikang

7. Ine Ibuot Owong

8. Ine Efiom

9. Ine Ukpono

10. Ine Ekoi (Annex NR 65).

3.188 The local government elections took place in 1976. Regulations for the elections referred to the following primary electoral units sited in Bakassi and forming part of Ikang Central electoral college:

1. Ine Nkan Okure No. 1

2. Ine Nkan Okure No. 2

3. Ine Utan

4. Ine Utan Asuquo

5. Ine Ikang

6. Ine Akpa Ikang

7. Ine Ibuot Owong

8. Ine Efiom

9. Ine Ukpono

10. Ine Ekoi (Annex NR 66).

3.189 In December 1976 the Secretary of the Odukpani Local Government sent a list of successful candidates to the Chief Electoral Officer at Calabar: see Annex NR 67. The list included the above primary electoral units comprising villages in Bakassi.

3.190 In 1982 steps were taken for the delimitation of wards within the Akpabuyo Local Government Area (Annex NR 68). The relevant documents show that several Bakassi villages were included in Ikang Central Ward, as follows:

Ine Nkan Okure I

Ine Nkan Okure II

Ine Ekoi

Ine Efiom

Ine Utan Asuquo

Ine Utan

Ine Ikang

3.191 Further action was taken in 1983 by the State Electoral Commission in Calabar for the purpose of delimiting the State Constituencies in Akpabuyo LGA into Council Wards in accordance with new guidelines: see Annex NR 69. The following wards, forming part of Ward Akpabuyo III, are within the Bakassi region:

Ine Nkan Okure No. 1

Ine Nkan Okure No 2

Ine Ukpono

Ine Ekoi

Ine Akpa Ikang

Ine Ikang

Ine Utan

Ine Utan Asuquo

Ine Efiom

3.192 In 1987 the National Electoral Commission commissioned the setting up of registration centres for the Odukpani Local Government Area: see Annex NR 70. In Ikang South Ward the registration units commissioned included the following villages in Bakassi:

Ine Nkan Okure I & II

Ine Ikang

Ine Ufang Idim

Ine Akpa Ikang

Ine Efiom

Ine Ukpono

Ine Ekoi

3.193 Under the auspices of the National Electoral Commission Decree 1987 (Annex NC-M 171), in 1990 the whole of Nigeria was divided into Local Government Electoral Wards: see the Local Government (Delimitation of Electoral Wards) Notice 1990 (Annex NC-M 172).

3.194 In Ikang Central Ward (with code No. LG/29/CR) in Akpabuyo Local Government Area, of the 15 villages constituting that ward, Ine Nkan Okure I, Ine Nkan Okure II, Ine Ekoi, Ine Utan Asuquo, Ine Ikang, Ine Ukpono, Ine Akpa Ikang and Ine Utan are all on Bakassi (Annex NC-M 173).

3.195 Electoral Wards were designated in the Bakassi LGA under the auspices of the National Electoral Commission of Nigeria for Cross River State in 1996. There are now nine electoral wards (Abana, Akpa Nkanya, Atabong West, Atabong East, Efut Inwang, Akwa, Archibong, Odon Ambai Ekpa and Odiong). The delimitation by the Electoral Commission appears in Annex NC-M 174. From this it is apparent that:

Abana Ward includes Abana Ntuen and Ine Ekoi

Odiong Ward includes Edem Abasi

Akpa Nkanya Ward includes Akpa Nkanya, Ine Mba and Ine Effiom

Archibong Ward includes Archibong Town.

3.196 The pleadings of the Cameroon Government do not contain any reference to the creation of electoral wards in any part of the Bakassi region. In this respect the Cameroon *Reply* fails to respond to the evidence set forth in the *Counter-Memorial*, page 244, paragraphs 10.73 to 10.75.

(i) Participation in Parliamentary Elections

The location of places mentioned in this Section is shown on Fig. 3.16

3.197 In the 1959 Federal election, Mr. Okon John Eminue, a Methodist School head teacher, was elected member representing Eket East Constituency which included some of the Bakassi villages. During the 1964 Federal elections won by the then Barrister E.I. Nkereuwem (now a retired Judge of the Akwa Ibom State Judiciary), one polling booth was erected at Akpa Nkanya, two at Abana, one at Ine Odiong, one at Ine Onosi, one at Atabong East and one at Atabong West. Between 1960 and 1963 Etim Effion Bassey, the retired principal of Methodist Boys' High School, Oron (from Eyofai Enwang) was a member representing Ward 5 -

including Effiat villages in Bakassi - in the then Okobo-Oron County Council of Eket Division. But between 1964 and 1966, Mr. Bassey was replaced by Ebi Umo, as the member representing this ward in the said Council. Ebi Umo, now the head of Akwa Obio Efiat, is a great grandson of Edidem Nteun Umo, the reputed founder of Akwa Obio Effiat, and the fourth in the stock of the founder of Abana Ntuen.

3.198 Further evidence is provided by Chief Edet Okon Isemin. In his own words:

> "I am a native of Ibaka in the present Mbo Local Government Area of Akwa Ibom State of Nigeria [......].
>
> From 1976-79, I was a Councillor in the then Oron Local Government representing Effiat/Ibaka Wards which included the Bakassi area.
>
> From 1st October 1979 to 30th September, 1983, I represented the Effiat/Mbo State Constituency in the defunct Cross River State House of Assembly in Calabar. Up to this moment, Bakassi is still part of Effiat/Mbo State Constituency of Akwa Ibom State of Nigeria.
>
> During the electoral rallies of those periods mentioned above, I personally campaigned for voters' support in the villages of Abana Ntuen, Atabong, Ine Okpo, Ine Odiong, Ine Ataya, Ine Akpak, Inua Mba etc. - all in Bakassi Peninsula." (Annex NR 71).

3.199 The evidence of the Clan Heads exercising authority in the Bakassi villages is helpful. According to the Clan Heads villages have voted in recent elections in the following areas: Archibong, Akwa, Atabong West, Atabong East, Abana, and Ine Akpa Ikang, see Appendix.

3.200 The pleadings of the Cameroon Government do not contend that residents of Cameroon have taken part in parliamentary elections relating to Cameroon. In this respect the *Reply* of Cameroon fails to respond to the evidence set forth in the *Counter-Memorial*, page 245, paragraph 10.76.

(j) Immigration

3.201 The immigration post at Ikang has been in use since October 1966 (see the Handing Over Notes for the Immigration Office at Calabar dated October 1966 and September 1977, Annexes NC-M 197 and NC-M 198). This post was located at Ikang because Nigeria's internal road system in the area terminated at Ikang, and therefore any travellers by vehicle or foot to the border would mostly have to pass through Ikang.

3.202 At Annex NC-M 199 are the records for the immigration post in April and May 1988. These show the passage of persons entering Nigeria with identity cards. All the persons mentioned were travelling into Nigeria from Lobe in Cameroon (also known as Ekondo-Titi). No one from any of the villages in Bakassi is noted. If the people of Bakassi were Cameroonian, they would carry identity cards and would have been noted down at Ikang immigration post, giving Bakassi settlements as their Port of Embarkation. There is no evidence of this.

3.203 The Clan Heads with authority over the Bakassi villages have reported that the villagers do not carry passports and move in and out of Ikang without being subjected to immigration controls - see Appendix.

(k) Public Education

The location of places mentioned in this Section is shown on Figure 3.14 at the end of the Section

3.204 The provision of public education is clearly an exercise of State functions constituting evidence of title. In the *Land, Island and Maritime Frontier Dispute* the Chamber of the Court recognised that the provision of public education counted as an *effectivité*.[39] In the Report of the Court of Arbitration in the *Beagle Channel* case, the Tribunal refers to the provision of public education as a State activity "customarily associated with the existence of sovereignty".[40]

3.205 From as early as 1893 there was a Methodist School at Archibong, but in the period prior to the 1960s, the people of Bakassi, if they were able to afford the cost of transport, tended to send their children to Duke Town Primary School in Calabar, which had first been established in 1846.

3.206 In the post-Independence period pupils from the Bakassi villages attended the Methodist Primary School at Ikang. Class Attendance Registers for the years 1961-62, 1963, 1965 and 1967, include pupils from Archibong Town (Annexes NR 72-75).

3.207 A Methodist School was established in 1968 at Atabong, and this was still within the authority of the Nigerian Education and Examination board in 1975 (Annex NC-M 183).

3.208 In a Note dated 15 September 1969, Cameroon protested when a primary school was established at Abana by the Catholic Mission based at Uyo (Annex NC-M 148). Whilst the school was not supported by public funds, the Government of Cameroon clearly regarded this development as evidence of a form of Nigerian State activity.

3.209 Nine schools in total were established on Bakassi prior to 1994. These were located in the following settlements (see Annex NC-M 184):

Settlement	Type of School	Date of Foundation	Number Enrolled

Archibong Town	Methodist	1893	300
Nkan Okure	Community	1962	200
Atabong West	Government	1968	450
Atabong East	Community	1968	345
Mbenmong	Community	1975	150
Nwanyo	Community	1981	100
Abana Town[41]	Government	1992	405
Archibong Town	State Secondary School	1993	150
Atabong Town	State Secondary School	1993	160

3.210 Some of these schools were forced to close during the troubles in the period 1967-1968, and also during the period at the beginning of 1994. This latter was as a result of the threat posed by the sustained attacks and occupation by Cameroonian soldiers and police. Such attacks in 1968 were drawn to the attention of the Etuboms at Calabar and were perceived as very serious (see paragraph 3.139 above).

3.211 In Annexes MC 317 and MC 322, there are two internal notes, which appear to be exactly the same but which are given two different dates on their cover sheet, 18 February 1992 and 18 December 1992 respectively. These show that even Cameroon recognises the fact that these schools are Nigerian. These notes state:

> "... the Community School, opened and directed by the Local Community of JABANA (Cameroun) [called Abana by the Efiks], receives subventions from AKPABUYO LOCAL GOVERNMENT, the State Commune of AKWA-BOM [sic] IN NIGERIA. Initially it was built of temporary materials and then in the process of being refurbished in permanent materials. The Teachers are all natives of NIGERIA." (Annex NC-M 186)

3.212 In September 1992 construction of a new primary school had begun at Abana under the auspices of Akpabuyo Local Government (Annex NR 76) and at Atabong West in September 1994 (Annex NR 77).

3.213 More recently, the Cross River State Ministry of Education granted permission to open fifteen primary schools in villages on Bakassi which included Akpa Nkanya, Ibekwe, Ine Ekoi, Mbenmong, Nwayo, Onosi (Annex NC-M 187).

3.214 The particularly impressive aspect of the educational picture is the fact that many individuals provide

testimony that they received their education in Nigerian-created schools either in Bakassi or in Calabar. The Bakassi Chiefs state that primary education and schools have existed on Bakassi for quite a long time. Etinyin Etim Okon Edet, the Clan Head of Abana, attests that he had attended the Abana Catholic Mission School from 1969. He submitted his report card for Elementary 1 (Annex NR 78). He said his school only had Elementary 1, 2 & 3, after which he and others went over to the mainland to continue their primary school education. He remembers that his headmaster was called Mr. Friday Ebukanson. He also remembers his class teacher, Chief Nyong Etim Inyang. He is still alive and is now the village head of Adak Uko. The Clan Head of Abana, His Royal Highness Etinyin Etim Okon Edet was the Chairman of Akpabuyo Local Government under which the northern part of Bakassi was administered before it was made a separate Local Government in 1996. He constructed a primary school at Abana in 1992 and as Chairman of the Local Government he posted teachers to the school, and to other schools (see above paragraph 3.212 and Appendix).

3.215 His Royal Highness, Ededem Archibong, the clan head of Archibong clan stated that primary schools existed in Archibong Town for a long time. A teacher named Samuel Udo is still resident in Archibong Town. He stated that he came to the village in 1977, and, discovering that there was no functioning school, created one himself. It was run by the local community and received no funding or resources from either Nigeria or Cameroon. He ran this primary school from 1978 until 1994, when the Nigerian local government became involved in the administration. The primary school has about 500 pupils at present. A secondary school was also built in Archibong in 1993, and this has about 200 pupils. The Clan Head himself attended school in Calabar. He stayed in Calabar during term time and returned to Archibong during the holidays (see Appendix).

3.216 The Clan Head of Akwa affirmed that there is a community primary school in Nkan Okure which is run by the local people. This was re-opened during the 1970s and has been approved by Akpabuyo LGA. There are currently 4 teachers and 150 pupils there.

3.217 A secondary school was set up in West Atabong in 1995. It was funded by the local government. A primary school was also established by the LGA in 1994. The teachers of both schools are paid by Nigeria. Before then, there were community schools which were run by the churches. Isaac Boro also started a school in West Atabong in 1968 during the civil war. This was run by Antera Andem Ema, who is still alive today. He stated that he was never paid as a teacher, and that when Isaac Boro left, the community took over the running of the school. Eventually it was abandoned. The children then used to go to Ikang or to Calabar for their education. The clan head attended school in Calabar, where he stayed during term time and returned to West Atabong for the vacation (see Appendix).

3.218 In relation to East Atabong the Clan Head reports that a primary school was set up in 1999. Prior to that there was a community school run by the local people, or some attended the Isaac Boro school in West Atabong or the schools in Ikang and Calabar. The Chief himself attended school in Calabar.

3.219 The evidence relating to the provision of schools is to be appreciated in comparison with the evidence offered by the Government of Cameroon. The *Reply* provides no evidence but refers to paragraphs 4.452-4.456 of the *Memorial* (*Reply*, page 307, paragraph 5.218). In fact the *Memorial* offers only the following statement:

> 'Des établissements scolaires construits par l'Etat camerounais, tant du niveau primaire que du niveau secondaire, existent également dans la péninsule. On

mentionnera à titre illustratif, pour le niveau primaire: le *Catholic School* de Mundemba, le *Catholic School* d'Ekondo-Titi, l'école primaire de Bamuso; pour le niveau secondiare; le lycée de Mundemba (créé en 1975), les C.E.S. d'Issangele (1992) et de Bamuso (1992) dans le domaine de l'enseignement général, et la S.A. R. de Mundemba pour l'enseignement technique (la S.A.R. créée à Bamuso s'étant avérée non viable).'[42] (paragraph 4.453)

3.220 In fact none of these locations are in Bakassi and thus in the result Cameroon, in two rounds of written pleadings, has failed to provide evidence of a single school run by the Cameroonian authorities in the Bakassi region. The absence of schools constitutes a powerful contradiction of the Cameroonian claim to sovereignty, more especially when the region concerned is populated, and has been populated for generations. In this context it is to be emphasised that the *Reply* of Cameroon has failed to respond to the evidence set forth in the *Counter-Memorial*, pages 250 to 252, relating to public education.

(l) Public Works and Development Administration

The location of places mentioned in this Section is shown in Figure 3.18 at the end of the Section

3.221 The existence and the planning of public works and the provision of a subsidised infrastructure constitute evidence of title: see the *Rann of Kutch Arbitration*,[43] and the Judgment in the *Minquiers* case.[44]

3.222 The South-Eastern State Development Administration Edict No.7 of 1972[45] established a Development Administration system, in which the territorial units were Development Areas. The Development Areas established extended to the Bakassi Peninsula. The relevant Areas and their constituent villages were as follows:

"CALABAR DIVISION

30. Ikang Development Area

Constituent Villages

1. Ine Nkani Okure No. 1 25. Ikot Antigha Ene

2. Ine Nkani Okure No. 2 26. Ikot Mkpang Esighi

3. Ine Utan 27. Ikot Abasi Ene Esighi

4. Ine Utan Asuquo 28. Ekepene Esuk Esighi

5. Ine Ikang 29. Itam Ikot Antigha

6. Ine Akpa Ikang 30. Efut Abua Esighi

7. Ine Ibuot Owong 31. Udua Inwang Esighi

8. Ine Efiom 32. Ifiang Nsung

9. Ine Ukpono 33. Ifiang Edem Inyang

10. Ine Ekoi 34. Edik Okon Idem

11. Ikang Efio Ekpe 35. Esuk Aye

12. Ikang Town 36. Esuk Okon

13. Edik Idim Ikot Efanga 37. Ikot Inwang Okpo

14. Efut Abua Ikot Eyei 38. Abakpa Ikot Nkok Anie

15. Ikot Efio Odiong Ene 39. Ikot Okon Ekpriwong

16. Ikot Inyang Nsidung 40. Ikot Edem Oku

17. Akwa Obio Inwang Nsidung 41. Ikot Otu

18. Ekpri Obutong 42. Abakpa Efio Ase

19. Obutong Abasi Eke 43. Usung Esuk Efio Obori

20. Ekpri Ikang 44. Akpap Okon Ene Ita

21. Okukubarakpa Esighi 45. Fait Ikot Nsa Ewa

22. Ikot Ene Uyi Esighi 46. Fait Ikot Naidung

23. Usung Idim Ikot Antigha 47. Esine Ufot Nsidung

24. Ikot Enene Esighi 48. Nyomidibi Nsidung

ORON DIVISION

157.Effiat/Ibaka Development Area

Constituent Villages

1. Ibaka 15. Utan Bramah

2. Akwa Obio Effiat 16. Mbe Ndoro

3. Inua Abasi 17. Ine Okpo

4. Ibuot Utan 18. Ine Akpak

5. Usuk Effiat 19. Ine Atayo

6. Obio Iyatta 20. Ine Odiong

7. Abana Ntuen 21. Akpa Nkanya

8. Esuk Enwang 22. Edi Abasi

9. Ibuot Ikot 23. Obong Nim

10. James Town 24. Onosi Abana

11. Mkpang Utong 25. Idak Okono

12. Utan Antai 26. Asiba

13. Utan Efiong 27. Ine Inua Abasi

14. Utan Udombo 28. Mbat Ekpa."

3.223 In accordance with the Edict of 1972, the Akpabuyo County Development Council (Establishment) Instrument was promulgated in August 1972. This included within Ikang Development Area, the Bakassi villages of Ine Nkan Okure I, Ine Nkan Okure II, Ine Utan, Ine Utan Asuquo, Ine Ikang, Ine Akpa Ikang, Ine Effiom, Ine Ukpono, and Ine Ekoi. (Annex NR 79). These same villages also appear in the Ikang Area Development Committee (Establishment) Instrument 1972 which established the Ikang Development Committee: these villages constituted a separate ward, represented by one Committee-man (Annex NR 80).

3.224 In accordance with the Edict of 1972 the Co-ordinator of Development Administration established the Effiat/Ibaka Area Development Committee, with authority to act in the area of the villages listed in the Schedule to the Edict. The relevant Instrument, dated 16 August 1972 (Annex NC-M 179), included Abana Ntuen on the Bakassi Peninsula.

3.225 A letter from the Department of Development Administration in Oron to the Senior Divisional Executive at the Oron Divisional Office, dated 12 December 1973 (Annex NC-M 180), refers to the following constituent villages being within Effiat/Ibaka Development Area of the Oron East County Development

Council:

Abana Ntuen

Ine Akpak

Ine Atayo

Ine Odiong

Akpa Nkanya

Edi Abasi

Onosi Abana

3.226 The Edict of 1972 (Edict No.7 of that year) was the basis for the Oron East County Development Council (Establishment) Instrument of 1973 (Annex NC-M 181). The instrument provided, in part, as follows:

> "In exercise of the powers conferred on the Military Governor by section 10 of the South-Eastern State Development Administration Edict 1972 and delegated to me under the Development Administration Delegation of Powers Order 1972, I, MTIENYONG UDO AKPAN, Co-ordinator of Development Administration of the South-Eastern State of Nigeria, hereby make the following -
>
> INSTRUMENT
>
> 1. The Oron East County Development Council (hereinafter referred to as 'the Council') is hereby established.
>
> 2. The Council shall exercise authority in accordance with the provisions of the South-Eastern State Development Administration Edict 1972 (hereinafter called "the Edict") throughout the Development Areas specified in Column 1 of the Schedule hereto.
>
> 3. The Council shall, exclusive of ex-officio members and such traditional rulers and special members as may be appointed to the Council by the Co-ordinator as provided in the South-Eastern State Development Administration (No.2) (Amendment) Edict 1973, consist of a chairman and not more than twenty-four members selected from the constituent villages [or] combination of villages set out in the Schedule hereto, in accordance with the Development Administration (Selection of Councillors and Committeemen) Regulations 1972."

3.227 The schedule to the instrument includes the Bakassi village of Abana Ntuen in the development areas

thus constituted.

3.228 In October 1994 the Cross River State Government purchased fishing gear for fishermen of the Bakassi Peninsula to replace losses caused by political disturbances involving Archibong Town, Abana, West Atabong and East Atabong: see Annex NC-M 182.

3.229 The pleadings of Cameroon contain little or no evidence of public works or development administration. In the Cameroon *Memorial* there is only the following passage:

> 'Enfin, l'encadrement des agriculteurs de cette zone est assuré par des services étoffés. Il existe en effet une délégation départementale de l'agriculture à Mundemba, des délégations d'arrondissement à Idabato, Issangele et Mundemba, et des postes agricoles dans les mêmes localités auxquelles s'ajoutent un peu plus au nord de la péninsule ceux d'Akpassang Korup, Bombage, Meangwe II et Mundemba.' (page 495, paragraph 4.454)[46]

This is characteristic of the approach to evidence adopted by Cameroon. No documents are cited and no reference is made to specifics. Moreover, with respect to the places mentioned only one, West Atabong (renamed Idabato), is situated within the Bakassi region. A serious inadequacy is the absence of dates, a question of the first importance from a legal standpoint. Furthermore, the link between West Atabong and agriculture is very difficult to understand. West Atabong is exclusively a fishing and trading village. There is no commercial agriculture there.

(m) Provision for Public Health

The location of places mentioned in this Section is shown on Figure 3.19

3.230 In its *Report* in the *Beagle Channel* arbitration, the Court of Arbitration referred to 'the provision of public medical services' as a State activity 'customarily associated with the existence of sovereignty'.[47]

3.231 Since 1959, the Nigerian authorities in Bakassi have established Health Centres for the benefit of the communities on Bakassi, and, indeed, these have often been built with the assistance of the local communities. These health centres are supplied with Nigerian funding, and the resident public health workers are trained in Nigeria. There are currently ten such health centres across the Bakassi Peninsula providing a wide range of health care and programmes (Annex NC-M 188). The following is a list of the foundation dates of some Health Centres (Annex NC-M 184):

Name of Settlement	Date of Establishment
Archibong	1959
Mbenmong	1960

Atabong West 1968

Abana 1991[48]

Atabong East 1992

3.232 Apart from health centres within the Bakassi region, the Health Centre at Ikang, on the Nigerian mainland, treats patients from the Bakassi villages. Immunization Records are available for the years 1986 to 1990: see Annex NR 82. Patients resident in Archibong and Atabong are listed in the attendance records. The ante-natal clinic at the Ikang Health Centre is attended by women from Bakassi. These records dating from the period 1985-1999 include the following villages on Bakassi: Archibong Town, Ine Ikang, Ine Ekpo, Ine Akpa Ikang, and Ine Utan. (Annex NR 83)

3.233 In the course of 1994, Cross River State made provision for the equipping of health centres in Archibong Town, Atabong West and Abana (Annex NC-M 189).

3.234 At no stage had the Cameroon authorities made provision for health care in the Bakassi region. This view of the position is essentially confirmed by the account of *effectivités* which appears in the Cameroon *Memorial*, paragraphs 4.420 to 4.456, and also in the Cameroon *Reply*, paragraphs 5.218 to 5.232. The *Reply* refers to health centres in the departments of Fako, Manyu, Meme and Ndian (Annex RC 197). In fact the document relied upon is dated 1992 and the only health centre referred to in the document which is located in Bakassi is at West Atabong (re-named Idabato). If this document is taken at its face value, it confirms that no health centres existed in Bakassi prior to 1992. However, the Annex is entitled 'Projet Cameroun/GTZ (Allemagne)' and appears to be programmatic in character.

3.235 The Clan Heads with authority over the Bakassi villages confirm the provision of clinics by Akpabuyo LGA, with assistance from Cross River State. In earlier times sick villagers attended clinics in Ikang or Calabar - see Appendix. The Clan Heads made no reference to the provision of medical facilities by the authorities of Cameroon.

3.236 The *Counter-Memorial* of Nigeria contains detailed references to the provision of public health in Bakassi: see pages 252 to 253. Specific dates are given. The matter is dealt with in the *Memorial* in a single sentence, with no dates given, thus:

> "Il existe des centres de santé à Issangele, Kombo Abedimo, Idabato et Jabane, dont les dotations financières sont régulièrement inscrites au budget du Ministère de la Santé."[49] (page 495, paragraph 4.452)

The *Reply* fails to respond to the data provided by Nigeria in the *Counter-Memorial*.

(n) Local Administration

3.237 Before October 1, 1960, the Bakassi Peninsula was administered under Calabar in accordance with

Akpabuyo County Council (Establishment) Instrument 1953, published in the Eastern Region Public Notice No.86 of 1953 as amended (Annex NC-M 137).

3.238 After Independence, Bakassi was administered as part of Nigeria by virtue of the following legislation:

(1) The Local Councils (Calabar Division) (Establishment) Instrument, 1953 of Eastern Region Legal Notice No.88 of 1953, as amended by Legal Notice No.267 of 1959 and Eastern Nigeria Local Government Notice No.1 of 1963 (Annex NC-M 200).

(2) The South-Eastern State Development Administration Edict No.7 of 1972 (which repealed South-Eastern State Development Administration Edict No.18 of 1971) under "Ikang Development Area" and "Effiat/Ibaka Development Area" (Annex NC-M 178).

(3) The Cross River State Law on Local Government (No.9 of 1983) (see in particular p.A 69) (Annex NC-M 201).

(4) The Akwa Ibom State Local Government Edict (No.3 of 1989) - see in particular pages A.75-6 (Annex NR 84).

(5) Decree No.36 - States (Creation and Transitional Provisions) - of 1996. This Decree constituted Bakassi into a Local Government Area under Cross River State of Nigeria with Headquarters at Abana (Annex NC-M 202).

(6) Decree No.7 - Local Government (Basic Constitutional and Transitional Provisions) Decree of 1997 (Annex NC-M 202).

3.239 In 1975 the appointment of Justices of the Peace was reported in the South-Eastern State of Nigeria *Gazette* (Annex NC-M 204). The relevant South-Eastern Notice No. 248 refers to the appointment of Chief Akwu Edem Archibong in respect of the "Area normally covered by the Police Station at Ikang" (which, as has been shown above (paragraphs 3.149 *et seq.*) included Bakassi).

(o) The Exercise of Ecclesiastical Jurisdiction

The location of the places mentioned in this Section is shown on Figure 3.20

3.240 A normal outwork of a system of civil administration is the exercise of an ecclesiastical jurisdiction by religious authorities in the form of the registration of births, marriages and deaths. This type of evidence was taken into account by the Chamber in the case concerning the *Land, Island and Maritime Frontier Dispute*.[50]

3.241 The Court is respectfully requested to study the pages from the baptismal and marriage registers of St. Mark's Parish, Oron, which contain the names of members resident in Abana in the Bakassi Peninsula (Annex NC-M 170). The dates stretch from 1938 to 1979. Another certificate of baptism, dated 7 December 1986, is provided by the Apostolic Church at Abana: see Annex NR 85.

3.242 The relevance of the role of the Catholic Church of St. Mark at Oron in Akwa Ibom State is considerable. Oron is a Roman Catholic Parish which is currently a part of Uyo Diocese. Before the formation of Uyo Diocese, Oron was a part of the Calabar Diocese. Roman Catholic Dioceses are, as is well-known, stable formations. Neither Diocese has at any stage included any part of Cameroon.

3.243 The southern part of Bakassi fell within Oron Parish. Persons baptised in Oron Parish include persons from Abana. In the entire Bakassi region the Parish Priest from Oron has always said masses. Neither the present incumbent nor his predecessor has ever encountered a priest from Cameroon.

3.244 As a result of early missionary activity in the area the Methodist Church was established in Archibong Town, part of the Calabar Circuit. A Certified True Copy of a Baptism Certificate is available from this church dated 15 February 1970: see Annex NR 86.

3.245 The Clan Heads with authority over the Bakassi villages provide reliable evidence of the creation of churches by authorities based in Nigeria or by individuals from Nigeria. The evidence of the Clan Heads confirms the existence of churches with exclusively Nigerian affiliations in the following villages: Archibong, Akwa (1955), Atabong West (*circa* 1940), Atabong East (*circa* 1940), Abana (*circa* 1950), and Ine Akpa Ikang (1993) - see Appendix.

3.246 Churches, like local schools, form part of the fabric of life in the Bakassi villages. The fabric of life is Nigerian in character, both at the level of official activity and at the social level. As in the case of education, so in the case of churches, the Cameroon pleadings provide no evidence of the existence of any churches affiliated with Cameroon: see the Cameroon *Memorial*, Vol. I, pages 486-96; and the *Reply*, pages 307-12.

(p) Internal Nigerian State rivalry over Bakassi

3.247 The northern villages on Bakassi have always been administered by a different local authority to those in the south, but both were within the same sub-region of Nigeria (see above, Section (viii)). After the division of Cross River State into two smaller States, Akwa Ibom and Cross River in 1987, the villages were administered by different local authorities in two separate Nigerian States. Akpabuyo Local Government Area in Cross River State administered those villages situated in the north of the peninsula and Effiat/Mbo Local Government Area and Okobo Local Government Area in Akwa Ibom State administered those villages situated in the south of the peninsula (see paragraph 3.96 and Fig. 3.7 above).

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

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

administration over the whole of the Bakassi Peninsula.

3.250 In 1999 the issues outstanding between Cross River State and Akwa Ibom State became the subject of proceedings in the Supreme Court of Nigeria: *Suit No. SC/124/1999 between Attorney-General of Cross River State and Attorney-General of Akwa Ibom State and 5 others*.[51] This major litigation can only serve to emphasise the depth of concern relating to the region of Bakassi on the part of important Nigerian political constituencies. Recently a Presidential Commission has been established to examine the issue and has delivered a first report.

(q) The Collection of Customs Duties

3.251 The collection of customs duties was taken into account by the Court in the *Minquiers and Ecrehos* case.[52] The exercise of customs jurisdiction was also taken into account in the *Rann of Kutch Arbitration*.[53]

3.252 Nigeria has operated a regular Customs patrol in the Bakassi area. Documents from the Nigerian Customs Service reveal that officers of the Customs Department at Ikang, Nigeria, regularly patrolled the Bakassi Peninsula until at least July 1970 (Annex NC-M 195). The area of their patrol included, for instance, the Bakassi village of Nkan Okure (*ibid.*).

3.253 The Cameroon pleadings provide no sufficient evidence of customs patrols within the Bakassi region: see the *Memorial*, page 493, paragraph 4.445. The Cameroon *Reply* fails to respond at all to the evidence provided in the *Counter-Memorial*: see the *Reply*, pages 307-312.

(r) Use of Nigerian Passports by Residents of the Bakassi Peninsula

3.254 Residents of the fishing villages in the Bakassi Peninsula use Nigerian passports. The passport application forms at Annex NC-M 196 show that people from Akpa Nkanya, Nkan Okure and Ine Mba (see Fig. 3.21) have applied to Nigeria for Nigerian passports in order to travel to Cameroon and elsewhere. Bakassi villagers travelling to mainland Nigeria through Ikang are not subjected to immigration procedures.

(s) The Existence of a Nigerian Postal Administration

3.255 International tribunals recognise that the existence of a postal administration constitutes significant evidence of title to territory: see the Report of the Court of Arbitration, *Beagle Channel* case (Argentina v. Chile), I.L.R. Vol. 52, p. 93. In this case the Court took account of the establishment of a postal service on Picton Island by Chile in 1905: *ibid.*, p. 221, paragraph 166 (b).

3.256 According to the Clan Head of West Atabong, the villagers send and receive their post through Ikang, and visit Ikang to collect and post letters (see Appendix).

3.257 A postal agency was established at Ikang in 1963 and sponsored partly by Posts and Telegraphs and partly by the Local Government. The Agency became dormant in about 1997. Postal records available include a selection of Notices, Reports and correspondence for the period 1962-1998 (Annex NR 87). The last

postmistress appointed affirmed that the Agency served the principal settlements in Bakassi. Thus post was received from the area for delivery to the main sorting office in Calabar, and incoming post for Bakassi addressees was made available for collection on a *poste restante* basis. Letters addressed to residents on Bakassi (Annex NR 88), and a registered items delivery receipt book including receipts for residents in Archibong (NR 89) were all found in the Agency by members of Nigeria's legal team on a visit to Ikang in August 2000.

3.258 There is no evidence that Cameroon has at any time sought to establish a postal administration in the Bakassi region: see the Cameroon *Memorial,* pages 490-96, and the *Reply*, pages 307-12.

(t) The Licensing of Canoes belonging to Residents of Bakassi

3.259 Akwa Ibom State imposes a charge on canoe owners landing fish, described as a 'haulage fee'. Relevant receipts for 1994 are to be found in Annex NR 90. The receipts relate to payers resident in Ata Obong (Atabong and Abana).

3.260 The Government of Cross River State imposes Canoe Landing Fees: an example of a receipt issued in 1988, relating to Atabong, is at Annex NR 91.

3.261 In addition the Effiat-Mbo Local Government (of Akwa Ibom State) requires the licensing of canoes and the use of official number plates. Copies of Numbered Receipts for Canoe Licence Fees are at Annex NR 92. The Effiat Mbo Register referred to above at paragraph 3.168 in connection with the collection of the General Rate also contains the record of issued Canoe Licence Plates. The relevant pages for 1990 are at Annex NR 93. Once again collection of the fees for Bakassi is entrusted to the Brama Task Force. Numbers appearing on the copy receipts in Annex NR 92 appear also in the Register.

(u) The Granting of Oil Exploration Permits

3.262 In the *Reply* the Government of Cameroon appears to rely upon the granting of oil licences as evidence of sovereignty in relation to the Bakassi Peninsula : see the *Reply*, pages 244-245, paragraphs 5.14-5.16.

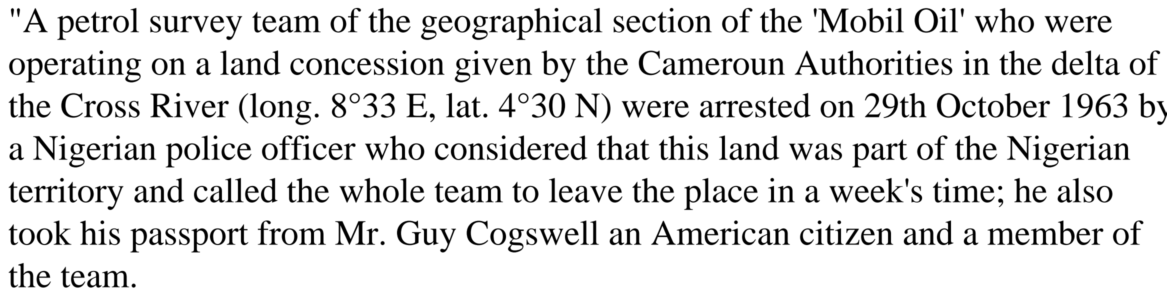
3.263 However, the legal consequences of the situation described in the *Reply* are not specified by Cameroon. In a Commentary which appears at the end of this Section the Government of Nigeria examines the data referred to in this part of the *Reply*. It is now proposed to set forth the Nigerian position on both the facts and the law.

3.264 After the Independence of Nigeria, private operators interested in petroleum prospects recognised the existence of Nigerian title to the Bakassi Peninsula. Thus in 1965 surveyors, acting on behalf of Mobil Oil Cameroun, approached the Nigerian Government for permission to carry out survey work: "on the Western bank at the mouth of the Calabar River" (Annex NC-M 190). It is not clear whether this was a reference to the western coast of the Bakassi Peninsula or to territory in Akwa Ibom State.

3.265 In any event the resulting survey work was carried out at least in part on Bakassi and gave rise to an incident described in a Nigerian internal report as follows:

> "We have been approached by the Cameroun Ministry of Foreign Affairs in respect of an incident which befell certain American employees of Mobil Oil Cameroun in the Rio-del-Rey area of the Cross river. Apparently, inadvertently, they trespassed on Nigerian soil in order to carry out certain surveys which they were doing for Mobil Oil Cameroun. They were discovered by a Nigerian Policeman on the 29th October who seized their passports and ordered them to quit within a week. The Cameroun Ministry of Foreign Affairs are not contesting the fact that the territory is Nigerian; however, they are pleading that the Americans trespassed inadvertently and would be grateful if their passports are returned." (Annex NC-M 191)

3.266 The approach by the Cameroun Ministry of Foreign Affairs was (in material part) as follows:



> "A petrol survey team of the geographical section of the 'Mobil Oil' who were operating on a land concession given by the Cameroun Authorities in the delta of the Cross River (long. 8°33 E, lat. 4°30 N) were arrested on 29th October 1963 by a Nigerian police officer who considered that this land was part of the Nigerian territory and called the whole team to leave the place in a week's time; he also took his passport from Mr. Guy Cogswell an American citizen and a member of the team.
>
> The Ministry has been informed of this incident. ... it deeply regrets it and reserves the position of the Cameroon Government as for the elements of the problem.
>
> The Ministry requests the Embassy to approach their Government so that Mr. Cogswell's passport be given back to him and seizes this opportunity to renew to the Embassy the assurance of its highest consideration." (Annex NC-M 192).

3.267 The picture which emerges from the documents contains two basic elements. First, the area in dispute was the subject of competing exploration activities and, secondly, the incidence of oil-related activities was not regarded as conclusive of the issue of sovereignty.

3.268 There is evidence that Cameroon was at all material times aware of the views of the Nigerian Government concerning entitlement to oil resources. Thus, the author of an internal Cameroon report of 1981 relating to the situation at the mouth of the Rio del Rey addressed to the Directeur General du CND at Yaoundé made the following observation:

> "Par ailleurs, on dit que les nigérians en principe ne sont pas satisfaits de voir la Société Nationale de Raffinage entrer en sa phase opérationnelle puisqu'ils disent que c'est leur petrole que nous sommes en train d'exploiter". (Annex MC 260)[54]

3.269 The expression of Nigerian concerns continued through the 1980s. On 29 October 1986 the Permanent Secretary of the Nigerian Ministry of External Affairs wrote to the Ambassador in Yaoundé. Under the

heading 'Nigerian Border and Oil Exploration' he had this to say:

> "Further to my telegram No. CWN.121 dated 27th October, 1986, I am directed to inform you that an inter-ministerial meeting was held recently on the above-mentioned subject. One of the decisions reached was that you should be asked to ascertain the extent of the Camerounian violation of the Nigerian border as it is understood that Cameroun has resumed oil exploration in the disputed Bakasi peninsula area.
>
> 2. I should be grateful if you would kindly verify the correct position and report back as early as possible." (Annex NR 94)

3.270 The outcome of this continuing concern was the meeting of the Nigeria/Cameroon Joint Commission in Yaoundé from 24 to 28 August 1987. At the inaugural session of the Joint Commission a Protocol was agreed, which reads (in material part) as follows:

> "At the opening ceremony, the heads of the delegations in their speeches reviewed the level of bilateral economic relations existing between Nigeria and Cameroon and observed that there was much room for improvement in order to translate into concrete actions, the desires of both countries for stronger ties. The two Ministers therefore re-affirmed the commitment of their two countries towards consolidation and expansion of the existing ties and co-operation between the two countries.
>
> The Joint Commission which conducted its work in a full plenary session, considered and adopted the following items on the agenda:

(1) Petroleum ...

> Below is a summary of the outcome of the deliberations on the various items tabled:

1. PETROLEUM

The Nigerian Side, considering that a lot of oil activities have been carried out in the boundary between Nigeria and Cameroon within the continental shelf area and in the Chad and Benue basins by the two countries, proposed the establishment of a contingency plan for controlling or containing oil pollution, against marine life, which may arise from petroleum exploitation. *Furthermore, having regard to the fact that offshore oil fields always look close by and since each side is likely to accuse the other of boundary violations, particularly in areas where the oil reserve is believed to be common to both countries ... the Nigerian Side also proposed co-operation by the two countries in having a properly delineated boundary.*

The Cameroonian Side took note of the observations and proposals made by the Nigerian Side

and promised to convey them to the appropriate Cameroonian authorities for consideration." (Annex NPO 51; emphasis supplied)

3.271 This agreement confirms the state of affairs relating to oil activities. Both Governments were aware of the existence of a dispute concerning the Bakassi region and were anxious to maintain a stable situation but one in which the issue of title was not prejudiced.

3.272 The *status quo* recognised and sustained in the 1987 Protocol was to continue. The same state of affairs can be seen recorded in the Joint Meetings of Experts in 1991 and 1993. During the Meeting in Yaoundé between 28 to 29 August 1991, reference was made to the Maroua Declaration. In the Minutes of the 1991 meeting the following passages appear:

> "La Partie Nigériane a relevé l'importance de cette question; elle a estimé que la position du gouvernement Nigérian sur cette question est connue du gouvernement Camerounais. La partie Nigériane a precisé que tous les accords signés dans le domaine des frontières avant la création en 1987 de la commission nationale du frontiers du Nigéria ont été remis a cette commission. S'agissant en particulier de la déclaration de Maroua, la partie Nigériane a souligné que celle-ci n'a pas été ratifiée par le Nigéria et que par consequent elle ne constitute pas pour elle, un instrument légal.

> La partie Camerounaise a pris note de cette déclaration tout en précisant que pour elle tous les accords sont valables et qu'elle n'a jamais été notifée de cette position de la partie Nigériane.

> La partie Nigériane a souligné la necessité pour les deux pays de s'accorder sur un cadre réaliste de négociations en vue de la réunion prévue à Abuja."[55] (NPO 52)

3.273 The two sides continued to agree to differ at the meeting of the Joint Commission in 1993. The relevant part of the Minutes read as follows:

> "(A) - Examination of agreements and treaties relating to the land border

> In pursuit of the conclusion of the Abuja joint meeting of experts of December 1991, recommending the assemblage of an inventory of existing documents pertinent to the delimitation and demarcation of the two countries' land border the Cameroonian side proposed that such instruments identified by both parties be examined without further delay.

> The Nigerian delegation pointed out that the examination of these legal instruments, since it was an important element, could not be done at this meeting. The two sides regretted that the joint sub-committee of twenty (20) experts set up at Abuja meeting of 1991 to draw up these instruments had not met as scheduled. Both parties, therefore, agreed that the sub-committee should meet in Nigeria in the near future on a date to be determined and conveyed through diplomatic

channels.

On the Lake Chad, the Nigerian delegation affirmed that the outstanding works had been satisfactorily completed and that the Nigerian experts had signed the technical report on the exercise. However, the southern extremity connecting with the Ebeji river, which is bilateral between Nigeria and Cameroon, had been referred to the two countries by the Lake Chad Basin Commission for resolution.

As regards the maritime sector of the border, the Nigerian delegation re-affirmed its non-recognition of the Maroua declaration of 1975 on the ground that it was not ratified. The Cameroonian delegation re-affirmed the validity of the Maroua declaration for her, the delcaration was a result of a long negotiation and detailed work by experts.

After a long and inconclusive discussion, which re-established the parallel positions of the two parties, it was agreed that the matter to submitted to the two heads of delegation for consideration.

After due consultation the heads of delegation observed that the grounds of disagreement between Nigeria and Cameroon over the Maroua declaration of 1975 are more political than technical. In order not to hinder the furthering of the existing excellent relations between the two nations, they resolved to refer the matter to their respective heads of state for determination.

It was further observed that attempts by Nigeria and Cameroon to explore and exploit separately the resources straddling the maritime border from Point I to Point G, in part covered by the Maroua declaration, have led to avoidable wastage and losses for both countries. In the light of this, the two heads of delegation agreed to recommend arrangements for joint ventures in the exploration and exploitation of the resources of the area.

Concerning exploitation of hydro-carbon resources south of point G, the two delegations confirmed the spirit and the letter of the provisions of the minutes signed in Abuja between the two delegations on 19 December 1991. In particular, the freedom of each country to develop its resources along the border.

In the meantime, the two heads of delegation emphasised the need to maintain a regime of peace in the area and to prevail on their respective law enforcement agencies in this regard." (Annex NPO 55 and NR 173 below; emphasis supplied)

3.274 The Joint Communiqué produced at the close of the meeting of the Joint Commission reflected these positions.

3.275 The records of meetings and the pattern of oil concessions in general has reflected the regime of what

might be described as concerted indecision in relation to land territory. The offshore areas are resource-related. The Bakassi Peninsula is inhabited, has been inhabited for generations, and is the home of 100,000 Nigerians. If oil exploration on the mainland had been prejudicial to title, it would have also been prejudicial to the rights of a settled population of Nigerians.

3.276 The attitude of the two parties is apparent from the fact that it was not uncommon for concession blocks to be unrelated in dimension to any claimed alignment. Thus immediately after Independence Block OML 10, granted by Nigeria to Shell/BP, extended from the mainland of Nigeria across Bakassi and eastwards across the Rio del Rey into Cameroon (see Fig. 3.22).

3.277 The licensing pattern in the Bakassi region is referred to in the Commentary below. Existing wells have been capped and the onshore developments have been disappointing both in terms of oil and gas. The trend of opinion within the oil industry appears to be to the effect that exploration has been entirely without prejudice to the issue of sovereignty. Moreover, in view of the existence of the dispute relating to Bakassi, it is not surprising that the degree of activity on the Bakassi Peninsula was minimal when compared with the production offshore. Ninety-five per cent of Cameroonian oil comes from the offshore area.

3.278 In the Cameroon *Reply* the point is made that the granting of concessions in the disputed area by Cameroon did not lead to any protests on the part of Nigeria: see the *Reply*, page 244, paragraph 5.16. The absence of protests is, of course, irrelevant given that the petroleum-related activities were unrelated to the incidence of title to territory.

3.279 In any event the Government of Cameroon expressly recognises that it did not protest in response to Nigerian oil activities: see the *Reply,* paragraphs 9.114 and 9.115. Cameroon seeks to explain her silence by reference to the arrangements agreed at Abuja on 19 December 1991 (Annex NPO 54), according to which information would be given of any action that might cause a nuisance. This reasoning is unconvincing. There was no obligation to give notice of concessions. The fact is that activities might be pursued but without prejudice to questions of title and subject to the ultimate settlement of the dispute.

3.280 Existing oil activities which involve overflight and related operations are subject to the permission and co-operation of the local Nigerian security forces.

3.281 The progress of oil development in Nigeria has been accompanied by a type of development which is aware of and responsive to the development needs of local communities and the preservation of the environment. An example of such development is provided by the operations of Moni Pulo.

3.282 Moni Pulo Limited was the licensed holder of Block OPL 230 under a licence issued by the Federal Republic of Nigeria in accordance with the provisions of the Petroleum Act 1969 for a term of 5 years commencing on 8 May 1992 (see Annex NR 95). Moni Pulo Limited is a Port Harcourt based oil company formed in response to the Federal Government of Nigeria's initiative in promoting opportunities for indigenous companies in the exploration for, and production of, oil and gas. OPL 230 lies offshore some 30km from the city of Calabar, South Eastern Nigeria (see Fig. 3.23). On 27 April 1995, the Department of Petroleum resources authorised Moni Pulo Limited to commence operations in the block (Annex NR 96). An extensive seismic program was initiated in July 1996 (see Annex NR 97). This led to the drilling of four

exploration wells in 1997, two of which discovered the Abana oil field.

3.283 In 1998, Moni Pulo received approval from the Department of Petroleum Resources for field development. As of February 1999, nine horizontal production wells have been drilled, completed and tested. A production barge with water injection facilities was assembled and a pipeline was constructed to transport produced crude to the FPSO, Knock Taggert, located in Block OPL 98, operated by Addax Petroleum Limited. On 12 May 1999, Moni Pulo Ltd. received the approval of the Federal Government of Nigeria for the conversion of Oil Prospecting Licence (OPL) 230 to an Oil Mining Lease (OML) 114 (see Annex NR 98). A certified copy of the concession map for OML 114 is at Annex NR 99.

3.284 During the period of development Moni Pulo has undertaken various community development projects together with the communities in the Bakassi Peninsula. The projects undertaken and completed include the provision of boats, the construction of boreholes and distribution pipes, and the building of an assembly hall for a secondary school (see Annex NR 100).

3.285 The company and the host communities on the peninsula are currently negotiating a memorandum of understanding which will guide future policies of development. An Environmental Impact Assessment is being carried out and submitted to the Federal Ministry of Environment for review (Annex NR 101).

3.286 It is worth recalling that in the recent Arbitration between Eritrea and Yemen relating to sovereignty over islands in the Red Sea the Tribunal, after an exhaustive examination of the complex concession history, arrived at certain conclusions which, so far as material for present purposes, were as follows:

> "437. The offshore petroleum contracts entered into by Yemen, and by Ethiopia and Eritrea, fail to establish or significantly strengthen the claims of either party to sovereignty over the disputed islands.
>
> [......]
>
> 439. In the course of the implementation of the petroleum contracts, significant acts occurred under state authority which require further weighing and evaluation by the Tribunal."[56]

3.287 The principal conclusion is significant not least because the Court of Arbitration had devoted much effort to the examination of the granting of concessions. And yet the outcome was characterised by a degree of caution on the part of the Tribunal.

3.288 With respect to the second of the conclusions formulated by the Tribunal, Cameroon has not provided any evidence of any such 'significant acts'.

3.289 In the respectful submission of the Government of Nigeria the Court should regard the need for caution as inevitably enhanced in the case of an inhabited territory with a long history of administrative economic and social affiliations with Nigeria. In any case the attitude of the two parties in the relevant period militates against the view that title was based upon the ebb and flow of exploration permits. It may be recalled that in

the *Corfu Channel* case (Merits) the Court took account of the 'attitude' of Albania in forming a view of the knowledge or otherwise of the presence of mines on the part of Albania: I.C.J. Reports, 1949, pp. 19-20. In the very different circumstances of the present case, both parties displayed the same attitude in face of their knowledge of oil activities. There was in fact a complementarity of attitude, amply confirmed in the documents, to the effect that oil exploration and the issue of title to land territory were not coincident.

3.290 In conclusion it is necessary to recall the context, which is described in some detail in the foregoing sections of this chapter. The Government of Nigeria has been exercising sovereignty in respect of the Bakassi Peninsula since the Independence of Nigeria in 1960. It was Cameroon which, especially in the 1970s, began a policy of harassment of Nigerian villages and attacks on Nigerian police and security forces. The granting of permits on the part of Cameroon formed the background to this expansionist policy in the Bakassi region. It would be ironical if the Court were to allow the oil activities of Cameroon to threaten the stability of the Nigerian communities and the long-established Nigerian administration. In the actual circumstances the granting of permits by Cameroon was part of a pattern of attempted usurpation of a pre-existing Nigerian title.

3.291 In fact as time went by the two States evolved a *modus vivendi* in relation to oil activities in the Bakassi region and, for this reason alone, it would be inappropriate to treat the granting of permits in this region as evidence of title.

Commentary on Chapter 5 § 2 of Cameroon's *Reply* entitled "Economic Geography"

Para No

5.14 "Oil prospecting effectively started with the granting of licence H-14 Rio del Rey to Elf Serepca on 27th May 1964."

In January 1961, Nigeria's Block OML 10 (a Shell/BP concession - see Fig 3.22 below) extended from the west bank of the Cross River Estuary, right across the Bakassi Peninsula and the Rio del Rey, and into Cameroonian coastal areas. There is no evidence to indicate that any prospecting by Cameroon licensees was actually carried out onshore.

> "The licence extends over the southern part of the Bakassi Peninsula and the *off-shore* part of the Rio del Rey, covering a surface area of 2,950 km^2."

The original concession did extend over those areas, but was reduced by the grant of further concessions. The true area disclosed in Annex RC-14 is 2,650 km^2, not 2,950 km^2.

> "This area was reduced to 1,475 km^2 upon renewal of the licence in 1968".

The order to renew the permit was actually dated September 1969.

> "Elf Serepca drilled four wells between 1967 and 1968."

All these four wells were drilled over 20 km offshore.

> "From 1969 to 1975 five seismic surveys, each lasting at least two months, were carried out by Elf Serepca and Pecten."

It is probable that all 5 seismic surveys were offshore.

> "A programme involving the drilling of 25 wells was also begun during this period, resulting in the discovery of the Asoma, Betika and Kole oils fields in the early 1970s. Prospecting intensified during these years."

All the wells drilled between 1969-1975 were offshore. The Asoma, Betika and Kole oil fields are all offshore.

> "In the space of 12 years (1976-1988) some 140 prospecting and appraisal wells and almost 50 development wells were drilled."

In the period 1976 -1988 (see Fig 6), only 10 out of over 150 wells were drilled onshore: all of these wells were drilled in the period 1979-1982. There is some uncertainty as to who drilled these wells. None of them have led to commercial production.

5.15 "Between 1977 and 1990 Cameroon granted six mining licences (1 prospecting licence and 4 concessions for liquid or gaseous hydrocarbons) to various oil companies in the area in question (Annex CR 41):

Mining licence	Date of grant	Company	Surface area
Ekundu concession	18th August 1977	Elf Serepca	170 km^2
Mokoko Abana concession	14th April 1981	Pecten Cam Tepcam	98 km^2
Moudi concession	7th July 1981	Tepcam then Perenco	215 km^2
Kita Eden concession	13th October 1980	Elf Serepca	185 km^2
Licence H-60	30th August 1990	Elf Serepca	845.8 km^2
Sandy Gaz		Elf Serepca"	

The Ekundu, Mokoko Abana, Moudi and Kita Eden permits are wholly offshore.

H-60 appears to be in six separate portions, the result of several phases of relinquishment and re-award. Whilst one of these appears to cover onshore areas it is quite unclear what the licensing status is for that area.

The Sandy Gaz permit straddles onshore and offshore areas but, again, the licensing status is unclear.

> "One single oil-related incident is worthy of note: in November 1989 a Nigerian army helicopter flew over the Betika West well drilling site obliging the operator Elf Serepca to withdraw its drilling rig."

Cameroon has failed to provide any evidence of this incident. The IHS database (see the Appendix to Chapter 10 for reference to this database) has no reference to any Betika well being drilled in the late 1980s.

> "In total, since the start of oil exploration in 1964, the zone off the Bakassi peninsula has seen considerable prospecting under the authority of the Cameroon government. It is now covered by a hydrocarbons concession (Sandy Gaz), two prospecting licences (permit H-60 and H-59) and three blocks, OLHP 9 and 10 and MLHP 9 resulting from former licences nos. H37 and H 35 (see Maps R 24 and R 25 reproduced in Chapter 9 of the present Reply)."

Whilst all of these concessions include onshore areas, the MLHP and OLHP licences were offered in the 1999 Cameroon Third Licensing Round (in which, OLHP-9 was referred to as OLHP-6, and OLHP-10 as OLHP-7).

> "It is this peaceful economic activity, essential to Cameroon's future, which is being compromised by Nigeria's military operations and unwarranted claims."

This statement begs the essential question of proof of title to Bakassi: in any event the reality is that Cameroon's offshore industry has not been affected at all and 95% of Cameroon's oil production is based offshore. The remaining 5% produced onshore does not include Bakassi.

(v) The Gazetteer published by the Director of Federal Surveys

3.292 In 1965 the Director of Federal Surveys of Nigeria published a *Gazetteer* in several volumes. Section IV of Volume II is devoted to Eastern Nigeria. It lists the following locations sited in the Bakassi region: Abana, Hanley Point and Sandy Point (see Fig. 3.24). These places are all described as villages and the precise co-ordinates are given (Annex NR 102).

3.293 The *Gazetteer* is obviously authoritative, and its very nature and purpose dictate that it is a reliable source concerning the realities on the ground in Bakassi five years after Independence. The evidential value of this source depends upon its having an expert provenance and being based upon contemporaneous data.

(xxiii) Conclusion: the Elements of Historical Consolidation

3.294 The various elements constituting the process of historical consolidation of title can now be summarised:

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

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

(3) The Efik and Effiat toponymy of the Bakassi fishing villages.

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

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

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

(7) The long-established settlement of nationals of Nigeria in the region.

(8) Manifestations of sovereignty by Nigeria after Independence in 1960.

3.295 To these elements may be added two others: acquiescence and recognition. These significant elements will be examined in the following two sections.

D. The Acquiescence of Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

(xxiv) The Legal Relevance of Acquiescence

3.296 As Nigeria indicated in the *Counter-Memorial*, acquiescence has three distinct roles. In the first place, acquiescence forms a very significant element in the process of historical consolidation of title. Thus its first (but by no means exclusive) role is played alongside the elements of historical consolidation reviewed above.

3.297 The second role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory concerned, that is to say, the effective administration of the Bakassi Peninsula by Nigeria, acting as sovereign, and an absence of protest.

3.298 In the third place, acquiescence may be characterised as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title logically anterior to and independent of the process of acquiescence. There can be no doubt that in appropriate conditions a tribunal can properly recognise a title based upon tacit consent or acquiescence.

3.299 The relevant jurisprudence of the Court is set forth in the *Counter-Memorial*, pages 260-1, paragraphs 10.124-10.127.

(xxv) The Evidence of Acquiescence by Cameroon in face of the Exercise of Sovereignty by Nigeria

3.300 The evidence of acquiescence by Cameroon is set forth in Nigeria's *Counter-Memorial*, pages 267 to 280. This examination of the evidence in a temporal sequence resulted in three conclusions, which were as follows:

First, until 1972 the Government of Cameroon acquiesced in the long-established Nigerian administration of the Bakassi region. From 1972 onwards, there were various Cameroon initiatives, and, in particular, the project for the renaming of villages, which clearly demonstrate the previous absence of a Cameroonian administration. On the ground there were sporadic Cameroonian activities which did not result in the establishment of effective or exclusive Cameroon control in the region.

Secondly, at no stage did Cameroon exercise peaceful possession. From the time of Independence in 1960 until 1972 the Government of Cameroon failed to challenge the legitimate Nigerian presence in the region. In the years after 1972, in spite of a growing intrusiveness on the part of Cameroon, this late development of an expansionist policy (almost certainly related to the prospects of petroleum exploration) could not erase the effects of the earlier attitude of acquiescence.

Thirdly, this assessment receives general confirmation from the passages of the Cameroon *Memorial* which are concerned with "structures administratives et actes d'administration" (pp. 490-96). No data are related to any date earlier than 1968, and the other items, if they are given dates, are related to the years 1976 and later.

3.301 A striking characteristic of the Cameroon *Reply* is that it avoids making any detailed comment upon the evidence of Cameroonian acquiescence set forth in the *Counter-Memorial* at pages 267 to 280: see, in particular, the *Reply*, p. 312, paragraph 5.236. In another section of the *Reply* (at pages 92-94) Cameroon purports to examine the acts of acquiescence 'alleged by Nigeria'. In this section Cameroon avoids dealing with specific issues of fact and law and instead resorts to abstract legal argument, ignoring the actual evidence.

3.302 Similarly, in the section of the *Reply* relating to "the role of protests" (pages 94 to 97), there is an avoidance of an examination of the actual evidence advanced by Nigeria. Moreover, the *Reply* makes a partial admission, when it states:

> "*Il est vrai que le gouvernement camerounais n'a pas toujours protesté contre les violations de son territoire commises par les autorités nigérianes ou par des particuliers avec l'appui de ces autorités*. Mais on ne saurait déduire d'une passivité dans un nombre de cas limité des conséquences juridiques négatives pour le Cameroun. Premièrement, la présentation des faits par le Nigéria n'est pas correcte. Le Cameroun, a bien envoyé de nombreuses notes de protestation au gouvernement nigérian (v. *infra*, par exemple, chapitre 5, pars. 5.233 - 5.234, et chapitre 11, pars. 11.94 - 11.99 et par. 11.216). De plus, le Cameroun a défendu ses droits sur Bakassi et la région de Darak, non seulement par des actes diplomatiques au niveau intergouvernemental, mais aussi par des actes d'autorité manifesant sa souveraineté. Ainsi, l'envoi de gendarmes et de soldats, que le Nigéria mentionne lui-même (v. CMN, vol. I, p. 263, par. 10.129), n'était nullement une action de harcèlement, mais constituait au contraire l'exercice légitime de la souveraineté territoriale. Le Cameroun a toujours défendu ses droits par sa présence sur les lieux et sa ferme opposition aux ambitions annexionnistes poursuivies par le Nigéria."[57] (*Reply*, pp. 94-5, paragraph 2.153; emphasis added).

3.303 But these qualifications do not add up to very much. When one turns to pages 311 to 312 (paragraphs 5.233-5.234) of the *Reply*, there is a list of 'official protests' by Cameroon "à l'occasion d'incidents sur Bakassi". This short section should be read in conjunction with the passage of the *Reply* quoted in the previous paragraph: the two passages of the *Reply* are complementary.

3.304 The *Reply* of Cameroon presents a list of *seven* protests covering the period 1970 to 1994. Only one protest listed is earlier than 1980. This relates to 1970 and concerns a maritime incident which took place at

the entrance to the Rio de Rey, off Inua Abasi: see Annex RC 20. The circumstances lying behind the alleged incident are obscure and the relevant Note raises no issue concerning title to Bakassi.

3.305 The second protest, dated 13 October 1980, makes the assertion that "Jabane" is under Cameroonian sovereignty: see Annex RC 51 (second item). This appears to be the first Cameroonian protest (in this list) directly related to the issue of sovereignty over Bakassi.

3.306 The third protest, dated 17 August 1985, relates to the interception of a Cameroonian pirogue by a Nigerian customs vessel at the 'forisane fishery': OC, Livre II, Annex 1, pp. 382-3. The incident, according to the Cameroon *Reply*, implied that "Idabato" was Nigerian.

3.307 The next document relates to the arrest of a Cameroonian trawler. The circumstances of the arrest remain obscure and the issue of sovereignty over Bakassi was not involved: see Annex RC 146, dated 18 July 1986.

3.308 The Cameroon Note of 25 March 1988 relates to an incident near the Kole oil terminal some 25 kilometres offshore, and the protest bears no relation to the question of sovereignty over Bakassi: see Annex RC 170.

3.309 The final protest invoked in the Cameroon *Reply* provides no more than confirmation of the exercise of sovereignty by Nigeria in the principal villages. This protest, dated 16 May 1991, relates to the 'persistent presence' of Nigerian police at Abana (Annex NC-M 220). The other document cited (referred to as Annex NC-M 328) cannot be identified.

E. Recognition and Admissions by Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

3.310 The conduct of Cameroon has been the subject of a preliminary examination in the *Counter-Memorial*, pages 280 to 284. When in 1968 the Nigerian fishing port of Abana was attacked by Cameroonian security forces, the Nigerian Government promptly protested the violation of Nigerian sovereignty: Annex NC-M 206. A further episode of harassment in 1970 was also the subject of protest: Annex NC-M 207. This activity by Cameroon was not accompanied by any assertion of sovereignty in response to the Nigerian protests.

3.311 In the period after Independence, the Bakassi Peninsula was administered as a part of Nigeria *à titre de souverain*, was inhabited by Nigerian nationals, and had exclusively Nigerian social and economic affiliations. In these proceedings Cameroon now claims that she has consistently exercised sovereignty in the region. But, if this were really the case, there would have been a series, a pattern, of protests in face of the Nigerian presence.

3.312 The actual incidence of protests confirms the view that the administration of the region by Nigeria after Independence was not contested by Cameroon until a considerable number of years had elapsed. The Nigerian presence was public in every way and involved the exercise of authority over a substantial population. In the event the first Cameroon protest was sent on 15 September 1969: Annex NC-M 148. This refers to the building of a primary school (by 'the Religious authorities of Nigeria') at 'Abana, in Cameroun territory'. No reference is made to the extent of the Cameroon claim.

3.313 The next relevant item is a Note Verbale dated 13 October 1980: Annex RC 51.

3.314 There is also a Cameroon Note dated 31 December 1976 (Annex NC-M 216) relating to an incident at Abana. It is to be noted that in the *Reply* Cameroon omits this item from the list of 'official protests' recorded in the *Reply* at pages 311 to 312, paras. 5.233-5.234. The first relevant protest in this list is the Note Verbale dated 13 October 1980 (Annex RC 51).

F. The Alleged Evidence of Nigerian Acquiescence : A Rebuttal

(w) Introduction

3.315 The Cameroon *Reply* seeks to establish that Nigeria has, by its conduct, acquiesced in the claims of Cameroon. The evidence offered is inconclusive and in some cases wholly irrelevant. Moreover, the diplomatic background and chronology present an ambience which strongly militates against any possibility of Nigerian acquiescence. Cameroonian incursions in 1968 and 1970 were met with prompt and decisive Nigerian protests: see above, paragraph 3.307, and the *Counter-Memorial*, pages 267 to 269, paragraphs 10.155-10.161.

(x) The Termination of Trusteeship

3.316 In the first place, Cameroon invokes the transactions of 1961 relating to the termination of the regime of trusteeship: see the *Reply*, pp. 89-91, paragraphs 2.140-2.143. In this context three points stand out. First, the transactions and the related instruments involved changes of status and a process of State succession. They were not related to localised questions. Secondly, in any event there is no sufficient evidence to prove that the Bakassi villages took part in the plebiscite involved in the transitional arrangements: see above paragraphs 3.181-3.186. And, thirdly, the outcome could hardly be decisive in relation to a process of historical consolidation of title the critical phase of which occurred after the Independence of Nigeria.

(y) The Alleged Activities of the Consul-General at Buea

3.317 Secondly, Cameroon seeks to rely upon the activities of the Nigerian Consul-General at Buea: see the *Reply*, paragraph 2.145, and pages 315-19.

3.318 Such activities involved the routines of a low-ranking official which were by nature unrelated to the issue of sovereignty. Consular officials are not mandated to deal with issues of title to territory. The general character of the duties of consular officers is described in a passage from Hall approved by Dr. Clive Parry, the distinguished editor of the *British Digest of International Law*, as follows:

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

duties of consuls are of the latter kind. They receive the protests and reports of captains of vessels of their nation with reference to injuries sustained at sea; they legalise acts of judicial or other functionaries by their seal for use within their own country; they authenticate births and deaths; they administer the property of the subjects of their state dying in the country where they reside; they send home shipwrecked and unemployed sailors and other destitute persons; they arbitrate on differences which are voluntarily brought before them by their fellow-countrymen, especially in matters relating to commerce, and to disputes which have taken place on board ship; they exercise disciplinary jurisdiction, though not of course to the exclusion of the local jurisdiction, over the crews of vessels of the state in the employment of which they are; they see that the laws are properly administered with reference to its subjects, and communicate with their government if injustice is done; they collect information for it upon commercial, economical and political matters. In the performance of these and similar duties the action of a consul is evidently not international. He is an officer of his state to whom are entrusted special functions which can be carried out in a foreign country without interfering with its jurisdiction." (Hall, *International Law* (4th ed., 1895), pp. 330-1)[58]

3.319 The authoritative treatise by Patrick Daillier and Alain Pellet describes consular duties in essentially similar terms:

"Les consuls et les postes consulaires ne sont pas chargés d'un rôle de représentation politique. Leurs fonctions revêtent un caractère purement administratif.

Ce caractère remonte à l'origine de l'institution consulaire. C'est en effet au XIIe siècle, au moment où les peuples commençaient à entrer dans la voie des échanges économiques, que les premiers consuls furent désignés par les Républiques italiennes et envoyés dans les ports de pays du Levant. Leur mission était alors limitée au contrôle du mouvement des bateaux de leur nationalité et à la protection de leurs compatriotes.

Aujourd'hui, selon l'article 5 de la Convention de 1963 qui codifie les anciennes pratiques, les consuls sont principalement chargés de protéger dans l'État de résidence les intérêts de l'État d'envoi et de ses ressortissants, personnes physiques et morales; de favoriser le dévelop-pement des relations commerciales, économiques, culturelles et scientifiques entre l'Etat d'envoi et l'État de résidence; d'exercer certaines fonctions concernant les nationaux se trouvant dans l'État de résidence (état civil, assistance judiciaire et parajudiciaire, délivrance des passeports); d'accorder des visas aux personnes étrangères qui désirent se rendre dans l'État d'envoi; de surveiller les bateaux, navires, aéronefs et leurs équipages en provenance de l'État d'envoi et de leur prêter assistance."[59]

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

3.321 In the final analysis, the assumptions made by the consuls were based upon a fundamental error, an error in which they were undoubtedly encouraged by their Cameroonian colleagues and security escorts.

(z) The Visit of the Nigerian Ambassador to Atabong in 1986

3.322 The Cameroon *Reply* (page 319, paragraph 5.264) refers to a visit by the Nigerian Ambassador to Idabato (West Atabong) in 1986. The only document cited in this respect (Annex RC 149) is an itinerary for the tour prepared by the staff of the Consul-General in Buea. There is no evidence that a visit to West Atabong actually took place and no indication of the source of the itinerary. In any event the Consul-General had no authority to make determinations as to title to territory.

(aa) The Attitude of the Nigerian Local Authorities

3.323 Cameroon also asserts that the Nigerian local authorities had knowledge of a Cameroon presence and that this knowledge constituted evidence of acquiescence: see the *Reply*, page 312, paragraph 5.238. This contention is inherently weak. Knowledge does not constitute consent, and the critical fact is that Nigeria protested promptly in face of Cameroon incursions into Nigerian territory: see above, paragraph 3.307. These protests of 1968 and 1970 were ignored by Cameroon.

3.324 Even if it were the case that local officials did not report or protest in reaction to every incident involving Cameroonian police or security forces, this would not constitute acquiescence in legal terms.

(bb) Map Evidence

3.325 In the context of the Cameroon argument based upon acquiescence, considerable reliance is placed upon map evidence: see the *Memorial*, pages 258-321. In this respect the *Reply* (page 313, paragraph 5.239) relies upon the material presented in the *Memorial*.

3.326 For present purposes the map evidence relating exclusively to the question of Bakassi will be considered. The relevance of map evidence to other sectors of the litigation will be considered in the appropriate context.

3.327 As a further preliminary point, it is to be emphasised that the legal context is the Nigerian claim to title based upon historical consolidation of title, either as an autonomous basis of title, or as a confirmation of the original title to the Bakassi Peninsula inherited by Nigeria at the time of Independence.

3.328 It must follow that the map evidence prior to the Independence of Nigeria in 1960 is not of direct relevance to the position in the period 1960 to 1994.

3.329 It must also follow that the map evidence can hardly be conclusive of the issue of sovereignty on the basis of historical consolidation of title. In this particular legal context, if there is a difference between the map evidence and the administrative and social *status quo* on the ground, it would be legally inappropriate, and incongruous on other grounds, to afford a decisive role, or indeed any role, to the map evidence.

3.330 The Government of Nigeria does not intend to trouble the Court with a collection of judicial assessments of map evidence. For the reasons advanced below, Nigeria considers that map evidence cannot overrule the administrative *status quo* on the ground, and therefore many of the precedents concerning map evidence are simply not applicable in the circumstances of this case.

3.331 However, the following assessment by the Chamber in the *Frontier Dispute* case is particularly apposite:

> "Whether in frontier delimitations or in international territorial conflicts, maps merely constitute information which varies in accuracy from case to case; of themselves, and by virtue solely of their existence, they cannot constitute a territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights. Of course, in some cases maps may acquire such legal force, but where this is so the legal force does not arise solely from their intrinsic merits: it is because such maps fall into the category of physical expressions of the will of the State or States concerned. This is the case, for example, when maps are annexed to an official text of which they form an integral part. Except in this clearly defined case, maps are only extrinsic evidence of varying reliability or unreliability which may be used, along with other evidence of a circumstantial kind, to establish or reconstitute the real facts."[60]

3.332 It would be especially inappropriate to give priority to the map evidence in the present case. The map evidence, in so far as it relates to Bakassi, is not based upon direct knowledge of the situation. The maps are all compiled maps, repeating the assumptions of other map makers.[61] There cannot be a focus upon the question of title to Bakassi in such circumstances. And this is particularly true when the Bakassi region represents a very minor feature on maps of small scale.

3.333 Against this background the map evidence presented by Cameroon can be analysed. Nineteen maps appear to support the Cameroon position: M 11, M 12, M 13, M 17, M 20, M 21, M 51, M 55, M 57, M 60, M 71, M 80, M 81, M 86, M 87, M 88, M 89, M 91 and M 92.

3.334 All of these maps are compiled from other sources. Nearly all are of small scale. None of these maps was prepared by experts concerned with highly localised and specialised issues of sovereignty.

3.335 Of the maps relied upon by Cameroon, two (M 11 and M 80) are Cameroonian official maps of late date (1976 and 1989) and therefore self-serving. Three of the maps relied upon by Cameroon are maps published at or soon after the Independence of Nigeria (M 51, M 17, and M 20), in other words very early in the period of historical consolidation.

3.336 Several of the maps relied upon by Cameroon emanate from the Federal Surveys of Nigeria, namely, M 17 (1963), M 60 (1968), M 20 (1960), and M 21 (1972). These maps are of very small scale with the exception of the Calabar sheet (M 17), published in 1963. It is important for the Court to note that the general indication of the boundary *status quo* on these maps is firmly contradicted by the *Gazetteer* published by the Director of Federal Surveys in 1965: see Annex NR 102. Section IV of Volume II is devoted to Eastern Nigeria. The *Gazetteer* lists three locations in the Bakassi Peninsula: Abana, Hanley Point and Sandy Point. Each location is described as a village and the co-ordinates are given.

3.337 It must be obvious that the *Gazetteer* reflects the political and social reality in the Bakassi Peninsula five years after Independence and not the work of the compilers of small scale maps. None of the villages listed in the *Gazetteer* as forming part of Eastern Nigeria are marked on the maps relied upon by Cameroon. The Government of Nigeria submits that the *Gazetteer* provides the expert evidence in this respect and not the maps.

3.338 There are three maps favourable to the position of Nigeria, as follows:

> M 18a: Administrative Map of Nigeria, 10th edition, 1990, Federal Survey, Lagos.
>
> M 90: Cross River State, 1991.
>
> M 93a: Map of Nigeria, 1992.

(cc) The Resolution of a Local Dispute

3.339 As further evidence of acquiescence, Cameroon refers to an episode in which a 'local dispute' between Otu and Ekang was settled, it is said, in favour of Cameroon in 1962: see the *Reply*, pages 313-15, paragraphs 5.240-5.248. This argument is difficult to follow as a matter of principle. But in any event the evidence is worthless because the two locations referred to are far to the north of Bakassi region: see Fig. 3.25 and RC Vol. II, Map 25.

(dd) Conclusion

3.340 In summary Nigeria rejects the suggestion that she has, by her conduct, or otherwise, acquiesced in the claims of Cameroon.

G. Conclusion

3.341 The evidence of the process of the consolidation of Nigerian title in the Bakassi Peninsula does much more than reflect a particular legal doctrine or concept. The evidence has the important quality of translating possession as a basis of title into a pattern of human relations and of direct connections between the communities living in Bakassi and the Nigerian mainland. The carapace of State activities and civil administration reflects the pattern of human relations.

3.342 The possession exercised by Nigeria since Independence consists of a pattern of political, social, ethnic

and economic relationships. These are longstanding and reflect the existence of an original title inhering in Nigeria and its predecessors, the City States of Old Calabar.

3.343 The pattern of relations between Bakassi and the mainland of Nigeria includes the following elements:

(1) The historical affiliations;

(2) The ethnic affiliations involving the Efik and Effiat groups and clans;

(3) The religious connections with churches on the mainland;

(4) The activities of the Ekpe Society and other associations;

(5) The exercise of authority by the traditional rulers, functioning as a public order system;

(6) The functioning of the Nigerian customary court system in Bakassi;

(7) The settlement of Nigerian nationals over a long period;

(8) The exclusively Nigerian character of the economic life of the region and the use of Nigerian currency;

(9) The maintenance of public order and also a Nigerian security presence, both military and naval;

(10) A pattern of peaceful routine administration, including taxation, census taking, participation in elections, development and public works, and postal administration.

3.344 The practical and human aspects of the Nigerian administration are illustrated very well in the evidence concerning schools. Cameroon has failed to provide evidence of a single school in the Bakassi region run by the Cameroon authorities. The absence of schools constitutes a powerful contradiction of the Cameroonian claim to sovereignty, more especially in a region which has long been populated.

3.345 The crucial fact is that, after the presentation of two written pleadings, the evidence offered by Cameroon concerning the exercise of sovereignty in the Bakassi Peninsula is demonstratively inadequate. The Court is respectfully referred to the table relating to the evidence. This is based upon twenty categories of state activity. In relation to eight categories, Cameroon has presented no evidence of any kind. In relation to a further eight categories, Cameroon makes assertions but provides no documentary evidence.

Acts of Nigerian Administration on Bakassi	Assertion by Cameroon relating to such acts of administration	Documentary evidence relating to such acts of administration produced by Cameroon
Use of the Nigerian Currency	No reference	-

Exercise of Authority by Traditional Rulers	No reference	-
Jurisdiction of Customary Law Courts	Reference made MC para.4.451	No documentary evidence produced
Exercise of Military Jurisdiction	No reference	-
Maintenance of Public Order	Reference made MC para.4.444	No documentary evidence produced
Exercise of Civil Jurisdiction	Reference made MC para. 4.450	No documentary evidence produced
Taxation	Reference made MC paras. 4.436, 4.446-4.449 *Reply* para. 5.228	The Court is respectfully referred to paras. 3.170-3.174 of this *Rejoinder*
Census Taking	Reference made MC para. 4.443	No documentary evidence produced
Delimitation of Electoral Wards	Reference made MC para.4.442	Annex MC 266
Letters of Administration	No reference	-
Participation in Parliamentary Elections	No reference	-
Immigration	No reference	-
Public Education	Reference made MC para. 4.453	No documentary evidence produced
Public Works and Development Administration	Reference made MC para. 4.454	No documentary evidence produced

Provision for Public Health	Reference made MC made MC para. 4.452 RC para. 5.232 and Annex RC 197	The Court is respectfully referred to paras. 3.235 and 3.237 of this *Rejoinder*
Local Administration	Reference made MC paras. 4.430-4.443	The Court is respectfully referred to paras. 3.235-3.237 of this *Rejoinder*
Exercise of Ecclesiastical Jurisdiction	No reference	-
Collection of Customs Duties	Reference made MC para. 4.445	No documentary evidence produced
Postal Administration	No reference	-
Licensing of Canoes	No reference	-

3.346 In summary, out of twenty categories of evidence of the exercise of sovereignty, Cameroon produces no evidence in relation to seventeen categories.

3.347 Reference is made to documentary evidence only in connection with taxation, health and local administration. The Cameroon *Memorial* devotes several passages to taxation (at pages 493 to 494, paragraphs 4.446 to 4.449). The Government of Cameroon refers to only one document: Annex MC 255. This consists of a record of taxes collected for the years 1980 to 1982. This document is the only document which indicates that taxes were actually collected and it relates to a period twenty years after Independence. In contrast, Nigeria has provided evidence of tax collection for the period commencing in 1967-8 and Cameroon acknowledged the collection of taxes by Nigeria in December 1964: Annex NC-M 167.

3.348 The *Reply* of Cameroon adds very little to the evidential picture. Two documents are referred to. The first is Annex RC 18, a report dated 28 February 1969. This document makes clear that the inhabitants of Atabong are Nigerian. It also establishes two other facts: that the inhabitants had habitually resisted paying taxes and also that Cameroon did not provide any social services in this area.

3.349 The second document referred to in the *Reply* is Annex RC 34. This document (dated October 1972) refers to tax collection at Tiko. Tiko is a place located north-east of Victoria, more than 90 kilometres from Bakassi. The document thus has no relevance.

3.350 On health, only one document (Annex RC 197), has been produced by Cameroon. That document, as was pointed out in paragraph 3.234 above, is programmatic only.

3.351 In relation to the issue of local administration, the relevant passages of the *Memorial* of Cameroon have been analysed in the *Counter-Memorial*, at page 264. It is there pointed out that there is an absence of proof of

actual acts of administration. The Cameroon *Reply* does not add very much: see pages 307 to 310. Thus, the materials relied upon by Cameroon in the context of the evidence of local administration demonstrate that there was little or no reality behind the legislation purporting to establish an administration. As the Table shows, for a long time after Independence it was Nigeria which was exercising practical authority in the Bakassi region.

3.352 In this context it is helpful to recall the 'fundamental principle' propounded by Sir Gerald Fitzmaurice according to which 'greater probative force' is 'attributable to a State's acts and conduct than to its professions': *British Year Book*, Vol. 32 (1955-6), pp. 63-4. As Fitzmaurice points out, the Court in the *Minquiers* case laid stress on the concrete evidence 'which relates directly to the possession of the ... groups': see the *Minquiers* case, I.C.J. Reports, 1953, p. 55. Much of the Cameroonian evidence of administration is not concrete but theoretical, as the documents analysed above clearly demonstrate.

3.353 The importance of stability in boundary matters is often stressed and the Government of Nigeria has major concerns in this regard. The recognition of the political, social and economic *status quo* in the Bakassi region by the Court will militate in favour of continuity and stability in the affairs of the region, including the adjacent States of Nigeria of which Bakassi forms a part. The rationale of the principle of historical consolidation is precisely the preservation of a well-established condition of things in the context of the determination of title to territory.

3.354 The evidence thus amply substantiates the four bases of the Nigerian claim to title over the Bakassi Peninsula, namely:

(1) Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar which title vested in Nigeria at the time of Independence in 1960.

(2) Effective administration of Bakassi by Nigeria, acting as sovereign, and an absence of protest.

(3) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

(4) Recognition of Nigerian sovereignty over Bakassi by Cameroon.

As Nigeria has already observed, these four bases of claim apply both individually and jointly. In the view of the Nigerian Government, each of the bases of title would be sufficient on its own.

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1 *Recueil des Cours*, Vol. 163 (1976, V), p.9 at pp. 68-69; footnotes omitted: "2. The meaning of these necessary and fundamental principles is perfectly clear: it is contrary to international law to use force to challenge the boundaries of a State and thus do damage to its territory by dismembering it. But one cannot go beyond that, so as, by sliding, sometimes deliberately, down an almost unnoticeable slope, to extend the principles of territorial integrity and the inviolability of boundaries, to confound and confuse them with the distinct concepts of the immutability and intangibility of dividing lines. In other words, if boundaries are inviolable, they are not immutable, and their

intangibility can in no way constitute a mandatory rule of *jus cogens.*

To claim, as has frequently been done, that the Charter of the OAU and the Cairo resolution consecrate the principle of the intangibility of boundaries is an abuse of language. The draftsmen of these texts never said that the boundaries of the African States, as they existed at the moment of their accession to independence, were fixed forever and could not be modified by peaceful means; they merely said that they must be "respected", i.e. that they may in no circumstances be challenged by force, in conformity with the principle of territorial integrity.

Is it necessary to remind ourselves that in international law submission to the text is the cardinal rule of all interpretation and that, as Anzilotti noted, 'every rule must be taken into account for what it really contains, without extending or restricting its sense'."

2 I.C.J. Reports,. 1992, p. 565, para. 345; and see further NC-M, para. 10.6.

3 I.C.J. Reports, 1986, pp. 632-33, para. 148.

4 Copies of the 1963 Constitution and 1967 Decree will be lodged with the Court.

5 I.C.J. Reports 1951, pp. 138-9.

6 "The Validity of the Maroua Declaration. The Nigerian side underscored the importance of this matter and pointed out that the position of the Nigerian Government on this question is well known by the Cameroon Government. The Nigerian delegation indicated that as far as the Maroua Declaration is concerned, the Nigerian Government never ratified the agreement and consequently, in Nigeria's view, it is not binding on Nigeria.

The Cameroonian side took note of the Nigerian position but stated in its view, that, the said declaration is valid and the Cameroon Government has never been formally notified of the Nigerian position.

The Nigerian side underscored the necessity for the two countries to agree on a realistic framework for negotiations at the meeting scheduled for Abuja." (Annex NPO 52).

7 Annex NPO 55 and NR 173, below.

8 *Droit international public*, 6th ed., Paris, 1983, p. 207 (emphasis in the original): "It was also thought possible, following a *dictum* of the ICJ in the Fisheries case (1951, p. 116) and the work of C. de Visscher, to present a different legal analysis of the facts relating to the exercise of sovereignty, relying on *historical consolidation* based on long usage. This would be distinguished from *prescription* because the latter can only take effect against any adverse claim, from *occupation* because it also applies to maritime areas, and from *recognition*, the effect of which is instantaneous. It would depend upon a sufficiently long absence of opposition from the interested States; here the time factor would play an essential part. Consolidation would work simultaneously for the maintenance and for the acquisition of territorial sovereignty; it would permit an imperfectly established sovereignty (*inchoate* title, case of the Island of Palmas cited above), to be perfected.

This concept was expounded by C. de VISSCHER, in particular in "Les effectivités en DI public", p. 107, and "Le régime des confins", p. 128, as well as by other authors such as Y.Z. Blum "Historic titles in IL", (The Hague, Nijhoff, 1965). It has all the merits of a portmanteau conception, applicable to all the hypotheses while emphasising the

importance of the effective exercise of sovereignty when the latter is possible. It confers no right upon such an exercise of sovereignty when it meets with opposition."

9 *Recueil des Cours*, Vol. 183 (1983-V), pp. 147-8 "d) *The Consolidation of title*

Faced with contradictory claims to sovereignty over a territory, advanced in reliance on very diverse titles which are sometimes difficult to separate out, the international case law, both arbitral and judicial, has always attached the greatest importance to the peaceful and continuous exercise of state competences, i.e. to *effectivités* by state authority, manifested for the duration.

The continuous exercise of state authority thus makes possible the consolidation of a title which, taken on its own, would not have enabled the holder to acquire the territorial sovereignty (discovery, contiguity), or to purge a title of an initial vice (conquest). It can prevail even over a title resulting from a treaty or other legal act (case of the *Island of Palmas*, RSA, II, pp. 845 *et seq.*)."

10 First Award, 9 October 1998, I.L.R. Vol. 114, p.1 at p.117, paras. 450-1.

11 9th ed., Vol. I by Sir Robert Jennings and Sir Arthur Watts, 1992, pp. 709-10, para. 272.

12 See Chapter 1, para. 1.6 *et seq.*

13 *op.cit*, p. 100.

14 A copy of this book has been lodged with the Court.

15 See para. 3.64 above for reference to Anderson Report.

16 A copy of this has been lodged with the Court.

17 9th ed., Vol. I, p. 710, para 272.

18 I.C.J. Reports, 1951, p.133.

19 I.L.R. Vol. 50, p.1 at p. 510.

20 *ibid.*, pp. 510-11.

21 I.C.J. Pleadings, Vol. II, p. 161.

22 The original document from which this schedule is taken is Annex NC-M 149.

23 Annex NC-M 153 contains the relevant pages. The full text has been lodged with the Court.

24 Annex NC-M 154 contains the relevant pages. The full text has been lodged with the Court.

25 Ine Nkan Okure has a number of different spellings throughout the Nigeria legislation and documents, eg Nkan Ekure, Nkanekuwe, Nkane Okure. These have been made consistent throughout the text as Ine Nkan Okure, except in direct quotes.

26 A full copy of this text has been lodged with the Court.

27 *Recueil des Cours*, Hague Academy, Vol. 92 (1957, II), p. 149.

28 I.C.J. Reports 1992 pp. 470-1, para. 179.

29 I.C.J. Reports 1953 pp. 58-59.

30 *ibid*., p. 71.

31 See I.C.J. Reports 1992 pp. 418-19, para. 56, p. 515, para. 264.

32 R.I.A.A., Vol. XVII, pp. 558-9 (Opinion of the Chairman).

33 "In accordance with the system of deploying public services, and more particularly security services, throughout the Cameroonian territory, there are Gendarmerie and customs services at the administrative centre of the Division (Mundemba)and at the administrative centres of the Districts (Bamuso, Idabato, Ekondo Titi, Mundemba, Kombo Itindi). At the district level, such as in Idabato, there is only one gendarmerie unit."

34 I.C.J. Reports 1953, pp. 65, 69.

35 I.C.J. Reports 1975, pp. 45-47, paras. 99-103.

36 I.L.R Vol. 50, p. 1 at p. 461.

37 "The taxes levied in the various fisheries, particularly those at Idabato I, Idabato II, Jabane I, Jabane II, Naumsi Wan, Kombo a Mpungu, Forisane, Kombo a Ngonja, Kombo a Monja, Kombo a Jane, Ine Akarika, Kombo a Kiase, Kombo Abedimo, Kombo a Billa, amounted to 9,450,000 FCFA for the 1980-1982 accounting period."

38 I.C.J. Reports 1953, pp. 66, 69.

39 See, for example, I.C.J. Reports 1992, pp. 397-99, paras. 60-62; pp. 542-43, para. 304.

40 I.LR. Vol. 52, p. 93 at p. 222.

41 The School was actually established in 1969 in a local church building by the Roman Catholic Mission at Uyo (now in Akwa Ibom State). In 1992, Akpabuyo Local Government Council built a new building. Mr Michael Edet Okon was Head Teacher from 1980 to 1992. His statement is at Annex NC-M 185.

42 "Schools built by the Cameroonian Government, at both the primary and secondary levels, are also found in the Peninsula. The catholic school in Mundemba, the catholic school in Ekondo-Titi, and the Primary School in Bamuso might be mentioned as illustrations at the primary level, and at the secondary level, the *Lycée* in Mundemba (founded in

1975), the CES in Issangele (1992) and Bamuso (1992) as regards general education and the SAR in Mundemba as regards technical education (the SAR founded in Bamuso proved unviable)."

43 R.I.A.A., Vol. XVII, p. 557 (Opinion of the Chairman).

44 I.C.J. Reports 1953 p. 69.

45 Annex NC-M 178 contains the relevant pages. A full copy of the text has been lodged at the Court.

46 "Lastly, there are ample services to meet the needs of training for farmers in this area. For example, there is a Divisional Agricultural Branch at Mundemba, and there are District Branches at Idabato, Issangele and Mundemba, as well as Agricultural Posts. There are also agricultural posts a little further north [of] the Peninsula, at Akpassang Korup, Bombage, Meangwe II and Mundemba."

47 I.L.R.Vol. 52, p. 93 at p. 222.

48 Documentary evidence of the administration of the Health Clinic at **Abana**, for example, is at Annex NR 81.

49 "There are health centres at Issangele, Kombo Abedimo, Idabato and Jabane, whose funding normally comes under the budget of the Ministry of Health."

50 I.C.J. Reports 1992 p. 351 at pp. 397-99 paras. 60-62, pp. 435-6 para. 123, pp. 469-70 paras. 177-8, pp. 471-2 paras. 180-1, p.516 paras. 265-6, pp. 542-3 para. 304.

51 Copies of written pleadings will be lodged with the Court.

52 I.C.J. Reports 1953 pp. 66, 69.

53 See the Opinion of the Chairman, R.I.A.A., Vol. XVII, pp. 557-8.

54 "Incidentally, it is said that the Nigerians are dissatisfied with seeing the National Refinery Company going into its operational phase because they say that it is their oil which we are in the process of exploiting." (Annex MC 260).

55 "The Validity of the Maroua Declaration. The Nigerian side underscored the importance of this matter and pointed out that the position of the Nigerian Government on this question is well known by the Cameroon Government. The Nigerian delegation indicated that as far as the Maroua Declaration is concerned, the Nigerian Government never ratified the agreement and consequently, in Nigeria's view, it is not binding on Nigeria.

The Cameroonian side took note of the Nigerian position but stated in its view, that, the said declaration is valid and the Cameroon Government has never been formally notified of the Nigerian position.

The Nigerian side underscored the necessity for the two countries to agree on a realistic framework for negotiations at the meeting scheduled for Abuja." (Annex NPO 52).

56 I.L.R. Vol. 114, p.1 at p.114.

57 "It is true that the Cameroonian Government has not always protested against the violations of its territory committed by the Nigerian authorities or by individuals with the support of those authorities. But it would be wrong to draw negative juridical consequences from passivity in a limited number of cases. First, Nigeria's presentation of the facts is incorrect. Cameroon did indeed send a number of protest notes to the Nigerian Government (see infra, for example, Chapter 5, paras. 5.233-5.234, and Chapter 11, paras. 11.94-11. 99 and 11.216.) Moreover, Cameroon has defended its rights over Bakassi and the Darak area, not only by diplomatic acts at intergovernmental level, but also by actions manifesting its sovereign authority. Thus the sending of gendarmes and soldiers, which Nigeria itself mentions (see NCM Vol. I, p.263, para 10.129) was in no way an act of harassment, but, on the contrary, constituted a legitimate exercise of territorial sovereignty. Cameroon has always defended its rights by its presence on the spot and its firm opposition to the annexionist ambitions pursued by Nigeria.' (emphasis added).

58 *British Digest*, Vol. 8, London, 1965, pp. 211-12.

59 *Droit international public*, 6th ed., 1999, pp. 737-8, para. 466. "Consuls, and their posts, are not charged with the role of political representation. Their functions are purely administrative.

This characteristic dates from the origins of the institution of consuls. In fact it was in the 12th century, at the time when peoples were beginning to enter into economic exchanges, that the first consuls were appointed by the Italian republics and sent to the Levantine ports. Their mission at that time was limited to the regulation of the movement of vessels of their nationality and the protection of their compatriots.

Today, in accordance with Article 5 of the Convention of 1963, which codifies the long-standing practices, consuls' main responsibilities are to protect the interests of the sending State and its nationals (individuals and corporate) in the State of residence; to assist the development of commercial, economic, cultural and scientific relations between the sending State and the State of residence; to carry out certain functions concerning nationals present in the State of residence (civil registration, legal and paralegal assistance, delivery of passports); to issue visas to foreign persons who desire to travel to the sending State; to carry out surveillance of boats, vessels, aircraft and their crews, originating from the sending State, and to provide them with assistance."

60 I.C.J. Reports, 1986, p.582, para. 54; also quoted in the Judgment of the Court in the *Case Concerning Kasikili/ Sedudu Island* (Botswana/Namibia, 1999, para. 84).

61 'Compilation' is defined as follows: 'The selecting, extracting, and assembling of map detail from various sources (such as existing maps, aerial photographs and surveys), followed by the production of a new or improved map based on this data.' (McGraw-Hill Dictionary of Scientific and Technical Terms; 5th Ed. New York, 1993).

PART I

BAKASSI

CHAPTER 3

APPENDIX

Statements made by the Bakassi Clan Heads concerning attribution of title

The Efik society is administered through a number of groups and sub-groups. The Obong of Calabar heads the society, and the traditional governing body is the Obong's Council, the leading members of which are called Etuboms.

The area under the jurisdiction of the Obong's Council is divided into clans. Each clan has a Clan Head. The clans were originally extended family-based structures, but have gradually incorporated other members from other parts of Nigeria. The members of the clan tend to be related to one another and often claim common ancestry. A clan may consist of one town (e.g. Archibong) or a collection of villages.

The Clan Head has primary responsibility for the traditional governance and administration of the villages within his authority, including the collection of taxes and the maintenance of public order.

There are six clans on the Bakassi Peninsula: Archibong, Akwa, West Atabong, East Atabong, Abana and Ikang. The first five of these are the principal towns on the peninsula. The villages on Bakassi all fall within the jurisdiction of one of these clans.

The clan unit forms part of the administration of the area (e.g. the maintenance of public order and the collection of taxes). However, the peninsula is also administered on a non-traditional basis for more modern concepts. For example, there are nine electoral wards on Bakassi: Abana, Akpa Nkanya, West Atabong, East Atabong, Efut Inwang, Akwa, Archibong, Odon Ambai Ekpa and Odiong. Each ward has 15 polling units within it.

Christopher Hackford and Charles Dalglish of the Nigerian legal team interviewed each of these Clan Heads during a visit to the area in June 2000. These Clan Heads spoke on behalf of all the villagers under their traditional jurisdiction.

Archibong

The Clan Head of Archibong is His Highness Edidem Archibong, who has been Clan Head for 2 years.

Before that time, his father was Clan Head.

Archibong was founded by Obong Asibong Edem. It is a very old well-established village on the banks of the Akpa Yafe. The current population of the village in about 2000, and that of the extended clan about 10,000. They are all Efiks.

The villagers pay their taxes in Naira to Bakassi Local Government Area (LGA). Before that was created in 1996, they paid to Akpabuyo LGA in Nigeria. These taxes include income tax, canoe licences and an education levy.

Samuel Udo, a resident of Archibong, informed the legal team that he came to the village in 1977, and, discovering that there was no school, created one himself. It was run by the local community and received no funding or resources from either Nigeria or Cameroon. He ran this primary school from 1978 until 1994, when the Nigerian local government became involved in the administration. The primary school has about 500 pupils at present. A secondary school was also built in Archibong in 1998, and this has about 200 pupils.

The Clan Head himself attended school in Calabar. He stayed in Calabar during term time and returned to Archibong during school holidays.

A clinic was established in the village in 1997, by Bakassi LGA. There are currently five nurses, who are all paid by the LGA. Previously, when villagers were sick, they visited the mainland for treatment, or if the illness was serious, the hospital at Ikot Ene, in Akpabuyo LGA. A Mobile Health Clinic, arranged by Akpabuyo LGA, also visited Archibong carrying out immunisation programmes. The last such programme was in 1997.

The Nigerian Government is involved in a number of building projects in Archibong. Aside from the health clinic and the schools, there is a local government sub-office, a market, a water project, an electricity-generating scheme and a government guest house.

The villagers do not have passports, or any other type of identification. They are not subject to immigration checks at Ikang when visiting Akpabuyo LGA or Calabar.

The villagers have voted in recent elections, both at a state and a local level. Polling booths are erected in the village. The Clan Head maintained that the villagers did not vote in the 1961 plebiscite, and this was confirmed by the elders present. The Clan Head also confirmed that Cross River State of Nigeria has carried out censuses on Bakassi in the past.

If there is any legal dispute, either criminal or civil, in Archibong, the matter is dealt with first by the Clan Head. If he does not succeed in resolving the matter, the dispute is referred to the Customary Court in Ikot Nakanda, Akpabuyo. This is the traditional method for dispute resolution. The police at Ikang or Ikot Nakanda will become involved in criminal matters as and where necessary.

A Roman Catholic Church was established by the Nigerian Roman Catholic Mission in Archibong in 1893. There is now also an Apostolic Church which is administered from Nigeria.

Allegiance to the Ekpe society is shared by all Efiks.[1] In this context Archibong has an Ekpe shrine situated in the village. The practice of Ekpe preceded the arrival of the Christian missionaries and co-exists with Christianity. Ekpe shrines also exist in Calabar, Ikang, Akwa, Abana and West Atabong.

During the civil war, many of the local villagers left the village and moved to Akpabuyo or Calabar. Only a few "hard-hearted" villagers remained. The area was supervised by Isaac Boro, although he did not have a permanent presence in the village. Isaac Boro was a major who fought for the Federal army during the Nigerian civil war (1967-1970). As most of the population had deserted the village, there was little administration. The remaining inhabitants did not pay taxes during this time. When the war was over, many of the population moved back to Archibong.

The Cameroonians first started to visit Archibong after the civil war ended and Isaac Boro had departed. They never set up a permanent presence in the village nor any kind of administration. They would come as "pirates" and demand taxes to be paid to them. Some local villages did pay because of the use of force, both verbal and physical, but some still refused to pay.

These sporadic raids continued from the end of the civil war until 1993. They became increasingly regular and were often violent. The gendarmes would rape and occasionally kill villagers, and boats and fish were stolen as well as money.

Since the strengthening of security in the area by the Nigerian army in 1994, the village has been peaceful.

Akwa

The Clan of Akwa includes the villages of Akwa, Mbenmong, Nwanyo and Nkan Okure (I and II). The Clan Head is His Royal Highness Okon Beto Nyong, who is now 73 years old.

Akwa was founded in about 1580 by Ananche Effiok Oho. The clan currently includes a number of villages strung out along the southern bank of the Akpa Yafe (Akwa, Mbenmong and Nwanyo) and a few smaller fishing villages such as Nkan Okure I and II. Akwa itself is situated a short walk eastwards from Archibong, and the remaining villages are found further west and south-west from here. The population of Akwa Town is about 5000, but the clan is much larger with a population of about 20,000. All the population are Efiks.

The villagers pay their taxes in Naira to Bakassi Local Government Area (LGA), but before that was created in 1996, they paid to Akpabuyo LGA in Nigeria. The taxes include income tax, canoe licences and an education levy.

A primary school was set up in Mbenmong in 1992. This was funded by Nigeria and the teachers are paid by the local government (now Bakassi LGA, but previously Akpabuyo). The Clan Head attended school in Henshaw Town, Calabar. Many of the children in and around Akwa attended the school in Archibong after 1978, but travelled to the mainland or Calabar for secondary education. There is also a primary school at Nkan Okure, established in the 1970's, which currently has 4 teachers and 150 pupils.

A small clinic was established in Mbenmong in 1996 by Bakassi LGA, and the villagers also use the clinic in Archibong. If the villagers are very sick, they attend the hospital at Ikot Ene, in Akpabuyo LGA. Before the clinic was established, the population visited Ikang when they were sick, or waited for a visit from the mobile health centre which was administered by Akpabuyo LGA.

Akwa and the surrounding villages share the same facilities, such as the water project and the electricity-generating scheme, which have been established in Archibong.

An Apostolic Church was founded in about 1955 in the clan. This was administered by Calabar.

The villagers do not have passports, or any other type of identification. They are not subject to immigration controls at Ikang when visiting the mainland or Calabar, where they carry out most of their trade.

The villagers have voted in recent elections, both at a state and a local level. A polling booth is erected in each of the villages within the clan. The Clan Head maintained that neither he nor any of the villagers had voted in the 1961 plebiscite.

If there is any legal dispute in the village, either criminal or civil, it is dealt with first by the Clan Head. If he does not succeed in resolving the matter the dispute is referred to the Customary Court in Ikot Nakanda, Akpabuyo. This is the traditional method for dispute resolution. The police at Ikang or Ikot Nakanda will become involved in the more serious criminal matters.

During the civil war, many of the villagers left the village and moved to the mainland. Only a few remained. The area was supervised by Isaac Boro. As most of the population had deserted the village, there was little administration, and no taxes were paid by the remaining inhabitants of Akwa throughout the duration of the war. The population returned at the end of the war.

The Cameroonians first started to visit Akwa and the villages within the clan after the civil war ended. They never set up a permanent presence in the village nor any kind of administration. They would come and demand taxes to be paid to them. Some local villages paid because of the use of force, both verbal and physical.

These sporadic raids continued from the end of the civil war until 1993. They became increasingly regular and were frequently violent.

Security was strengthened in 1994 to prevent these attacks, and since that date the situation in the village has been peaceful. The Clan Head and the villagers have no recollection of any attacks since 1994 by Cameroonian gendarmes.

West Atabong (Atai Ema)

West Atabong is a substantial town located on the western bank of the Bakassi Sound. There are twelve villages within this clan area, and these are all located in close proximity to West Atabong in the south west of the Bakassi peninsula. These include Ebighi Edu, Esit Ufak, Ibuot Utan Ibekwe and Ine Ekaya (the locations of these villages are on Map 5 of the *Atlas* to Nigeria's *Counter-Memorial*).

The Clan Head is His Royal Highness Etubom Okon Etim Okon Asuquo III. He has been Clan Head since 1992, and a village head since 1985. He is 65 years old. West Atabong was founded by Obong Atai Ema Otong Otu Mesembe.

The current population of West Atabong is about 15,000, and the population of the whole clan is significantly larger. West Atabong is a substantial settlement. It is well-populated and busy. Aside from fishermen, there is a large market, a cinema, bars, barbers, food stalls, and many shops selling a large variety of goods.

The people currently pay their taxes in Naira to Bakassi LGA, and previously paid to Okobo LGA in Akwa Ibom State in Nigeria. The taxes include income tax and canoe licences.

A secondary school was set up in West Atabong in 1995. It was funded by the local Nigerian government. A primary school was established in 1994, also by the LGA. The teachers of both schools are paid by Nigeria.

Before then, there were community schools which were run by the churches. Isaac Boro also started a school in West Atabong during the civil war. This was run by Antera Andem Ema, who is still alive today. He stated that when Isaac Boro left, the community took over the running of the school. It was gradually abandoned. The children then used to go to Ikang or to Calabar for their education.

The Clan Head attended school in Calabar, where he stayed during term time and returned to West Atabong for the vacation.

There are a number of churches in West Atabong, but the principal one is the Methodist Church, which was set up by Methodist missionaries from Oron in Nigeria in the 1940s. The preachers all came from Nigeria and the Chief himself was baptised in 1942 in that church.

A clinic was established by Okobo LGA in 1993, and the nurses are paid by Nigeria. Before that time, sick villagers attended clinics in Ikang or Jamestown. From the 1930s onwards, a mobile health clinic,

arranged by the Nigerian local government, would regularly visit the area.

In addition to these, the local government has, since 1993, also built a revenue office, started a water project, and runs a generating plant for electricity.

The villagers now send and receive their post through Ikang. They have an address there and visit Ikang to collect and post mail.

The people do not have passports, but used to have them issued by Calabar to enable them to trade in Equatorial Guinea and Cameroon.

Nigerian elections have taken place a number of times in West Atabong. Polling booths with corrugated iron roofs were erected as far back as 1963. The Clan Head confirmed that the local population did not vote in the plebiscite.

The population also took part in the Nigerian census of 1953.

Petty criminal matters are dealt with by the Clan Head and in his absence, or if he fails to resolve the matter, it is referred to the police at Ikang or Jamestown. Other legal disputes are also dealt with primarily by the Clan Head, but may be referred to the Customary Court at Jamestown.

Isaac Boro was sent to West Atabong in December 1967. He was sent to protect the Efiks and to prevent the Biafran insurgents from coming into Calabar via Ikang. He positioned himself at the old village of Itung which is now Isaac Boro camp.

Village life here, on the south of Bakassi, was not greatly affected by the civil war, and the residents carried out their daily lives in peace.

The Cameroonians did not start to visit the village until after Isaac Boro left. However, they did not establish a permanent presence in the village itself and never stayed for more than two or three hours. They made intermittent raids on the villages. They plundered the property of the locals and extorted taxes from them. These taxes were never receipted.

This situation continued and deteriorated over the period from 1970 to 1994, and the local population became more desperate. The local people sent a series of reports to the Nigerian government, but nothing was done in this period.

In April 1994, the Nigerian army strengthened the security in West Atabong. Since that time there have not been any attacks on the villages by Cameroonian gendarmes. However they continue to attack the local fishermen when they are out to sea, or when they stray too far to the eastern side of the peninsula. The gendarmes will take the outboard engines from the fishermen, steal their catch and extort money. The brother of the Clan Head was killed by Cameroonian gendarmes while he was fishing on the high

seas.

East Atabong (Ekpot Abia)

The clan of East Atabong consists of nine villages strung along the south-eastern coast of the Bakassi Sound. The clan was founded by Obong Ekpot Abia Ntekim Antai Umo, an Efik, in the 17th century.

The Clan Head is His Royal Highness Okon Effiong Edem, who has been Clan Head since 1999, and a chief since 1975. He is currently 48 years old.

The clan area includes a number of villages around East Atabong, such as Ine Amamong, Ine Itung, Akwa Ine Ibekwe and Ine Okopedi.

The population of the main village, East Atabong, is about 5,000, while that of the clan is approximately 20,000, of whom some are Efik and some Effiat.

The people now pay their taxes in Naira to Bakassi LGA, but previously paid to Okobo LGA. These taxes include income tax and canoe licences. They have only ever paid to Cameroon when they have been forced to do so by gendarmes. These Cameroonian taxes are never receipted.

A primary school was set up in 1999. Prior to that there was a community school run by the local people. Some children attended the Isaac Boro school in West Atabong or the schools in Jamestown and Calabar. The Chief himself attended school in Calabar.

A clinic has recently been established in East Atabong by Bakassi LGA. Before then, the local people used to travel to Jamestown or rely on a mobile health clinic provided by the local Nigerian LGA. Bakassi LGA is introducing a water project and electricity generating project into the main village, East Atabong.

A Methodist Church was established in East Atabong in the 1940s and this was run from what is now Akwa Ibom State.

The villagers do not carry passports with them, and pass through Ikang and Jamestown without hindrance. They have also voted in past and recent elections, when a polling station has been set up in the village. They did not vote in the Plebiscite.

The Clan Head first tries to resolve any legal or petty criminal offences. In the event that he is unable so to do, it is referred to the customary court or the authorities in Jamestown.

There is a large amount of inter-relation between East Atabong and West Atabong, and the two clans often share the same facilities - in health, education and trade.

Isaac Boro stationed an officer, Rafael Eken, in East Atabong during the civil war to control that area. He managed to maintain a peaceful existence for the inhabitants and the village was hardly affected by the war.

The Cameroonians started to visit the villages after the departure of Rafael Eken in 1969, but they would not stay long, and they did not establish a permanent presence in the area.

Attacks and tax raids by the Cameroonian gendarmes continued throughout the period from 1970 to 1994, when the Nigerian army strengthened its presence in the village in order to protect the villagers from these attacks.

Since the Nigerian military strengthened security in the area, the village has been peaceful, although Cameroonian gendarmes still continue to attack Nigerian fishermen in the high seas.

Abana

The clan area of Abana includes all the villages situated on the western side of the Bakassi Peninsula, from Onosi in the south to Ine Ekoi in the north.

Abana was founded over 300 years ago by an Efik called Obong Abana Ntuen Umo. The current population of the clan is over 50,000, of which about 30,000 live in Abana itself. There are no Cameroonians living there.

The Clan Head of the area is His Royal Highness Etim Okon Edet. He is 39 years old, was born on 23 December 1960 and grew up in Abana.

The Clan Head explained that Abana was part and parcel of Old Calabar and the people owe their allegiance to the Obong of Calabar.

The villagers pay their income taxes in Naira to Cross River State and to the Chairman of Bakassi LGA. Previously they paid to Mbo LGA. They also pay their canoe licence fees to Bakassi LGA, and to Mbo LGA. They have never paid taxes to Cameroon.

Abana has a primary school which was set up by the Catholic Church in 1969. The Clan Head attended this school for two years before moving to a school in Calabar. The headmaster of the school was Mr Friday Ebukanson, and his class teacher was Chief Nyong Etim Inyang, who is now the village head of Adak Uko. A new primary school was established in 1992 by Akpabuyo LGA.

A clinic was also established in 1992 by Akpabuyo LGA. Prior to that date, the sick and injured attended the Nigerian mainland for treatment, such as St Joseph's Hospital in Ikot Ene, Akpabuyo, or at clinics in Oron.

Bakassi Local Government Area is situated at Abana, and has its offices there. Also the Nigerian authorities have built a magistrates court, a guest house, an electricity generator, a water project and a number of offices in the town. The Clan Head was concerned about the problem of erosion of the shore line.

The town contains an Ekpe shrine and there are now several churches. The main churches are the Catholic Church and the Apostolic Church which were established in the 1950s and were administered from Nigeria.

During the 1950s and 1960s, the population took part in Nigerian elections. Abana itself was not a ward at that time, but the local population would travel to Ikang, Eket or Oron to vote. In more recent elections polling stations have been established in the town. The clan chief stated that the village of Abana was part of Eket Division and therefore the villagers did not participate in the 1961 plebiscite.

In the event of crime or when legal disputes arise in the village, the Clan Head tries to resolve them by traditional means. If this attempt fails, criminals are taken to Ikang or Atimbo police stations in Nigeria, and legal disputes are referred to Ikot Nkanada or Jamestown Customary Courts.

During the civil war the village was occupied by Nigerian soldiers, and neither Cameroonian soldiers nor the insurgents were present. Isaac Boro stationed an officer in the village. This enabled the population to carry on their livelihood in peace.

When Isaac Boro left and moved to Jamestown, the Cameroonian soldiers saw that the village was empty. They began periodically to attack the Nigerian people, coming into the villages to try and extort money from them. They never stayed very long in the village. During these raids the local people would run away and hide in order to avoid having to pay anything.

These attacks continued from 1970 onwards, and in 1992 the gendarmes hoisted their flag over the village during one of these raids. It was removed by the Clan Head when he returned to the village.

The legal team were introduced to a man who had been blinded in one eye by the Cameroonian gendarmes. He was called Okon Asibong. Over 15 years ago, the gendarmes attacked him because he tried to prevent them from going into the Ekpe shrine and arresting the chiefs of the village. They beat him up, blinding him in one eye.

Since the Nigerian army strengthened security in 1994, the village has been peaceful and has not been subject to attacks by Cameroon. The gendarmes still carry out attacks on the fishermen who are fishing on the high seas, and steal their engines. This occurs particularly if the fishermen pass to the east of East Atabong towards Ine Odiong.

Ikang Clan

Ikang itself is not on Bakassi, but it is a major administrative centre. The area under the authority of the Clan Head of Ikang includes a significant number of villages on Bakassi. As a direct consequence, Ine Ikang, Ine Akpa Ikang and the surrounding fishing hamlets, owe allegiance to the Clan head based at Ikang on the mainland.

The villages on Bakassi which are in this clan are strung out along the banks of the Akpa Yafe, in the north-western part of the Peninsula.

Ine Akpa Ikang is the hub of the group of settlements. Ine Akpa Ikang used to be known as Ine German.

The assistant chief of the village, Akpan Utong Otu, stated that the total population of these villages is more than 2000. There are a number of tribes living in this village in addition to Efiks, including Ijaws, Andoni and Ibibios, who are all from Nigeria.

The assistant chief explained that all the villages in the group were permanent and that a number of the villagers have second homes and/or relations in Akpabuyo, at Ikang, Ikot Nakanda and Calabar.

The villagers pay their tax to Akpabuyo LGA at Ikang. They have never paid any taxes to Cameroonians. They also pay for canoe licences.

A primary school has been established in the village by Akpabuyo LGA. This has six teachers (paid by Akpabuyo LGA) and four classes, with a pupil enrolment of about 100. The Chief himself did not go to school.

There is no clinic in the village and the sick visit the clinic in Ikang if necessary. From time to time, nurses come from Archibong to carry out inoculations.

An Apostolic Church was established in 1993, and more recently a Christian Life Bible Church. The villagers still practice Ekpe.

The villagers have voted within Ikang ward in local elections as far back as the 1960s. They did not vote in the plebiscite.

Local disputes are settled by the local chief, or are referred to Ikang or Ikot Nakanda if there is no resolution.

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1 The Ekpe society is more fully described in Chapter 3 of this *Rejoinder*.

PART II

LAKE CHAD

CHAPTER 4

THE ASCERTAINMENT OF THE BOUNDARY WITHIN LAKE CHAD: THE ABSENCE OF A DELIMITATION

A. Preliminary Matters: the Basis of Nigeria's Claim

4.1 The Claim of Nigeria relates to the following villages in the Lake Chad region:

1 Aisa Kura

2 Ba shakka

3 Chika'a

4 Darak

5 Darak Gana

6 Doron Liman

7 Doron Mallam (Doro Kirta)

8 Dororoya

9 Fagge

10 Garin Wanzam

11 Gorea Changi

12 Gorea Gutun

13 Jribrillaram

14 Kafuram

15 Kamunna

16 Kanumburi

17 Karakaya

18 Kasuram Mareya

19 Katte Kime

20 Kirta Wulgo

21 Koloram

22 Logon Labi

23 Loko Naira

24 Mukdala

25 Murdas

26 Naga'a

27 Naira

28 Nimeri

29 Njia Buniba

30 Ramin Dorinna

31 Sabon Tumbu

32 Sagir

33 Sokotoram

4.2 As Nigeria had occasion to indicate in the *Counter-Memorial*, whilst some of the villages lie to the

West or South of the provisional demarcation of Lake Chad boundaries carried out by IGN, most of the villages lie to the East. It is a basic premise of the present Chapter that title to the named villages vests in Nigeria independently both of the present status of the demarcation as such, and of the incidence of the provisional alignment.

4.3 It is the position of Nigeria that the areas of Lake Chad to the north and east of the terminus of the land boundary at the mouth of the Ebeji (see Chapter 7, below) constitute territory the title to which is undetermined, subject to the existence of title to specific areas (see paragraph 4.1 above and Chapter 5 below) based upon historical consolidation of title and acquiescence.

4.4 It is accepted that, if an agreed delimitation had emerged from the work of the Lake Chad Basin Commission (LCBC), then various treaty instruments would have constituted data upon which the delimitation would have been based. However, as demonstrated in Chapter 16 of the *Counter-Memorial*, the work of the LCBC did not produce a result which was final and binding upon Nigeria. In the absence of a jointly agreed delimitation, there is no boundary in place which is opposable to Nigeria.

4.5 It is to be emphasised that Nigeria's is not the only opinion to the effect that there is no definitive delimitation in place. That was the opinion of the LCBC itself when it embarked on a procedure intended, subject to the *lex specialis* of the LCBC as an organisation, to result in a final delimitation. This is also the opinion of the majority of the riparian States expressed in their conduct outside the framework of the LCBC. Thus in the recent months Nigeria has agreed to bilateral talks concerning the boundary in Lake Chad with Chad and Niger respectively. Nothing could indicate the realities of the existing position with greater clarity.

4.6 The arguments advanced on behalf of Cameroon involve both ignoring the consensual nature of the LCBC, and asserting that the interpretation and application of the relevant treaty instruments, that is, the operations called for by the LCBC in mandating the IGN operation, only constituted a process of "demarcation" in relation to a pre-existing delimitation.

4.7 As a further preliminary, it is to be noted that Cameroon complains that Nigeria does not claim a boundary line but claims only specific villages (*Reply*, page 101, paragraph 3.03; and page 119, paragraph 3.33). In response, Nigeria contends that the claim has a high level of specificity and thus complies with the requirement that the Court should be informed of the precise nature of the claim: compare Article 38 of the Rules of Court in relation to the institution of proceedings by means of an application and Article 39 in relation to the bringing of proceedings on the basis of a special agreement.

4.8 In order to increase the degree of specificity, the Nigerian claim has been reformulated, and is set out in further detail in Chapter 5, below.

B. The Cameroonian Assertion that a Treaty-based Boundary Already Exists

4.9 A major element in the position of Cameroon is the contention that a treaty-based boundary already

exists (*Reply*, pages 101-135, paragraphs 3.01-3.66). The concomitant assertion is that Nigeria denies that there is a treaty-based delimitation in existence: see the *Reply*, page 101, paragraph 3.02.

4.10 It is necessary, first of all, to clarify the position of Nigeria. Nigeria accepts that the delimitation of the boundary within Lake Chad must involve appropriate reference to the treaty instruments of 1906, 1908, 1910 and 1931. A careful description of these instruments and the related transactions is to be found in Chapter 15 of the Nigerian *Counter-Memorial*, pp. 343-376.

4.11 At the same time the Nigerian position differs from that of Cameroon in the following particular respects:

First: There is a considerable difference between the acceptance by the parties of the evidential relevance of a series of treaty instruments and the question of the validity or applicability of one or more of the treaty instruments to particular areas or localities.

Second: The tasks presented to the contractors (IGN France International) by the Member States of the LCBC were in no way confined to the technical process involving the demarcation of a previously agreed and precisely described alignment. As a consequence, the process of boundary-making involved *both* a delimitation *and* a demarcation. In this context it is inaccurate to refer to an already existing "treaty-based" boundary.

Third: In any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon.

4.12 In insisting on the existence of a treaty-based title Cameroon relies upon the Thomson-Marchand Declaration, in the form of an Anglo-French Exchange of Letters of 9 January 1931 (*Reply*, pages 101-103, paragraphs 3.04-3.11). This reliance involves a number of solecisms. In the first place, the transactions of 1931 did not involve a final determination of the Anglo-French boundary but provided for delimitation by a boundary commission. In this respect the British Note (Annex NC-M 54) gives the picture:

> "2. His Majesty's Government agree that this Declaration is, as you point out, not the product of a boundary commission constituted for the purpose 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; that, none the less, the Declaration does in substance define the frontier; and that it is therefore desirable that the agreement embodied therein shall be confirmed by the two Governments in order that *the actual delimitation of the boundary may then be entrusted to a boundary commission,* appointed for the purpose in accordance with the provisions of Article 1 of the Mandate.

> 3. His Majesty's Government note that the French Government by their note under reference confirm, for their part, the agreement embodied in the Declaration; and I have the honour in reply to inform your Excellency hereby that His Majesty's Government similarly confirm this agreement.
>
> 4. His Majesty's Government in the United Kingdom accordingly concur with the French Government *that the actual delimitation can now be entrusted to the boundary commission envisaged for this purpose by Article 1 of the Mandate*." (emphasis added)

4.13 It is clear from the language of the Exchange of Notes that the arrangements were essentially procedural and programmatic. In other words, after the work had been carried out, there would be an agreement on the delimitation thus effected. This stage has not yet been reached in relation to Lake Chad and certain parts of the land frontier.

4.14 In light of the complex diplomatic history relating to Lake Chad, it is not surprising that the Members of the LCBC did not take the view that the Exchange of Notes of 1931 was in any way definitive. Thus, when in 1988 the LCBC drew up the *Technical Specifications for Boundary Demarcation and Survey in the Lake Chad* (Annex NC-M 279) the documents included the following:

> "(iii) Texts and documents dealing with border demarcation in the Lake Chad:
>
> (a) Convention between Great Britain and France respecting the delimitation of the frontier between British and French possessions east of the Niger (signed in London on 29 May 1906);
>
> (b) Convention confirming the boundary between Cameroon and French Congo (signed in Berlin on 18 April 1908);
>
> (c) Agreement between the United Kingdom and France on the delimitation of the border between the British and French possessions east of the Niger (signed in London on 19 February 1910);
>
> (d) Exchange of notes between His Majesty's Government in the United Kingdom and the French Government concerning the boundary between British and French Cameroons (done in London on 9 January 1931);
>
> (e) Minutes of the meeting of 2 March 1988 between Chad and Niger to determine their bi-points on the Lake Shore."

4.15 It is evident from this document that the Exchange of Notes of 1931 was not regarded by the LCBC either as exclusively relevant or as definitive.

4.16 In this context the text of the contract awarded to IGN France International is equally significant. The contract (Annex NC-M 281) provided (in material part) as follows:

> "Article 7: Documentation handed to the Contractor by the Lake Chad Basin Commission
>
> The Lake Chad Basin Commission shall supply the Contractor with the following documents:
>
> [.................]
>
> (iii) Texts and documents dealing with boundary demarcation in Lake Chad:
>
> (a) Agreement between Great Britain and Germany concerning the boundary between British and German territories from Yola to Lake Chad, signed in London on 29 May 1986 [*sic*];
>
> (b) Convention confirming the boundary between Cameroon and French Congo, signed in Berlin on 18 April 1908;
>
> (c) Agreement between the United Kingdom and France on demarcation of boundaries between British and French possessions East of the Niger, signed in London on 19 February 1910;
>
> (d) Exchange of notes between the Governments of His Majesty of the United Kingdom and France concerning the frontiers between French Cameroon and British Cameroon in London on 9 February [*sic*] 1931;
>
> (e) Minutes of the meeting of 2 March 1988 between Chad and Niger to determine the bi-point of the North Frontier of Chad-Niger in Lake Chad."

4.17 Once again, the instrument of 1931 was not treated either as exclusively relevant or as definitive. And it is necessary to recall that Cameroon, as a Member State of the LCBC, had accepted these provisions in the contract awarded to IGN.

4.18 This series of relevant documents is completed by reference to the *Report of the Marking-Out of the Boundaries in Lake Chad* adopted by the Heads of State of the Member States of the LCBC at N'Djamena on 14 February 1990 (Annex 5 to the *Additional Application*). The relevant passages are as follows (in the English translation provided by the Registry of the Court):

"We the undersigned,

experts from the Member States of the (CBLT/LCBC Cameroon, Niger, Nigeria and Chad), duly designated by our States to supervise and monitor the work on the demarcation of our boundaries in accordance with resolution No. 2 adopted by our Governments at their Sixth Summit Meeting held in N'Djamena on 28 and 29 October 1987,

on the one hand,

and IGN-France International (IGN-FI), holder of contract No. CBLT/MO2/88, approved on 26 May 1988, *for the delimitation of the boundaries* between the territories of Cameroon, Niger, Nigeria and Chad.

on the other,

have proceeded, from 13 June 1988 to 12 February 1990, *to effect the delimitation and marking-out of the said boundaries* and submit to the approval of the respective Governments the following description of the boundaries that we marked out.

Chapter I. General Considerations.

1.1 *Nature of the work*

The work consisted of a faithful reconstitution, on the ground, of the indications defining the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force.

1.2 *Course of the boundary*

The boundary line is drawn as a straight line from one beacon to another, and marked out on the ground by major beacons linked to each other by intermediate beacons, erected every 5 kilometres or so.

Seven major beacons have been set up at the points defined in the texts and maps in force.

Sixty-eight intermediate beacons have been strung out along the traverse for traverses I-II, I-VII, II-V, III-VI, and follow the curve of the geographical parallel for traverses I-IV and II-III...

Chapter VI. Cameroon-Nigeria Boundary in Lake Chad

This section of the boundary *has been reconstituted in accordance with the indications*

given in:

(1) the Exchange of Notes between His Majesty's Government in the United Kingdom and the French Government, respecting the boundary between the French and British zones of the Mandated Territory of the Cameroons, effected in London on 9 January 1931.

(2) the report of the meeting of experts relating to the determination of the co-ordinates of the mouth of the El-Beid (Ebedji), which was held on 15 and 16 September 1988 in N'Djamena, Chad. The co-ordinates of the mouth of the El-Beid (Ebedji) as defined by the experts were approved by the national Commissioners in their resolution No. 2 relating to the demarcation of the boundaries in Lake Chad, during the 36th Session of the Lake Chad Basin Commission meeting in Maroua, Cameroon, from 1 to 2 December 1988." (emphasis added)

4.19 As Nigeria pointed out in her *Counter-Memorial* it is significant that the first of the passages quoted above refers to "the delimitation of the boundaries" and also "the delimitation and marking-out of the said boundaries." Of particular significance is the definition of the "nature of the work". The work thus consisted of "a faithful reconstitution, on the ground, of the indications defining the course of the inter-State boundaries, as given in the agreements, treaties, exchanges of notes, conventions and maps currently in force." The different essays in delimitation contained in those agreements, treaties, exchanges of notes, conventions and maps were depicted on Maps 43-49 and 51-52 of the *Atlas* to Nigeria's *Counter-Memorial*, and are produced here (with relevant amendments) as Figs. 4.1 to 4.9. [4.1; 4.2; 4.3; 4.4; 4.5; 4.6; 4.7; 4.8; 4.9]

4.20 These documents lead to the following conclusions. The procedure did not, and in the circumstances, could not, constitute a process of demarcation alone. The procedure involved the use of the LCBC to effect the original purposes of the colonial treaty instruments. But those purposes had been to effect a final delimitation by means of a boundary commission. No such implementation had taken place in Lake Chad and the Member States of the LCBC were engaged in an attempt to resolve issues left open since 1931. In the light of the actual history, it is misleading to assert the existence of a delimitation, as opposed to a procedure for delimitation (see the British Note of 1931, above), based upon a treaty. In the event, even the procedure was not that envisaged by the Exchange of Notes of 1931, and no treaty-based boundary has existed on Lake Chad since 1931.

4.21 It is unfortunate that in her *Reply* Cameroon has avoided any comment upon the content of the three documents analysed above, that is to say, the explicit references to the relevant treaty instruments, which necessarily involved a process of precise interpretation and application of the treaties, a process connoting delimitation, that is to say, the ascertainment of the boundary line in principle.

4.22 However, somewhat inconsistently, Cameroon does refer to a document of the LCBC of 1984, the relevant passages of which are as follows:

> "5. Après discussions et échange de vues, la sous-commission a retenu comme documents de travail, les textes suivants traitant de la délimitation des frontières dans le Lac Tchad:
>
> "- Accord entre la Grande Bretagne et la France concernant les possessions britanniques et françaises à l'Est du Niger signé à Londres le 29 mai 1906;
>
> "- Convention pour préciser les frontières entre le Cameroun et le Congo français signée à Berlin le 18 avril 1908;
>
> "- Accord entre le Royaume Uni et la France sur la délimitation des frontières entre les possessions britannique et française à l'Est du Niger signé à Londres le 19 février 1910;
>
> "- Echange de notes entre les Gouvernements de sa Majesté du Royaume Uni et de la France concernant la frontière entre le Cameroun français et britannique fait à Londres le 9 janvier 1931."[1]

4.23 This document is quoted by Cameroon in its *Reply* (page 126, paragraph 3.57), although it contradicts the thesis that the 1931 Exchange of Notes is the only treaty instrument which is relevant. The document as a whole, produced by a sub-committee of experts of the LCBC in November 1984, is of interest because it prefigures the considerable legal and technical problems involved in the delimitation of boundaries in the Lake Chad region.

C. The Relevance of the Exchange of Notes of 1931 to the Land Boundary Between Lake Chad and the Sea

4.24 The position of Nigeria in relation to the land boundary has been stated in clear terms in the *Counter-Memorial* as follows:

> "Nigeria accepts in principle the course of the boundary as described by the instruments which are principally relevant to the delimitation of the boundary and relied on by Cameroon (referred to in paragraph 18.28 above). During the course of the Preliminary Objections phase of the present case, Nigeria had occasion to state that (it being understood of course that there was an admitted dispute as regards the Lake Chad and Bakassi areas which had implications for the boundary in those areas) the established boundary was accepted in principle by Nigeria, and that there was, so far as Nigeria was concerned, no dispute between Nigeria and Cameroon over the land boundary as such between Lake Chad and Bakassi. Notwithstanding the view expressed by the Court in paragraphs 85, 87 and 93 of its Judgment of 11 June 1998 on Nigeria's Preliminary Objections, that remains the position: there is in principle no dispute that the delimitation of the land boundary between Lake Chad and Bakassi is to be carried out on the basis of the instruments invoked by Cameroon."[2]

4.25 The position of Nigeria remains the same, and the matter is adverted to here only because reaffirmation may be called for in the light of the Cameroon argument that Nigeria accepts the treaty instruments concerning the land boundary, whilst rejecting the same instruments in relation to the sector of the boundary within Lake Chad (*Reply* page 103, paragraphs 3.10-3.11).

4.26 The inconsistency alleged by Cameroon, however, lacks substance. The issue of delimitation *qua* Lake Chad has been treated as a discrete enterprise by the Member States of the LCBC since 1983: see the *Counter-Memorial*, pp. 391-410. This position was shared by Cameroon, at least until 1994, when she commenced these proceedings.

4.27 There is a further consideration, which appertains to the substance of the matter. Apart from the operational separation of the Lake Chad question from the land boundary, the position in other respects does not involve any inconsistency. In the case of Lake Chad the issues outstanding since 1931, or 1906, or 1908, are substantial. They include the determination, *in relation to each other*, of two tripoints on the Lake. The 1931 Exchange of Notes did not leave a boundary in place within Lake Chad. There was no treaty-based boundary which could be either accepted or rejected. In relation to the land boundary, with the exception of certain significant local anomalies, the situation is substantially different (see Chapter 6 below).

D. The Decision of the Court in the Phase of Preliminary Objections

4.28 In the *Reply* the Government of Cameroon contends that the position of Nigeria concerning Lake Chad, as maintained in the *Counter-Memorial*, ignores the decision of the Court in the Preliminary Objections phase of these proceedings: see the *Reply*, p.101, paragraph 3.01 and p.119, paragraph 3.35.

4.29 This contention on the part of Cameroon is based upon a misunderstanding and can be disposed of briefly. In the part of the Judgment to which Cameroon refers, the relevant passages (I.C.J. Reports, 1998, pp. 307-309, paragraphs 70-72) conclude with the Court pointing out that the issues relating to the powers of the LCBC and the legal consequences of the pertinent proceedings of the LCBC were issues reserved for the Merits phase. In the words of the Court:

> "It is not for the Court at this stage to rule upon these opposing arguments. It need only note that Nigeria cannot assert both that the demarcation procedure initiated within the Lake Chad Commission was not completed and that, at the same time, that procedure rendered Cameroon's submissions moot. There is thus no reason of judicial propriety which should make the Court decline to rule on the merits of those submissions."

E. The Distinction Between Delimitation and Demarcation

4.30 It is necessary to look briefly at the classical distinction between delimitation and demarcation. Rousseau provides a clear description of the classical distinction in these works:

> "A la différence de la délimitation, acte *juridique* qui s'analyse comme une décision de principe sur la détermination des éléments qui constituent la frontiére, la démarcation désigne l'ensemble des opérations *matérielle* qui aboutiront á reporter sur le terrain le tracé de la frontiére établi par voie conventionnelle."[3] (emphasis in the original)

4.31 The reader of the documents produced by the LCBC in relation to the exercise in boundary-making on Lake Chad must inevitably recognise that the operation is not limited to demarcation alone.

4.32 A number of authors recognise that in the language of diplomacy the use of the terms delimitation and demarcation is sometimes confused:[4] The following observations by Brownlie are also relevant to the present case:

> "It is common practice to distinguish delimitation and demarcation of a boundary. The former denotes description of the alignment in a treaty or other written source, or by means of a line marked on a map or chart. Demarcation denotes the means by which the described alignment is marked, or evidenced, on the ground, by means of cairns of stones, concrete pillars, beacons of various kinds, cleared roads in scrub, and so on. The principle of the distinction is clear enough, but the usage of the draftsman of the particular international agreement or political spokesman may not be consistent. In fact the terms are sometimes used to mean the same thing.
>
> The distinction is logical and reflects the general experience. However, in certain circumstances the relations between delimitation and demarcation are significantly different. In the first place, a not uncommon procedure is for two governments to define their common boundary in principle and at the same time agree to establish a joint commission which will establish a more precise alignment by means of a detailed survey and demarcation. The work of the joint commission will then be embodied in an international agreement to which will be annexed an elaborate boundary description, usually in the form of a lengthy schedule of boundary pillars and, or, map sheets. In such an operation the process of ascertainment of the alignment, dependent upon survey work and agreement of the commissioners, merges with the procedure of demarcation. "Description" and the establishment of the alignment upon the terrain become a single phase."[5]

F. The Relevance of the Principle of *Uti Possidetis*

4.33 In the course of its argument in the *Reply*, Cameroon invokes the principle of *uti possidetis* (*Reply*, page 103, paragraph 3.09). The argument appears in the context of the contention by Cameroon that a treaty-based delimitation within Lake Chad has existed since the 1931 Exchange of Notes.

4.34 The Nigerian Government considers that the reference to *uti possidetis* is unhelpful because it is

question-begging. The purpose of *uti possidetis* is conservative, that is, to produce a transmission of the status quo. The question which divides the parties in this connection is the nature of the status quo which was continued after independence.

G. The Absence of a Final Delimitation Binding Nigeria

4.35 In response to the *Reply* of Cameroon, Nigeria maintains the position that the work of the LCBC relating to the delimitation and demarcation of the boundary within Lake Chad did not produce a result which was final and binding on Nigeria.

4.36 The Court will recall that during the Ninth Summit (the Minutes are at Annex NC-M 286) on 30-31 October 1996, the Heads of State and Governments adopted as Decision No. 2 (p. 11):

> "*Country Reports on the Adoption and Signing of Document on Boundary Demarcation*"
>
> Considering the item on adoption of the document on boundary demarcation;

Noting the sensitivity of the issue in view of recent developments;

> Considering the necessity for peace and tranquility in the sub-region;
>
> Noting the absence of the Heads of State of Cameroon and Nigeria,

The Heads of State decided:

- To defer discussions on the issue.

> - To mandate the President of the Summit to intervene either through consultations or meeting with the two Heads of State of Cameroon and Nigeria, to find an amicable solution to the problem in the spirit of African brotherhood."

4.37 The Minutes of The Forty-Fourth Session of the Lake Chad Basin Commission held at N'Djamena on 26-28 October 1996, which include the resolutions adopted, make no reference to the question of delimitation within Lake Chad (Annex NR 103)

4.38 In the same way no reference to the question of delimitation appears in the resolutions adopted by the Commission at its Forty-Fifth Session in 1998 (Annex NR 104) or its Forty- Sixth Session in 1999 (Annex NR 105).

4.39 At the Tenth Summit of the Heads of State and Government held on 28 July 2000 in N'Djamena no reference was made to the question of boundaries within the Lake Chad: see Annex NR 106. Thus the

position has not changed since the Ninth Summit in 1996.

4.40 Accordingly, Nigeria affirms the facts set forth and conclusions offered in Chapter 16 of the *Counter-Memorial*.

H. The Present Legal Position

4.41 The present legal position can be summarised as follows:

First: The tasks pursued by the LCBC involved both delimitation and demarcation.

Second: The treaty instruments of the colonial period had not created a final delimitation within Lake Chad.

Third: The work of the LCBC did not produce an outcome which was legally binding on Nigeria.

Fourth: In any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon.

4.42 In the next chapter of the present *Rejoinder* the issues of the historical consolidation of title and the acquiescence of Cameroon will be examined.

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1 Annex MC 271, pp. 2239-2241 "After discussions and exchange of views, the sub-commission retained as working documents the following texts dealing with the delimitation of boundaries in Lake Chad:

- the Agreement between Great Britain and France concerning British and French possessions to the East of the Niger signed in London on 29 May 1906;

- Agreement to define the boundaries between Cameroon and the French Congo signed in Berlin on 18 April 1908;

- Agreement between the United Kingdom and France on the delimitation of the boundaries between the British and French possessions East of the Niger, signed in London on 19 February 1910;

- Exchange of notes between the governments of His Majesty in the United Kingdom and France concerning the boundary between the French and British Cameroons effected in London on 9 January 1931."

2 *Counter-Memorial*, p. 500, para. 18.54 (footnotes omitted).

3 Charles Rousseau, *Droit International Public*, Vol. III, Paris 1977, p. 269, para. 184: "By contrast with delimitation, a *legal* act which is, on analysis, a decision in principle as to the determination of the elements which constitute the boundary, demarcation means the collectivity of *material* operations which lead to the transfer onto the terrain of the boundary line established by treaty or agreement".

4 See Rousseau *loc. cit. supra*.

5 Brownlie, *African Boundaries*, London, 1979, p. 4.

PART II

LAKE CHAD

CHAPTER 5

THE BASES OF NIGERIA'S TITLE TO DARAK AND OTHER LAKE CHAD VILLAGES

A. Introduction: The Bases of the Nigerian Title

5.1 The three bases of the Nigerian claim to title over Darak and the associated villages are as follows:

(1) long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title;

(2) effective administration of the area by Nigeria, acting as sovereign, and an absence of protest; and

(3) manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigerian sovereignty over Darak and the associated Lake Chad villages.

5.2 These three bases of claim apply both individually and jointly. In the view of the Nigerian Government each of the bases of title would be sufficient on its own.

5.3 The villages in Lake Chad which are in dispute between Nigeria and Cameroon are as follows:

1. Aisa Kura
2. Ba shakka
3. Chika'a
4. Darak
5. Darak Gana
6. Doron Liman
7. Doron Mallam (Doro Kirta)
8. Dororoya
9. Fagge

10. Garin Wanzam

11. Gorea Changi

12. Gorea Gutun

13. Jribrillaram

14. Kafuram

15. Kamunna

16. Kanumburi

17. Karakaya

18. Kasuram Mareya

19. Katti Kime

20. Kirta Wulgo

21. Koloram

22. Logon Labi

23. Loko Naira

24. Mukdala

25. Murdas

26. Naga'a

27. Naira

28. Nimeri

29. Njia Buniba

30. Ramin Dorinna

31. Sabon Tumbu

32. Sagir

33. Sokotoram.

5.4 It is to be noted that the villages of Wulgo and Dambaure are not in dispute. Map 42 of the *Atlas* to the Nigerian *Counter-Memorial* indicates thirty-five place names. This map, which is illustrative in purpose, includes Dambaure and Wulgo (Numbers 20 and 21).

5.5 The thirty-three villages listed in paragraph 3 above have various characteristics in common, have a very similar economy, and form part of the Ngala Local Government Area ("LGA") within Borno State, which comprises a part of the Federal Republic of Nigeria. The administrative centres for these villages are Ngala, Gamboru, Wulgo and Darak. The locations of these and other Nigerian administrative centres in the Lake Chad area of Borno State are depicted on Fig. 5.1.

5.6 Whilst some of these villages (including Sagir) lie to the West of the provisional delimitation of Lake Chad boundaries carried out by IGN, most of the villages lie to the East. The legal relevance of the IGN delimitation has been assessed in the previous Chapter, and it is a basic premise of the present Chapter that title to the named villages vests in Nigeria independently both of the present status of the delimitation as such, and of the incidence of the provisional alignment.

5.7 The activities of the fishermen and farmers who founded these communities were open and peaceful, and the process of administration by Ngala Local Government Area, which followed the process of settlement, was equally open and peaceful.

5.8 At no stage prior to the present proceedings before the Court did the Government of Cameroon make any reservation or protest. This is the more remarkable when it is recalled that representatives of both the Cameroonian and the Nigerian Government have been meeting on a regular basis in the forum of the Lake Chad Basin Commission since its creation in 1964. Matters of joint concern such as the joint military patrols of the lake and lake bed were regularly discussed. There is however no record in the LCBC Minutes of Meetings of any *discussion* of alleged occupation by Nigeria of Cameroon villages, let alone *protest* by Cameroon. The general issue of acquiescence on the part of Cameroon is addressed further below at paragraphs 5.115 *et seq.*

5.9 Cameroon has complained that Nigeria does not propose a boundary line (*Reply* paragraphs 3.03 and 3.33). Although Nigeria believes that the international boundaries within Lake Chad are yet to be determined (see paragraphs 4.35-4.40 above), in order to increase the degree of specificity, Nigeria has reformulated its claim, and this is depicted on Figs. 5.2 and 5.3. This claim reflects the administrative patterns of the Nigerian Local Governments Areas of Ngala and Marte. Ngala Local Government Area has administrative authority over the vast majority of the villages in dispute (see further below, paragraphs 5.16-5.82), and includes the administrative centres of Wulgo and Darak. The easternmost limit of Ngala LGA is thus claimed by Nigeria as its boundary with Cameroon, without prejudice to the other international boundaries within Lake Chad which Nigeria considers are still to be determined.

B. Historical Consolidation of Title: the Legal Concept

5.10 The elements of the legal concept of historical consolidation of title have been elaborated upon earlier in Chapter 10, paragraphs 10.21-10.24, of the Nigerian *Counter-Memorial*, and also in the present *Rejoinder* Chapter

3, paragraphs 3.42-3.51.

C. The Specific Components of the Historic Consolidation of Nigerian Title

(i) The Attitude and Affiliations of the Population of Darak and the other Lake Chad Villages

5.11 The legal relevance of the attitude and affiliations of the population in the territory in question has been canvassed in Chapter 17 of the *Counter-Memorial*, paragraphs 17.17-17.19. The inhabitants of these villages regard themselves as Nigerians and are in fact Nigerians by nationality. The contemporaneous notes which recorded interviews with the *bulamas* (headmen) of the villages in May 1998 show the significant sense of allegiance to Nigeria by the people of the area. These notes are included as an Appendix to Chapter 17 of the *Counter-Memorial*.

(ii) Historical Associations

5.12 The historical associations of the Lake Chad region have been described in the *Counter-Memorial*, pages 420 to 421, paragraphs 17.20-17.23. The Government of Nigeria reaffirms the importance and the reality of the historical associations and, in particular, the preservation of the system of traditional rulers and the significant role of the Shehu of Bornu.

(iii) The Exercise of Authority by Traditional Rulers

5.13 The exercise of authority by the traditional rulers remains an important element in the public order system of modern Nigeria. The system applicable in the Lake Chad villages appertaining to Nigeria has been described in the *Counter-Memorial*, pages 421-22, paragraphs 17.24-17.29. The Shehu of Borno and the traditional rulers constitute a part of the administration of the villages and the collection of taxes.

(iv) The Settlement of Nationals of the Claimant State

5.14 As Nigeria has stated in the *Counter-Memorial*, in the formulation of title by a process of historical consolidation there can be no doubt that the existence of long-established settlements of the nationals of the claimant state plays a significant role. The settlement of nationals has been treated as relevant in the jurisprudence of international tribunals. The relevant material is set forth in the *Counter-Memorial*, pages 234-37, paragraphs 10.50-10.55.

5.15 The villages claimed by Nigeria are inhabited by Nigerians, who are in the majority in all of the villages except one (in which the majority are Malians, and these people live happily under Nigerian administration). In none of them is there a significant Cameroonian population.

(v) Acts of Administration by the Federal Government of Nigeria and by Borno State

(a) Introduction

5.16 As Nigeria has pointed out in her *Counter-Memorial*, a major component in the process of historical consolidation is the evidence of peaceful possession and administration, consisting of acts involving "a

manifestation of sovereignty" in respect of the Lake Chad villages (*cf. the Minquiers and Ecrehos* case,[1]) or "acts of such a character that they can be considered as involving a manifestation of State authority" in respect of the villages.[2]

5.17 For the greater convenience of the Court the Government of Nigeria has decided to provide a consolidated presentation of the evidence of Nigerian state activities, combining the materials contained in the *Counter-Memorial* with evidence which has become available since the preparation of that pleading.

5.18 The evidence of administration and peaceful state activity by Nigeria in the disputed villages will now be reviewed.

(b) The Maintenance of Public Order

5.19 The contemporaneous notes (in the Appendix to Chapter 17 of the *Counter-Memorial*) show that the police station in Darak was established by the Federal Government. This was in 1981: see Annex NR 107 which also includes details of Nigerian police outposts at Wulgo, Chika'a, Kirta Wulgo and Doro Kirta (which is also known as Doron Mallam).

5.20 There is also a mobile police unit stationed at Darak. The unit can be seen in its general role of maintaining public order, for example in 1987-1988 (NR 108). In addition to this, there is an army unit stationed in Darak. There is also a police station at Kirta Wulgo.

5.21 There have, in the past, been a number of occasions when armed bandits from other countries, in particular from Chad, have harassed the Nigerian fishermen and villagers, extorting money and, in one or two cases, committing more serious acts of atrocity. It is usually the case that the small police station on Darak is under-equipped to deal with such a serious situation. Therefore the Chairman of Ngala LGA is contacted and he requests assistance from the Governor of Borno State. The Governor mobilises units from the 21st Armoured Brigade of the Nigerian Army, which is based at Maiduguri. These are sent to the area to act as peacekeepers, and protect the villagers and fishermen from further attack or harassment.

5.22 The Divisional Police Headquarters is at Gamboru in Ngala Local Government Area. There is ample documentation of the police administration based upon the Gamboru-Ngala Division. This includes lists of police stations and the details of postings to Nigerian villages including Kirta Wulgo, Darak, Doro Kirta, Chika'a and Katti Kime, in the period 1987 to 2000 (NR 109). In addition there are crime diaries from Ngala Police Station for the period 1987 to 1988 which refer to the following villages: Jribrillaram, Kasuram Mareya, Doro Kirta, Darak, Katti Kime and Kirta Wulgo (NR 110). The locations of these villages and those in the following paragraph are shown in Fig. 5.2.

5.23 Police reports are available for the period 1987 to 1991 (NR 111). These reports derive from Ngala Divisional Headquarters, from Doron Mallam (Doro Kirta) and from Darak police station. In a report, for instance, from Darak police station, dated 2 February 1989, reference is made to a crime reported by a resident of the village of Ramin Dorinna.

5.24 The Police are also involved in the monitoring of the "dumba" fishing method in association with the Federal Department of Fisheries, Borno State (Annex NR 112).

(c) Taxation

5.25 The Lake Chad villages all pay community tax (*Haraji*) to Ngala Local Government Area in Borno State. An extract from the Cash Book recording receipts for 1991 is at Annex NC-M 288. Examples of Community Tax Receipts for 1991 are at Annex NC-M 289. These records relate to the following villages:

Chika'a

Darak

Dororoya

Fagge

Garin Wanzam

Gorea Gutun

Kafuram

Katti Kime

Kirta Wulgo

Mukdala

Murdas

Naga'a

Njia Buniba

Ramin Dorinna

Sagir

5.26 *Haraji* Cash Books in respect of Wulgo village unit, recording receipts for 1989 and 1990 are at Annexes NR 113 and NR 114. These records relate to the following villages: Chika'a, Darak, Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Kafuram, Kamunna, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Njia Buniba, Ramin Dorinna, Sagir and Sokotoram.

5.27 Cattle tax (*Jangali*) is also paid by the residents of the villages to the Borno State authorities: see the extract from the *Jangali* cash book for 1990 (NR 115), which relates to Naga'a, Katti Kime and Darak. Reference to the payment of cattle tax is also made in the contemporaneous notes appended to Chapter 17 in the *Counter-Memorial*.

5.28 The residents also pay an education levy. Extracts from the Education Cash Book and Receipts for 1991 are at Annex NC-M 290. They relate to the following villages:

Chika'a

Darak

Kafuram

Kasuram Mareya

Katti Kime

Kirta Wulgo

Naira

5.29 Extracts from the Wulgo Village Unit Education Cash Books for 1988 and 1989 are at Annexes NR 116 and NR 117. These relate to the following villages: Chika'a, Darak, Darak Gana, Dororoya, Fagge, Garin Wanzam, Gorea Gutun, Kafuram, Kamunna, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Naira, Njia Buniba, Ramin Dorinna, Sagir and Sokotoram.

5.30 The residents of these villages originally paid all these various taxes to Dikwa Native Authority in the 1960s and 1970s: since the 1980s they have paid them to Ngala Local Government Area. Further examples of individual tax receipts for community taxes (*Haraji*) and for the education levy are at Annex NR 118.

5.31 The Wulgo Village Unit *Haraji* Tax Assessment Register for the tax year 1973-4 includes Chika'a and Naga'a (NR 119). The Community Tax Assessment Register for 1980-1981 includes Katti Kime and Naga'a (NR 120). Community Tax Assessment Registers are also available for the years 1982-3 and 1984-5. Extracts of these are at Annexes NR 121 and NR 122 and these include the villages of Chika'a, Darak, Doro Kirta (Doron Mallam), Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Kafuram, Katti Kime, Kirta Wulgo, Mukdala, Murdas, Naga'a, Njia Buniba, Ramin Dorinna and Sagir.

5.32 In 1975 the District Head of Ngala wrote to the Village Head of Wulgo in the following terms:

> 'Greetings. I write to inform you that nomadic Fulanis are beginning to troop into your territory. They are currently in the region of Lake Chad around the area of Katti Kime and Kirta Wulgo.
>
> In view of the above therefore I herewith send two of my body guards who should join your people in approaching their people to collect poll tax.' (Annex NR 123)

5.33 There is an additional feature of the situation which is of considerable importance. At no time have the residents of these villages paid taxes of any kind to the authorities in Cameroon. Indeed, it is a matter of record that the residents refused to pay taxes when Cameroon officials appeared in their villages - see Appendix to Chapter 17 of the *Counter-Memorial*.

(d) Voluntary associations

5.34 The fishermen of the villages in the Lake Chad area form themselves into voluntary associations in order to improve the livelihood of the members. These associations have applied for loans and other assistance, on behalf of the fishermen, to Ngala LGA. Receipts are given for payments in respect of these loans (Annex NR 124).

(e) House Assessment

5.35 The purchase of a local government guest house at Darak was preceded by a process of assessment by a committee organised (in 1995) by the Ngala Local Government Council of Borno State. The relevant document is at Annex NC-M 291.

(f) Census Taking

5.36 The Nigerian National Census held a census in 1973 and 1991. Darak and the other villages in the area were enumerated as part of Wulgo Enumeration Area.

5.37 Documents available relate to claims for travel expenses in December 1973 from the Village Head at Wulgo for transporting the enumerator and supervisors from Gamboru to villages in the Lake Chad Area (including Chika'a) on enumeration days: see Annex NR 125. The claim is addressed to the Divisional Census Officer, through the Assistant Divisional Census Officer, Gamboru-Ngala.

5.38 The results of the 1991 census are at Annex NC-M 292. These include returns for the following villages:

Chika'a

Darak

Darak Gana

Dororoya

Garin Wanzam

Jribrillaram

Kafuram

Kamunna

Katti Kime

Kirta Wulgo

Murdas

Naga'a

Nimeri

Ramin Dorinna

Sabon Tumbu

(g) The Administration of Justice

5.39 The villages form a part of the Nigerian system of the administration of justice. Cases arising in the Nigerian villages are heard in the Wulgo Area Court, with the possibility of appeal to the Ngala Upper Area Court. Records available relate to the period 1981 to 1982: see Annexes NR 126 to NR 129. The parties involved in the recorded cases were residents of Darak, Kirta Wulgo and Na'aga.

5.40 A typical record reads as follows:

'KALTUME MOHAMMED OF DARRACK : PLAINTIFF

VS

MUSA A. ADAMU OF DARRACK - DEFENDANT

CASE: DIVORCE

I, Judge Abdullahi Abaya, after having listened to both plaintiff and defendant in the case of wife-beating to the point of drawing blood consistently for the past two years, conclude that their stay together is no longer feasible.

I therefore pronounce the marriage dissolved. Furthermore, the Plaintiff should safeguard her 3 months old pregnancy as a condition. Any of the parties can appeal if it is not satisfied, at Ngala Upper Area Court.'

(Wulgo Area Court, 11 November 1981).

(h) Public Education

5.41 The Ngala Local Government Authority has established primary schools in Chika'a, Naga'a, Darak, and Kirta Wulgo. The residents of Kafuram attend the school in Kirta Wulgo.

5.42 In August 1976 the Education Secretary of Ngala received the following letter from the District Head of Ngala:

'Greetings. I take liberty in drawing your attention on the need for a conclusion of new classes

within the lake area.

There is need to construct three classes in areas such as Kirta Wulgo, Chika ...

I believe anytime you are ready the ward head of Wulgo (Lawan) will be pleased to show you a location.

I hope you understand.' (Annex NR 130).

5.43 In November 1992, there was correspondence between the Headmaster of Naga'a Primary School and the Local Education Authority regarding the building of two classrooms to accommodate pupils, and the wardhead of Naga'a was prompted to build a temporary shelter to achieve this (Annex NR 131).

(i) Provision of Public Health

5.44 The Ngala Local Government Authority and Borno State have created a system of health care in the Lake Chad villages involving on-site provision of care and various forms of preventive medicine. Naga'a and Kirta Wulgo have their own clinics.

5.45 Mobile clinics are provided for the villages of Chika'a and Darak. The residents of Kafuram attend the clinic at Kirta Wulgo. The Ministry of Health Mobile Clinic reports monthly to the Director-General, Ministry of Health, Maiduguri. Thus in a letter dated 13 July 1988 it is stated that "the mobile clinic left Maiduguri on 4 June 1988 to Ngala Local Government Area to the following villages: Doro Kirta, Kirta Wulgo ... Darak". The numbers of people with measles and whooping cough in Darak are listed (Annex NC-M 295).

5.46 The Primary Health Care Department of Ngala Local Government Area provides a system of disease control and preventive medicine in the villages. The Health Post at Darak was the site of one of several dispensaries provided by the Ngala LGA (Annexes NC-M 296 and NC-M 297).

5.47 Reports of outbreaks of measles and whooping cough at Darak were responded to by appropriate action on the part of the authorities in Maiduguri (Annexes NC-M 298 to NC-M 302). Requisitions were duly made for the provision of drugs and health assistance. In November 1994 a situation report referred to an outbreak of cholera in the villages of Darak, Chika'a, Naga'a and Sagir (Annex NC-M 303).

5.48 Cases of vomiting and diarrhoea in the villages were treated as a result of action by the Disease Control Unit of Ngala, L.G.A (Annex NC-M 304). A detailed report, dated 22 November 1994, relates to the situation in Chika'a, Doron Liman, Naga'a, and Darak (Annex NC-M 305). Later reports concern the situation in Chika'a, Dororoya, Naga'a, and Darak (Annexes NC-M 306 and NC-M 307).

5.49 The Public Health Department of Ngala LGA also operates a programme for the prevention of epidemic disease, in conjunction with the Ministry of Health of Borno State (Annexes NC-M 308 to NC-M 310). The programme includes an ongoing vaccination exercise (Annex NC-M 311) and a programme of surveillance of infectious diseases.

5.50 There is a letter dated 24 November 1992 from Kirta Wulgo health clinic to the co-ordinator of the Health

Care Department of Ngala Local Government concerning flood disasters. The manuscript note on the following page says "*the action on pipe line is for those in the Darrack areas for assistance*" (Annex NC-M 313).

5.51 A letter dated 27 November 1992 from the Ngala Local Government Primary Health Department is headed "Situation Report on Flood Disaster in Darrak". It appears that there was an outbreak of disease after a flood in Darak. In fact, 15 people were injured when running from fast flowing water (Annex NC-M 314).

5.52 There is a letter dated 3 August 1993 from Katti Kime Primary Health Care Department of Ngala Local Government authority to the co-ordinator for health care reporting on the outbreak of measles. It lists the names and ages of children with measles in Katti Kime (Annex NC-M 315).

5.53 A letter from the Health Office in Gamboru to the Environmental Health Officer in Maiduguri dated 31 May 1996 reports on an outbreak of gastro-enteritis in Darak and comments on the actions taken by the Local Council (Annex NR 132). A Disease Control Unit was set up in Darak to cope with the outbreak (Annex NC-M 312).

5.54 There is a letter dated 25 August 1996 from Darrak Village unit to the District Head of Ngala L.G.A. concerning the outbreak of cholera in Chika'a and Naga'a and requesting help. This is followed by hand-written correspondence within the Local Government offices (Annex NC-M 316).

(j) Environmental Sanitation

5.55 The Medical and Health Department of the Ngala L.G.A. has since 1977 (at least) been concerned with environmental sanitation in the villages (Annex NC-M 317). In particular, measures have been taken to introduce water sanitation and treatment in Darak (Annex NC-M 318).

(k) General Powers of Administration

5.56 A letter dated 1 July 1996 from the Department of State Services of Ngala Local Government Authority to the Chairman states:

> "Although the police and this service have jointly intensified efforts to frustrate and or prevent further use of the 'Dumba' on the shores of Lake Chad which fall within Nigerian territorial waters, the situation is still pregnant with confusion ....
>
> The Police had on 18th June 1996 invited and charged the duo of the Hausa community leader in Darrak, one Mohammed DAN LANSU and the Secretary General of the so called faceless Darrak multi-purpose co-operative society, Ali MOHAMMED, in its continued efforts to stop completely the use of dumba of the shores of Lake Chad" (Annex NC-M 319).

5.57 A letter dated 2 October 1996 from the Administration Department to the Chairman of the Local Government Authority states:

> "I wish to write and refer to the above subject matter [Request for Transport and Fuel on Security Purposes at Lake Chad] and request for transport and fuel to enable the Local Government Security Secretary, the village head of Darrak, the Council representing Wulgo/Tuno Kalia and a member of the SSS on a fact finding mission on [a] matter relating to the security of the Local

> Government." (Annex NC-M 320)

5.58 A letter dated 7 March 1997 from Borno State to Ngala Local Government Council states:

> "Report on the Lawan of Darrak.
>
> I have been directed to request you to inform the village head of Darrak to see the Military Administrator through the Director General, Council Affairs ... on Monday 10th March 1997."

There is a letter dated 7 March 1997 from Ngala Local Government to the village head of Darak requesting the same (Annex NC-M 321).

5.59 There is written correspondence within Ngala Local Council concerning the demolishing of the dumba fish traps by the Nigerian army. This was done in the Darak area and the army stayed in Darak during the operation (Annex NC-M 322).

5.60 A letter dated 18 September 1996 from Ngala Local Government Council to the district head of Ngala states:

> "I am directed to write ... and inform you of the earlier decision of the Security Committee Members to remove Bulama Dan Lantso, as the Bulama of Darrak" (Annex NC-M 323).

(l) The Appointment of Village and Ward Headmen

5.61 The appointment of the village headmen (*bulama*) was traditionally within the remit of authority of the Shehu of Borno. More recently, although it remains part of the function of the Shehu or Lawan, the Governor of Borno State has to give final approval, and he can appoint and dismiss a bulama as appropriate (see Annex NC-M 294). Salaries of headmen are paid by the relevant local government authority.

5.62 It was the responsibility of the District Head of Ngala to appoint ward heads in the Lake Chad region. Thus in a letter dated 29 April 1969 the District Head of Ngala instructs the Village Head of Wulgo as follows:

> "This is to inform you that you should go down to Kirta Wulgo and install Bulama Malum Fannami as the Ward Head of Kirta Wulgo.
>
> You should also inform the people of the area that Bulama's domain will include Ndigiri, Yerwa Kura, Kusuma, Sigal and also all the towns in the lake." (Annex NR 133).

5.63 In a letter dated 15 May 1969 the District Head of Ngala instructs the same Village Head "to travel to Chika town and install Bulama Kachalla as the ward head of Chika" (Annex NR 134).

5.64 In correspondence from February-March 1991, there is a letter from the Dikwa Emirate Council to the District Head of Ngala requesting nominations for Village Heads of new village units, including Darak. The reply lists the *Curricula Vitae* of the suitable candidates and a letter of appointment and invitation to the appointee to attend the turbaning ceremony was sent (Annex NR 135).

(m) Registration of Electors

5.65 A substantial proportion of the population in the Lake Chad villages are registered as electors for the purposes of Nigerian legislation. There is no evidence that the inhabitants vote in Cameroonian elections.

5.66 In the Nigerian Local Government Elections in both 1988 and 1989, Darak and Wulgo constituted an electoral ward. Bukar Torobe was elected as councillor to represent the ward in the Ngala Local Government Council. His Certificate of Election is at Annex NC-M 328.

5.67 In the 1993 Local Government Election, Mohammed Lawan was elected as councillor for the ward. In the 1996 and 1997 Local Government Elections, Jidda Khurso Mohammed was elected as councillor. His Certificate of Election is also at NC-M 328.

5.68 In the 1997/98 Local Government Elections, Mohammed Zainami was elected councillor. For the 1998 election, Darak was made a separate electoral ward. Mohammed Zainami was re-elected as councillor.

(n) Licensing and Regulation of Fishing

5.69 The contemporaneous notes reveal that Ngala LGA licenses fishing in the area, including the villages. Both the Borno State Government and Ngala LGA provide fishing nets and equipment. In this context Ngala LGA supervises and regulates the fisheries.

5.70 The Federal Department of Fisheries, Borno State, has carried out a number of activities in respect of the fishing on the Lake, which include the provision of development assistance to Darak fishermen. It has set up an outpost on Darak and in 1982 provided 10 ton cold-room capacity to supply ice blocks to the fishermen at Darak. A summary report of these activities is at Annex NR 136.

5.71 In December 1992, the Nigerian Institute for Freshwater Fisheries Research, a department of the Federal Ministry of Science and Technology approved the establishment of semi-fishing ponds for the production of fresh fish by the Darrak Multi-Purpose Co-operative Society (Annex NR 137). The project involved the bulamas of Darak, Darak Gana, Dororoya, Ramin Dorinna, Garin Wanzam, Chika, Naga'a, Doro Kirta, Kafuram and other Lake Chad villages. In October 1993, the same Institute also approved the use of cross-water fishing traps in Lake Chad by the same Society (Annex NR 138).

5.72 In co-operation with the police (see above paragraph 5.24), measures are taken by Ngala LGA to deter and terminate the use of inappropriate fishing methods and, in particular, the illegal use of dumba (fishing barriers). As part of this policy Ngala LGA has created (in 1995) the Dumba Demolishing Committee (Annex NC-M 324). These measures provoked legal action, or at least the threat of legal proceedings, by the Darrak Co-operative Multipurpose Society Ltd (Annex NC-M 325). It is to be noted that the proceedings envisaged would have been in the Nigerian legal system.

5.73 In January 1996 the same legal representatives petitioned the then Military Governor of Borno State on the same subject (Annex NC-M 326). In June 1996, the Governor's Office wrote to the Chairman of Ngala Local Government Council requesting that action be taken to restrain those individuals still using the "dumba" method of fishing (Annex NR 139).

(o) The Regulation of Trading

5.74 The Ngala local authority has the power to regulate trading when it deems this to be necessary. Thus in a letter dated 14 May 1992 regarding Darak Patent Vendors, Ngala Local Government Council stated "that the Local Government have a notice of patent vendor's serving in Darak. They are totaling to about Twelve, and we had directed the early this year to go and get their State Licence and they were on the process" (Annex NC-M 327).

(p) Distribution of Disaster Relief

5.75 In 1982 and 1983 disastrous bush fires afflicted Chika'a. In 1982 the Village Head turned to Ngala LGA requesting help (Annex NR 140), and in 1983 the Bulama turned to the Lawan (Traditional Ruler) of Wulgo for assistance (Annex NR 141). The 1983 fire destroyed thirty houses.

5.76 The village heads of Katti Kime and Naga'a similarly wrote to Ngala LGA requesting help after fire disasters in July 1983 and March 1984 respectively (Annexes NR 142 and NR 143).

(q) Immigration

5.77 The Nigerian Immigration Service has been routinely patrolling and keeping surveillance on Darak and the Lake Chad villages since the late 1960s. In 1973, an immigration control post was established at Gamboru, and from here the Darak area was monitored (Annex NR 144).

5.78 A full control post was established at Darak in October 1994, with an initial staff strength of ten officers. Documents relating to the administration of Darak out-post in 1994, both when it was still a patrol post and after it had been established as a control post, are at Annex NR 145.

(r) Development Administration

5.79 The Ngala Local Government Authority of Borno State has either provided assistance to the villages or has informed the village communities that assistance is available, for example, for the construction of wells.

5.80 Development assistance has been provided to the following villages:

> Naga'a - a school, a clinic, a cement well, and provision of fertilizer and pesticides.
>
> Gorea Changi - construction of a well.
>
> Darak - mobile services, including a clinic, provision of drugs, provision of fertilizer and pesticides, construction of a well, provision of nets, maintenance of navigability of waterway to Katti Kime, assistance in times of flood damage.
>
> Nimeri - provision of fishing nets and fishing equipment.
>
> Kirta Wulgo - a clinic and a school.

5.81 In 1997 the Ngala Local Government made a grant for the improvement of the road leading to the Katti Kime/ Darak area (Annex NC-M 293).

(vi) The General Pattern of Claims to the Villages

5.82 In the previous section the evidence of the exercise of sovereignty, and the peaceful exercise of government functions, by Ngala L.G.A. on behalf of Nigeria, has been examined. In due course it will be necessary to analyse the evidence presented on behalf of Cameroon. However, as a question of the logical order of things, it is useful to undertake an analytical survey of the pattern of claims and also the evidential picture in respect of the individual villages claimed by Nigeria.

(a) Villages Claimed by Nigeria Alone

5.83 The first category of villages to emerge consists of those villages claimed by Nigeria but not the subject of a claim in the pleadings of Cameroon. There are five villages in this category, as follows:

Doron Mallam

Jribrillaram

Koloram

Kirta Wulgo

Sabon Tumbu

5.84 It is reasonable to conclude that these villages are not claimed by Cameroon. Sagir is admitted to be Nigerian in the *Reply*, paragraph 3.87. However, Sagir is included in the locations claimed in pages 147 to 153 of the *Reply*.

(b) Villages Claimed by Cameroon in Respect of Which Evidence of Alleged State Activity is Presented

5.85 The second category consists of those villages claimed by Cameroon and in respect of which evidence of state activity by Cameroon is presented. This category consists of eighteen villages as follows:

Aisa Kura

Bashakka

Chika'a

Darak

Darak Gana

Fagge

Gorea Changi

Gorea Gutun

Kafuram

Kamunna

Karakaya

Katti Kime

Murdas

Naga'a

Naira

Nimeri

Sagir

Sokotoram

5.86 At this stage the analysis reveals that, of thirty-three villages claimed by Nigeria, fifteen are not claimed by Cameroon *on the basis of evidence of State activity*.

(c) Villages Evacuated As a Consequence of Catastrophic Flooding or Banditry by Chadian Nationals

5.87 In the last ten months the following villages have been temporarily evacuated as a consequence of catastrophic flooding:

Doron Kirta

Dororoya

Kafuram

Katti Kime

Njia Buniba

Ramin Dorinna

5.88 Also in the recent past certain villages have been evacuated as a result of banditry carried out by Chadian nationals, namely:

Aisa Kura

Ba shakka

Loko Naira

Naira

Nimeri

5.89 It is of particular significance that the Nigerian residents displaced by flooding or banditry have moved to other Nigerian villages, and, in particular, to Darak, Chika'a and Naga'a.

5.90 Whilst it is appropriate that the Court should be put in possession of this information, it is to be appreciated that, as a matter of principle, such temporary and adventitious relocation cannot affect the existing evidence of Nigerian title. These episodes do not constitute evidence of abandonment of title.

(d) Villages Accepted by Cameroon As Occupied by the Nigerian Army

5.91 In the *Reply* the Government of Cameroon contends that ten villages are 'occupied by the Nigerian army': see the *Reply*, pages 147-53, and Annexes RC 225 and 230. The list provided by Cameroon in the text of the *Reply* is as follows:

Chika'a

Darak

Gorea Changi

Gorea Gutun

Kafuram

Kamunna

Katti Kime

Murdas

Naga'a

Sagir

5.92 The number involved (according to documents exhibited by Cameroon) is sixteen villages. The correct number appears to be ten, as above, based upon the Cameroon *Reply*, pages 147-153. Katti Kime II is referred to twice in Annex RC 230 and the two Katti Kime villages (I and II) are referred to separately in Annex RC 225.

5.93 The location of one of the villages mentioned in the Annexes referred to in the previous paragraph, Hile Dalgui, has not been indicated by Cameroon and, in any case, is not one of the villages claimed by Nigeria.

5.94 In any event, given the long-standing exercise of sovereignty and administration by Nigeria in this sector of the Lake Chad region, it is inappropriate to allege that any activity by the Nigerian security forces constitutes an 'occupation'. Such an allegation is also, in legal terms, question-begging. If the Court determines the issue of title in favour of Nigeria, the 'occupation' is confirmed to be in accordance with international law.

5.95 A major omission is apparent from the Cameroon presentation in this context. Apart from the ten villages said to be 'occupied' by the Nigerian Army, there are eighteen villages claimed by Nigeria, and administered as part of Borno State, and which are not included in the list of 'occupied villages'. The eighteen villages are as follows:

Aisa Kura

Ba shakka

Darak Gana

Doron Liman

Dororoya

Fagge

Garin Wanzam

Kanumburi

Karakaya

Kasuram Mareya

Logon Labi

Loko Naira

Mukdala

Naira

Nimeri

Njia Buniba

Ramin Dorinna

Sokotoram

(e) Conclusion

5.96 The analysis of the pleadings leads to the following conclusions. Of the thirty-three villages claimed by Nigeria:

- The claims to five villages are not contested by Cameroon: see above, paragraph 5.83.

- Cameroon accepts that ten villages claimed by Nigeria are within the control of Nigeria: see above, paragraphs 5.91-5.93.

- Apart from the ten villages described as being occupied by Nigeria, there are eighteen other villages also administered by Nigeria *à titre de souverain*.

- Fifteen of the villages claimed by Cameroon are not the subject of any evidence of State activity presented by Cameroon.

5.97 The position is more easily understood if the different categories are shown in relation to each other: see the table below.

Villages claimed By Nigeria	Villages claimed by Cameroon	Villages claimed by Cameroon but occupied by Nigeria	Villages claimed by Nigeria for which Cameroon produces no evidence

1. Aisa Kura	1. Aisa Kura	1. Chika'a	1. Doron Liman
2. Ba shakka	2. Ba shakka	2. Darak	2. Doron Mallam
3. Chika'a	3. Chika'a	3. Gorea Changi	3. Dororoya
4. Darak	4. Darak	4. Gorea Gutun	4. Garin Wanzam
5. Darak Gana	5. Darak Gana	5. Kafuram	5. Jribrillaram
6. Doron Liman	6. Fagge	6. Kamunna	6. Kanumburi
7. Doron Mallam	7. Gorea Changi	7. Katti Kime	7. Kasuram Mareya
8. Dororoya	8. Gorea Gutun	8. Murdas	8. Kirta Wulgo
9. Fagge	9. Kafuram	9. Naga'a	9. Koloram
10. Garin Wanzam	10. Kamunna	10. Sagir	10. Logon Labi
11. Gorea Changi	11. Karakaya	According to the	11. Loko Naira
12. Gorea Gutun	12. Katti Kime	*Reply*, pp. 147-53.	12. Mukdala
13. Jribrillaram	13. Murdas	Other sources	13. Njia Buniba
14. Kafuram	14. Naga'a	provide a different	14. Ramin Dorinna
15. Kamunna	15. Naira	list.	15. Sabon Tumbu
16. Kanumburi	16. Nimeri		
17. Karakaya	17. Sagir		
18. Kasuram Mareya	18. Sokotoram		
19. Katti Kime			
20. Kirta Wulgo			
21. Koloram			
22. Logon Labi			

23. Loko Naira 24. Mukdala 25. Murdas 26. Naga'a 27. Naira 28. Nimeri 29. Njia Buniba 30. Ramin Dorinna 31. Sabon Tumbu 32. Sagir 33. Sokotoram			

5.98 Of the eighteen villages claimed by Cameroon, ten are (according to Cameroon) occupied by Nigeria. In respect of fifteen of the villages claimed by Nigeria, Cameroon has produced no evidence to challenge Nigeria's claim.

(vii) The Evidence Presented in the Cameroon Pleadings

5.99 In its *Memorial* Cameroon did not present any evidence relating to the exercise of state activities in the Lake Chad region: see the *Memorial*, pages 405 to 413. In the *Reply* such evidence is presented at pages 137-139 (paragraphs 3.71-3.83) and 147-53, and also in Annex RC 225.

5.100 The evidence presented on behalf of Cameroon has serious flaws. In the first place the evidence is confined to the years 1982 to 1988, with certain exceptions. The evidence of Nigerian activities covers a substantially longer period. There is also a contradiction in the fact that evidence is presented by Cameroon in respect of villages which, in the view of Cameroon, are under the control of Nigeria, that is to say, 'occupied' by Nigerian security forces.

5.101 The Cameroon *Reply* avoids any examination of the evidence of peaceful possession produced by Nigeria in the *Counter-Memorial*: see the *Reply*, pages 137-139, 147-153, and 536-547.

5.102 The Cameroon Government has produced no evidence relating to fifteen of the villages claimed by Nigeria: see column four of the Table above.

5.103 In respect of the following villages only two documents have been produced by Cameroon (see the *Reply*

pages 147-153):

Aisa Kura

Bashakka

Darak Gana

Karakaya

Naira

Nimeri

5.104 In respect of these villages there is in truth no respectable evidence of the exercise of sovereignty. The documents involved are the same in each case: that is Annexes RC 109 and 119, which relate to a single administrative tour of the district of Hile-Alifa. It is not established that the tour was actually undertaken.

5.105 It is also necessary to observe that many of the documents produced on behalf of Cameroon are entirely programmatic in content, involving the planning of census tours and so forth, in the absence of evidence that the events actually occurred.

5.106 The evidence concerning state activities must also be related to the fact that Cameroon made no protests in face of the Nigerian administration of the villages until 1994: see below, paragraphs 5.111-5.120. This silence on the part of Cameroon is of particular significance in light of the fact that Nigeria's state activities were entirely open and visible to all.

(viii) Conclusion: the Elements of Historical Consolidation

5.107 The various elements constituting the process of historical consolidation of title can now be summarised:

First: The attitude and affiliations of the population of the Lake Chad villages indicate an exclusive association with the Borno State of Nigeria.

Second: The historical associations of the region constitute strong evidence of the gravitational pull, in geopolitical and economic terms, of the Borno Emirate (and its successors) in relation to the shores of Lake Chad and, more especially, the southern sector.

Third: The historical associations of the area in question are reinforced and complemented by the contemporary political power and constitutional status of the Nigerian traditional rulers and, in the region concerned, of His Royal Highness, the Shehu of Borno.

Fourth: The villages are inhabited by Nigerian nationals.

Fifth: The Lake Chad villages have been administered as part of Nigeria for a considerable period of time.

5.108 In the context of the process of historical consolidation of title in respect of the villages claimed by Nigeria, it is to be understood that the process has not had the effect of displacing the definitive title of Cameroon or of any other riparian State. In the absence of a final delimitation within the Lake Chad region, the areas within the lake necessarily have the status of territory the title to which is undetermined.

5.109 The existence of such a category is recognised in the literature: see *Oppenheim's International Law*, 9th ed., Vol. I, 1992, pp. 566-7; Brownlie, *Principles of Public International Law*, 5th ed., 1998, pp. 108-9; *ibid*., 1st ed., 1966, pp. 101-2. The concept of a title which is "indeterminate" was recognised by the Arbitration Tribunal in the First Award in the *Eritrea/Yemen* Case: see *International Law Reports* Vol. 114, p. 2 at pp. 46-58, paragraphs 145-88.

5.110 In the *Counter-Memorial* an account of the precise geography of Lake Chad is available in Chapter 13. The sources reveal that the riparian States in the LCBC and in other fora recognise a conventional or 'Normal Lake Chad': see Figure 13.6 and Maps 43 to 52 in the *Atlas* to the *Counter-Memorial*.

5.111 The margin or shoreline of the Normal Lake Chad constitutes the significant line of division between the mainlands of Nigeria and the other riparian States and the areas the title to which remains indeterminate.

5.112 It must follow that the process of historical consolidation of title has occurred in a context in which a title was created, and not displaced. It is also particularly appropriate that the process of consolidation of title should lead to a certainty which was otherwise lacking.

5.113 It must also follow that villages on the mainland of Nigeria are not within the category of villages which are in dispute. Thus Wulgo, for example, is not in dispute and, indeed, is not claimed by Cameroon.

5.114 To these elements in the process of historical consolidation the significant element of Cameroonian acquiescence must be added. This will be examined in the following section.

D. The Acquiescence of Cameroon in face of the Peaceful Exercise of Sovereignty by Nigeria

(ix) The Legal Relevance of Acquiescence

5.115 As Nigeria indicated in the *Counter-Memorial*, acquiescence constitutes a major element in the process of historical consolidation of title. In consequence, the first, but by no means the only, role of acquiescence, is played alongside the other elements of historical consolidation reviewed above.

5.116 The second, and independent, role of acquiescence is that of confirming a title on the basis of the peaceful possession of the territory in dispute, that is to say, the effective administration of the Lake Chad villages by Nigeria, acting as sovereign, together with an absence of protest on the part of Cameroon. In this connection a passage from the Judgment of the Chamber in the *Land, Island and Maritime Frontier Dispute* provides a general paradigm: see the *Counter-Memorial*, paragraph 10.124.

5.117 In the third place, acquiescence may be characterised as the main component of title, that is, providing the essence and very foundation of title rather than a confirmation of a title logically anterior to and independent of

the process of acquiescence.

(x) The Evidence of Acquiescence by Cameroon

5.118 The villages claimed by Nigeria contain significant and well-established communities. The population sizes are approximately as follows:

Darak 20,000

Jribrillaram 8,000

Kirta Wulgo 6,000

Koloram 5,000

Naga'a 4,000

Katti Kime 4,000

Chika'a 3,000

Sabon Tumbu 2,000

Garin Wanzam 2,000

Doron Liman 1,000

Gorea Changi 550

Fagge 530

Gorea Gutun 500

Ramin Dorinna 500

Sagir 500

Doron Mallam 400

Darak Gana 400

Kafuram 300

Murdas 300

Nimeri 200

Kamunna 120

Mukdala 100

Naira 100

Dororoya 100

5.119 The activities of the fishermen and farmers who founded these communities were open and peaceful, and the process of administration by Ngala L.G.A., which followed the process of settlement, was equally open and peaceful. At no stage prior to the present proceedings before the Court did the Government of Cameroon make any reservation or protest.

5.120 The Government of Cameroon began the present proceedings by an *Application* filed on 29 March 1994. This *Application* defined the "subject of the dispute" as follows:

> "1. The dispute relates essentially to the question of sovereignty over the Bakassi Peninsula, a territory of approximately 665 sq km lying between Cross River and the Rio del Rey, the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria. In so doing, the Government of the Republic of Nigeria is contesting the long-established frontier between the two countries.
>
> 2. Since the end of 1993, this contestation has taken the form of an aggression by the Federal Republic of Nigeria, whose troops are occupying several Cameroonian localities in the Bakassi Peninsula. This has resulted in great prejudice to the Republic of Cameroon, for which the Court is respectfully requested to order reparation.
>
> 3. Moreover, the maritime boundary between the two States has been the subject of several delimitation agreements, from the Agreement of 11 March 1913 to the Maroua Declaration of 1 June 1975. However, this delimitation has remained a partial one and, despite many attempts to complete it, the two parties have been unable to do so. In order to avoid further incidents between the two countries, the Republic of Cameroon requests the Court to determine the course of the maritime boundary between the two States beyond the line fixed in 1975."

5.121 Thus, in the *Application* dated 29 March 1994 the "subject of the dispute" involved no reference to issues relating to the Lake Chad region. This silence provides a necessary perspective in which to evaluate the Cameroonian assertions that in 1987 there was an 'invasion' of Cameroon's territory by Nigerian forces: see the *Reply*, pages 536-547 and pages 567-569.

5.122 Consequently, there is no reference to any issues relating to the Lake Chad region. The first reference to the Lake Chad region occurs in the Cameroonian Note to Nigeria dated 11 April 1994 (Annex NC-M 287 and Annexe MC 355) which reads (in material part) as follows:

> "The Ministry of External Relations of the Republic of Cameroon presents its compliments to the Embassy of the Federal Republic of Nigeria in Yaoundé, and has the honour to draw the attention of the Embassy to the following.
>
> Nigerian nationals have occupied the Cameroonian locality known as Kontcha (Faro and Deo Division) in the Adamawoua Province of Cameroon. The Cameroonian authorities have observed that in the past, Nigerian military occupation of Cameroonian territory generally followed the illegal occupation of parts of her territory by Nigerian citizens. The *Nigerian military occupation of Darak* and parts of the Bakassi Peninsula are cases in point". (emphasis added)

5.123 The issue was then taken up in the *Additional Application* introduced by the Government of Cameroon on 6 June 1994, which refers (in paragraph 11) to the "new dispute". In this instrument the Government of Cameroon describes the "subject of the dispute" as follows:

> "1. This aspect of the dispute relates essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad - located between the Cameroon-Nigeria frontier and the Cameroon-Chad frontier and extending to around the middle of the remaining waters - the Republic of Cameroon's title to which is contested by the Federal Republic of Nigeria; and to the course of the boundary between the Republic of Cameroon and the Federal Republic of Nigeria, from Lake Chad to the sea. By its action, the government of the Federal Republic of Nigeria is once again contesting the long-established frontier between the two countries, which has recently been defined in a multilateral context.
>
> 2. *That contestation initially took the form of a massive introduction of Nigerian nationals into the disputed area, followed by an introduction of Nigerian security forces*, effected prior to the official statement of its claim by the Government of the Federal Republic of Nigeria quite recently, for the first time, in a Note dated 14 April 1994. It is a decision on the title to that territory and sovereignty over it that the Court is respectfully requested to give at the same time as its decision on the requests submitted by the Republic of Cameroon in its initial Application dated 29 March 1994." (emphasis added)

5.124 The Cameroonian claim, as it appears in the *Additional Application*, takes the form of a response to a Nigerian Note dated 14 April 1994: see Annex MC 356. In reality, this Nigerian Note was a response to the Cameroonian Note, dated 11 April 1994, referred to in paragraph 5.122 above. The Nigerian Note constitutes the first Nigerian reference to the issue concerning Lake Chad and reads as follows (in material part):

> "It is both unfortunate and unacceptable that Darak which has always been part and parcel of Wulgo District of Ngala Local Government area of Borno State of Nigeria and which has since time immemorial been administered as such, is now being claimed as part of Cameroon territory."

5.125 The evidence available shows that the Nigerian villages have, in greater part, existed for periods of between 20 and 40 years. The terrain is flat and open and the activities in the Nigerian villages have been public and unconcealed. The Cameroonian *Additional Application* refers to "a massive introduction of Nigerian nationals into the disputed area". The conclusion which necessarily presents itself is that the Government of Cameroon had for decades maintained a silence in face of the long established and public Nigerian presence.

5.126 The Government of Cameroon confirms the absence of any protest prior to 1994 in its pleadings. The *Memorial*, under the heading 'Les protestations camerounaises', refers only to a single Note dated 21 April 1994 (Annex MC 357): see the *Memorial*, pages 589-590.

5.127 The *Reply* (pages 142-143) denies acquiescence by Cameroon and cites the Cameroon Note dated 21 April 1994, which preceded the *Additional Application* dated 6 June 1994 by only a few weeks.

(xi) The Military Initiatives by Cameroon in 1987

5.128 In its *Memorial* Cameroon contends that in February 1987 certain villages appertaining to Cameroon were invaded by Nigerian civilians armed with machetes, and that this episode was followed by a military occupation by Nigeria, which began on 2 May 1987: see the *Memorial*, pages 587-589, paragraphs 6.81-6.86. Similar assertions appear in the *Reply* at pages 536-547 (paragraphs 11.165-11.214) and pages 567-569 (paragraphs 12.25-12.28).

5.129 It is the position of Nigeria that the incidents in May 1987 complained of by Cameroon involved violent initiatives by Cameroonian security forces. These initiatives by Cameroon disturbed a Nigerian administrative *status quo*. The Cameroonian attack of 1987 was prefigured by a visit by Cameroonian officials to Kirta Wulgo in 1985, in response to which Nigeria presented a Note Verbale to Cameroon: see the telegram of the Nigerian Ministry of External Affairs dated 26 March 1985 (Annex NC-M 376). The contents of this telegram indicate that there was a *status quo* consisting of a Nigerian administration in place.

5.130 The events of May 1987 again involved initiatives by Cameroon: see the Nigerian internal military and police reports (Annexes NC-M 379, NC-M 380 and NC-M 381). In response Nigeria sent a protest, dated 8 May 1987, which reads (in material part):

> "The Ministry of External Affairs of the Federal Republic of Nigeria presents its compliments to the Embassy of the Republic of Cameroun and has the honour to inform the Embassy that reports have reached the Ministry concerning intrusion by Camerounian soldiers and agents into some border villages in Ngala Local Government Area of Borno State in the Federal Republic of Nigeria. The reports also indicate that this has not been the first time such incidents have occurred. Reports further state that not only were the Nigerian nationals molested, but their villages were also occupied by the Camerounian soldiers and agents, the Nigerian flags in the villages were pulled down and burnt, and the Cameroun flag was hoisted in their place, even on Nigerian territory.
>
> The Ministry hereby calls the attention of the Embassy to this unfriendly and flagrant act of trespass committed in spite of the cordial relations existing between Nigeria and Cameroun, and hereby registers the concern and dismay of the Federal Military Government of Nigeria at this unsavoury and unprovoked recurring incursions of which the Federal Military Government takes serious view.
>
> The Ministry further demands explanation for this unfriendly act, and assurance that there will not be a recurrence of such incidents in the future." (Annex NC-M 382).

5.131 In the event both the Nigerian village heads and the security forces resisted Cameroonian encroachments. In November and December 1987, a further attempt at Cameroonian encroachment occurred and this was again met with a pre-existing Nigerian administrative presence.

(xii) Conclusion: the Acquiescence of Cameroon

5.132 The legal position of Nigeria can be summarised as follows:

(1) For varying periods between 20 and 40 years in duration, Nigeria has had peaceful possession of the Lake Chad villages, which were at all times administered as part of the Borno State of Nigeria.

(2) At no stage prior to the Note dated 11 April 1994 did Cameroon make any protest or claim relating to the Lake Chad villages presently in issue.

(3) At no stage has Cameroon had a system of administration in place in the region.

(4) The episode of Cameroonian interference in 1987 was short-lived and did not lead to any claim to the region on the part of Cameroon. At no stage has Cameroon exercised peaceful possession.

5.133 The evidence of Nigerian peaceful possession has been reviewed extensively in the present Chapter. The Cameroonian incursion of 1987 was not only late in the day but does not appear to have been *à titre de souverain*. In any event it was resisted and the Cameroon authorities did not persist.

5.134 The interviews with local chiefs show a general absence of Cameroonian activity. On only two occasions did a village headman make any reference to interference by gendarmes from Cameroon; in Mukdala and Kafuram. In these two interviews the headmen said that the gendarmes were informed that the village was Nigerian, after which the Cameroonians left. In all the other interviews no reference was made to Cameroonian visits of any kind.

5.135 The key evidence of Cameroonian acquiescence lies in the silence of Cameroon prior to the Cameroonian Note to Nigeria dated 11 April 1994 (see above, paragraph 5.122). Subsequently the issue was taken up in the *Additional Application* introduced by the Government of Cameroon. This refers (in paragraph 11) to the "new dispute". This "new dispute" was not referred to in the original *Application* filed on 29 March 1994.

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1 I.C.J. Reports, 1953, pp. 58-59.

2 *ibid*, p. 71

PART III

THE LAND BOUNDARY

CHAPTER 6

THE DEVELOPMENT OF THE PLEADINGS

A. Background

(i) Cameroon's *Additional Application* of 6 June 1994

6.1 Cameroon's initial *Application* of 29 March 1994 to the Court concerned only certain questions in respect of the Bakassi Peninsula and the maritime boundary between Nigeria and Cameroon (a boundary directly affected by the dispute over Bakassi). By an *Additional Application* filed with the Court on 6 June 1994 Cameroon extended the scope of the issues placed before the Court, including therein *inter alia* "the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea", which frontier the Court was requested "to specify definitively": *Additional Application*, paragraph 17 (f). By its Order of 16 June 1994 the Court agreed that the *Additional Application* could be treated as an amendment to the initial *Application,* so that the Court could deal with both as a single case.

6.2 Although Cameroon thus put in issue the whole of the boundary between the Parties from Lake Chad to the sea, Nigeria has found it convenient for this aspect of the case to be dealt with primarily as concerning the land boundary *between* Lake Chad and the Bakassi peninsula (i.e. south of Lake Chad and north of Bakassi). The boundary within Lake Chad falls naturally to be dealt with separately as part of the more general problems to which the situation in respect of Lake Chad gives rise, while the land boundary in the southernmost areas is consequential upon the resolution of the substantive dispute over title to the Bakassi Peninsula. Accordingly the present Chapter of Nigeria's *Rejoinder* will be concerned only with the land boundary between Lake Chad and Bakassi: questions concerning the boundary within Lake Chad are dealt with in Chapters 4-5, and the question of title affecting the boundary in the Bakassi area is dealt with in Chapters 1-3.

(ii) Cameroon's *Memorial*

6.3 So far as concerns the land boundary between Lake Chad and Bakassi, Cameroon in its *Memorial* asked no more of the Court than that it should declare the course of the boundary in terms of its course as fixed by certain instruments. Starting at a point which Cameroon regards as the mouth of the River Ebeji (which Cameroon put at longitude 14_ 12' 11.7" E and latitude 12_ 32' 17.4" N) Cameroon's submission (in translation - MC, paragraph 9.1) was that the Court should adjudge and declare that the course of the land boundary was as follows:

"- thence it follows the course fixed by the Franco-British declaration of 10 July 1919, as specified in paragraphs 3 to 60 of the Thomson/Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931, as far as the "very prominent peak" described in the latter provision and called by the usual name of "Mount Kombon";

- from Mount Kombon the boundary then runs to "Pillar 64" mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6(1) of the British *Nigeria (Protectorate and Cameroons) Order in Council* of 2 August 1946;

- from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

- thence, as far as the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs 16 to 21 of the Anglo-German Agreement of 11 March 1913."

(iii) Nigeria's *Fifth Preliminary Objection*

6.4 In the light of Cameroon's *Memorial*, Nigeria raised a number of *Preliminary Objections*. So far as concerned the course of the boundary, Nigeria's *Fifth Preliminary Objection* was that there was no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tripoint in Lake Chad to the sea. In particular (and so far as concerns the part of the land boundary to be dealt with in this Chapter) Nigeria submitted that there was no dispute relating to boundary delimitation as such from the shores of Lake Chad to the hill which Cameroon referred to as "Mount Kombon",[1] nor between "Mount Kombon" and boundary pillar 64 on the Gamana River, nor between that pillar 64 and Bakassi.[2]

6.5 The Court in its Judgment of 11 June 1998 (I.C.J. Reports 1998, p.275, at pp.313-317) rejected Nigeria's *Fifth Preliminary Objection* by thirteen votes to four. Again, so far as concerns the land boundary *between* Lake Chad and Bakassi the Court made a number of observations which are relevant to the subsequent argument on the merits of Cameroon's submissions.

(1) "In the course of the oral proceedings, it became clear that ... there are competing claims of Nigeria and Cameroon in respect of the village of Tipsan, which each Party claims to be on its side of the boundary" (Judgment, paragraph 85). The Court concluded that "there can be no doubt about the existence of disputes with respect to ... Tipsan..." (Judgment, paragraph 87), and that "clearly [Nigeria] does differ with Cameroon about ... Tipsan ..." (Judgment, paragraph 92). It is noteworthy that this is the only location along the entire 1,800 km land boundary at which the Court found (on the basis of the limited evidence and argument before the Court at that preliminary stage) that there was a dispute as to the course of the boundary. For a fuller explanation of the situation at Tipsan, see below, paragraph 7.169 *et seq.*

(2) Having found that there existed disputes with regard to certain islands in Lake Chad and the Bakassi Peninsula, as well as with regard to Tipsan, the Court noted that "All of these disputes concern the boundary between Cameroon and Nigeria". But the Court added that "given the great length of that boundary, which runs over more than 1,600 km from Lake Chad to the sea,[3] it cannot be said that these disputes in themselves concern so large a portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary" (Judgment, paragraph 88).

(3) The Court noted "that, with regard to the whole of the boundary, there is no explicit challenge from Nigeria" (Judgment, paragraph 89).

(4) While the Court held that the existence of a dispute might be established by inference, the Court rejected Cameroon's argument "that the challenge by Nigeria to the validity of the existing titles to Bakassi, Darak and Tipsan, necessarily calls into question the validity as such of the instruments on which the course of the entire boundary from the tripoint in Lake Chad to the sea is based, and therefore proves the existence of a dispute concerning the whole of the boundary" (Judgment, paragraph 89).

(5) As regards the various boundary incidents complained of by Cameroon, the Court concluded that "not every boundary incident implies a challenge to the boundary" and that "Even taken together with the existing boundary disputes [*scil*. regarding Darak, Bakassi and Tipsan], the incidents and incursions reported by Cameroon do not establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria" (Judgment, paragraph 90). Nigeria draws attention to Cameroon's grossly misleading presentation of this part of the Court's Judgment, in its *Reply* (RC 11.17). Cameroon there refers to the incidents alleged to have occurred between Lake Chad and Bakassi which (so Cameroon asserts) "établissent que la frontière entre les deux Etats est contestée sur toute sa longueur, *comme la Cour l'a reconnu en rejetant la cinquième exception préliminaire du Nigéria.*"[4] (emphasis added). The truth is that the Court said exactly the contrary: not only did the Court *reject* Cameroon's argument that "the challenge by Nigeria to existing titles to ... Tipsan necessarily ... proves the existence of a dispute concerning the whole of the boundary" (Judgment, paragraph 89) but the Court added specifically that "the incidents and incursions reported by Cameroon do *not* establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria" (paragraph 90, emphasis added). Thus Cameroon's invocation of the Court's judgment in support of Cameroon's version of events was not merely misleading, but was a grossly inaccurate representation of what the Court actually said.

(6) The Court considered Cameroon's request to be for the Court to specify definitively the frontier between Cameroon and Nigeria "along a line the co-ordinates of which are given in Cameroon's Memorial" (Judgment, paragraph 86). Nigeria feels constrained to observe that, as a matter of fact, Cameroon's *Memorial* nowhere puts forward as the land boundary a line of which it gives the co-ordinates. Instead, Cameroon's proposed boundary as set out in its *Memorial* is the line as delimited in the various instruments referred to, all of which describe the boundary by reference to geographical features and none of which prescribes a line fixed by reference to a consecutive series of geographical

co-ordinates.[5]

(7) The Court attached weight - negative weight so far as Nigeria was concerned - to Nigeria's response to the related question posed by a member of the Court. This asked whether, leaving aside the Darak region and Bakassi, "there is agreement between Nigeria and Cameroon on the geographical co-ordinates of this boundary as they result from the texts relied on by Cameroon in its Application and its Memorial" (Judgment, paragraph 85). As Nigeria correctly pointed out (and as just repeated), the boundary is not described by reference to geographical co-ordinates but by reference to physical features, and since Independence there had been no bilateral agreement providing geographical co-ordinates for the pre-Independence boundary (Judgment, paragraph 91).

(8) Nigeria's alleged reticence concerning the course of the land boundary and its legal basis or bases led the Court to conclude that "the exact scope of this dispute cannot be determined at present; a dispute nevertheless exists between the two Parties, at least as regards the legal bases of the boundary" (Judgment, paragraph 93).

(iv) Nigeria's *Counter-Memorial*

6.6 In its *Counter-Memorial* Nigeria principally -

(1) noted that Cameroon had manifestly refrained from putting forward in its *Applications* or *Memorial* its own 'definitive specification' of the land boundary (NC-M, paragraph 18.3), and that the land boundary which Cameroon had requested the Court to 'specify definitively' was not (except for only two isolated points)[6] a boundary which Cameroon itself had specified by reference to geographical co-ordinates (NC-M, paragraph 18.5);

(2) noted that Cameroon had requested that the Court should confirm that the land boundary between Lake Chad and Bakassi followed the lines of delimitation laid down in the several instruments cited by Cameroon, and that those delimitation lines were inadequate as a contemporary 'definitive specification' of the land boundary (NC-M, paragraph 18.6);

(3) identified (NC-M, paragraph 19.2) three principal reasons for the inadequacy of those delimitation lines, namely that

(a) Cameroon's own official maps show a boundary which is in places demonstrably inconsistent with the boundary as delimited in the instruments which are principally relevant to the delimitation of the present land boundary (NC-M, paragraphs 19.5-19.22);

(b) the terms of those instruments do not reflect long-established practices and local agreements which have varied the land boundary as delimited in those agreements (NC-M, paragraphs 19.23-19-38); and

(c) in many places those instruments describe the land boundary in terms which give rise to difficulty when the attempt is made to apply them on the ground (NC-M, paragraphs 19.39-19.55);

(4) stated that it was principally for those reasons that Nigeria qualified its acceptance of the delimitation of the boundary by the relevant instruments as an acceptance "in principle" (NC-M, paragraph 19.3);

(5) stated that because of the inadequacies to which Nigeria had drawn attention, the various instruments cited by Cameroon in its final submissions were unacceptable to Nigeria as a 'definitive specification' of the land boundary, although they were an acceptable starting point for such a specification of the boundary and were in principle accepted by Nigeria on that basis (NC-M, paragraphs 18.8, 19.109);

(6) outlined the historical evolution of the land boundary (NC-M, paragraphs 18.12-18.53);

(7) accepted in principle the course of the boundary as described by the instruments which are principally relevant to the delimitation of the land boundary and relied on by Cameroon (NC-M, paragraph 18.54), namely -

(a) the Thomson-Marchand Declaration 1929-1931, particularising the earlier Milner-Simon Declaration 1919;

(b) the Nigeria (Protectorate and Cameroons) Order in Council 1946;

(c) the Anglo-German Demarcation Agreement of 12 April 1913; and

(d) the Anglo-German Agreement of 11 March 1913;

(8) stated that Nigeria did not call into question the validity as such of the instruments on which the land boundary between Lake Chad and Bakassi was based, and in principle accepted the course of the boundary as delimited in the instruments primarily concerned, and in principle accepted the validity of all of them as the basis for the land boundary between Lake Chad and Bakassi (NC-M, paragraphs 18.55, 18.57);

(9) commented in some detail upon each of the four Sectors of the land boundary which Nigeria had for convenience identified (NC-M, paragraphs 19.56-19.108); and

(10) reserved to itself the right to insist on a definitive specification of the land boundary, to the extent necessary to reflect the present legal situation of the boundary (NC-M, paragraphs 26.4-26.5).

B. Cameroon's *Reply*

6.7 In its *Reply* Cameroon advances a number of general arguments and makes a number of general

assertions which require correction or comment.

(i) Boundary Treaties

6.8 Cameroon contends that "Le droit international attribue un statut particulier aux traités établissant des frontières"[7] (RC, paragraph 2.02). From this Cameroon apparently seeks to argue that the various instruments delimiting the boundary between Nigeria and Cameroon are binding and immutable. By invoking Nigeria's acceptance in principle of the legal validity of the relevant instruments Cameroon seeks to suggest that Nigeria is committed to the terms of those instruments and cannot now argue that they may be departed from in any way.

6.9 Nigeria would first draw attention to the fact that one of the relevant instruments is not a treaty but an Order in Council. The line it prescribed never became an international boundary by virtue of a treaty between Nigeria and Cameroon or their predecessors in title. Nevertheless, Nigeria does not on that account seek to deny the continuing validity of the boundary - now an international boundary - originally prescribed as an *internal* boundary between the northern and southern parts of the British mandated area of Cameroons, although the original internal purpose served by that boundary is a factor to be borne in mind in considering its subsequent *international* role.

6.10 Although Nigeria accepts the relevant instruments "in principle", this does not imply, as alleged by Cameroon, that Nigeria is precluded from now arguing that those instruments can be departed from in any way. Nigeria made it clear in its *Counter-Memorial* that its acceptance of the relevant instruments "in principle" was precisely because the description of the boundary given in those instruments was in need of clarification, interpretation or variation if it was to be regarded as accurately delimiting the present boundary between Nigeria and Cameroon.

6.11 The permanently binding character of boundary treaties - or at least of the boundaries resulting from such treaties - is not an absolute rule of international law. Certain qualifications to the general rule must be admitted, in particular those set out below.

(1) A boundary cannot be regarded as immutably established by a treaty if the treaty is in terms which do not with sufficient clarity indicate where the boundary runs. An ambiguously or inadequately described boundary is not rendered clear or adequate simply by being incorporated in a treaty.

(2) Cameroon acknowledges that a boundary treaty may be changed by the mutual consent of the parties. Cameroon fails to note, however, that that mutual consent may be either express or implied. What matters is the existence of consent to a variation in the boundary previously agreed by treaty. How that consent is established is a matter of evidence. If it is express consent, for example by a subsequent treaty, then the matter is clear. But there is no rule of international law that a treaty can be amended only by a further treaty, and even in the absence of express consent in that form other ways of establishing the necessary consent will be sufficient to show that the previous treaty-based boundary has been varied. Such implied consent may be found, for example, in the long-standing acquiescence of State authorities

in a state of affairs which is different from that prescribed in the original treaty and of which they are aware. Moreover, a treaty-based boundary may be changed by a process of historical consolidation (as to which see above, paragraph 3.42 *et seq.*).

(3) A treaty which is subject to some substantive defect affecting its validity is not cured of that defect simply because it purports to establish a boundary. The defect in the treaty taints the boundary which the treaty purports to establish.

(4) As the International Law Commission has recognised, although a succession of States does not in itself affect the boundary established by a pre-succession treaty, the succession leaves untouched any other ground for claiming the revision or setting aside of the boundary settlement: the mere occurrence of the succession does not consecrate the existing boundary if it was open to challenge.[8]

(5) A boundary treaty, like any other treaty, is to be interpreted in the light of the parties' subsequent practice in the application of the treaty establishing their agreement regarding its interpretation.

6.12 Much the same points are to be made with respect to Cameroon's assertion that "Le droit international présume que les traités délimitant une frontière posent une frontière permanente, définie et complète en l'absence de preuves manifestes du contraire"[9] (RC, paragraph 2.22). As Nigeria has shown elsewhere (above, paragraph 1.63), this sweeping statement is without foundation in international law, and no such presumption as is alleged by Cameroon exists.

6.13 In so far as Cameroon might wish to apply its alleged presumption to the treaties establishing the land boundary, Nigeria repeats (see above, paragraph 1.63) that boundary treaties are only as permanent, defined and complete as their terms provide. It is the actual terms of the treaties (or other equivalent instruments) which are paramount, not some alleged presumption.

(1) A boundary treaty is not permanent (or more strictly, does not establish a boundary which is permanent) if the parties have subsequently consented, expressly or by implication, to variations in the boundary;

(2) nor is a boundary complete if the treaties prescribing the boundary fail, either by their terms or by virtue of some legal defect, to deal with the boundary in its entirety, and any such lacuna is not filled by some such presumption of completeness as that postulated by Cameroon;

(3) nor is a boundary any better defined than the terms of the treaty provide, and if those terms do not define the boundary adequately, then the boundary is in fact and in law ill-defined and is not by virtue of some alleged presumption rendered well-defined; in this respect the Award of the Arbitration Tribunal (Lord McNair, President) in the *Argentine-Chile Frontier Case*[10] states the position correctly, in observing (in a passage which Cameroon failed to quote in full: above, paragraph 1.78) that

> "Since the 1902 Award was a valid Award, it must be assumed to have settled the entire boundary between Argentina and Chile in the area covered by it ... *except to the extent to which it is impossible to apply the Award on the ground*" (emphasis added)

6.14 A further general point raised by Cameroon on applicable principles of treaty law is the assertion that title based on treaty is predominant in international law (RC, paragraph 2.47 *et seq.*). But this bald statement needs qualification:

(1) a treaty-based title has no particular cachet: a title based on a treaty is, like any other treaty-based right or obligation, subject to the treaty in question being modified as a consequence of express or implied consent of the parties (including their subsequent practice);

(2) a treaty-based title may also be modified as a consequence of historical consolidation of title;

(3) in any event, the treaty must indeed establish a lawful title; and

(4) the treaty must be clear as to the territorial limits of the title which it establishes.

(ii) Nigeria's acceptance of the relevant instruments

6.15 Cameroon notes (at RC, paragraph 2.13) that Nigeria's acceptance of the various legal instruments which determine the boundary is qualified by terms like "in principle" and "as such". Cameroon suggests that these qualifications constitute reservations to Nigeria's apparent acceptance of the instruments, which weakens Nigeria's engagement to them.

6.16 Nigeria has drawn attention in its *Counter-Memorial* to the existence of certain problems with some of the relevant instruments (problems which will be explained further in this *Rejoinder*), as regards their accuracy, clarity, validity or effectiveness. In the light of those problems of which it was aware it would have been improper for Nigeria to have said, without qualification, that it accepted the instruments in question. To have accepted a boundary delimitation known or sincerely believed to be invalid, inaccurate, unclear or ineffective would have misled the Court, and would not have contributed to securing a clear settlement of the boundary between Nigeria and Cameroon. While Cameroon is apparently content to invite the Court to confirm defective boundary delimitations, Nigeria is not. In short Nigeria's acceptance of the boundary delimitation set out in the relevant instruments covers by far the greater part of the land boundary between Lake Chad and Bakassi: it is only in a relatively small number of locations (exemplified in Nigeria's *Counter-Memorial*, and fully examined in this *Rejoinder*), affecting a relatively small part - only some 210 kms - of that land boundary, where Nigeria believes that the existing instruments are defective and need clarification or interpretation before it would be appropriate for the Court to confirm the boundary as delimited by the instruments which both parties agree are relevant.

(iii) Definitive specification of the boundary

6.17 In its *Reply* Cameroon has changed its position regarding the detail in which the boundary should be specified. In its *Additional Application* Cameroon requested the Court to "specify definitively" (in French, "préciser définitivement"[11]) the land boundary between Cameroon and Nigeria. This indicated that Cameroon wanted from the Court a detailed specification of the boundary. But Cameroon then in its *Memorial* put before the Court only the terms of the relevant instruments, without any further detailed specification of the boundary, and provided no evidence, by way of maps or otherwise, as to precisely where Cameroon considered the boundary to run. In these circumstances it was incumbent upon Nigeria to draw to the attention of the Court both (a) the inadequacies of the relevant instruments as a 'definitive specification' of the boundary and (b) the numerous locations where the best maps available to show Cameroon's belief as to the course of the boundary demonstrated that Cameroon itself did not comply with the terms of the instruments on which it was relying.

6.18 As will be noted below (paragraph 6.39 *et seq*.), Cameroon has now apparently dropped its request that the Court should "specify definitively" the land boundary between Lake Chad and Bakassi. Cameroon now presents the Court with only a simple request that the Court should confirm the boundary as delimited in the relevant instruments.

6.19 Before passing on to the implications of Cameroon's change of position, Nigeria wishes to draw attention to Cameroon's misrepresentation of Nigeria's attitude to the request that the boundary should be 'specified definitively'. Thus in the *Reply* (paragraph 2.36) Cameroon states that

> "Une "definitive specification" ne saurait être érigée en un nouveau concept, regroupant délimitation et démarcation, qui aurait pour conséquence de placer les problèmes de démarcation au même niveau que les problèmes de délimitation.... Il ne s'agit en aucun cas d'un terme de l'art, mais d'une expression utilisée par le Nigéria pour générer la confusion."[12]

Again, at paragraph 2.116 of the *Reply*, Cameroon alleges that Nigeria creates confusion between the process of delimitation and that of demarcation and

> "utilise la notion de "definitive specification" qu'il considère comme un équivalent de la délimitation".[13]

6.20 But Cameroon nowhere acknowledges that the concept of 'definitive specification' of the boundary was introduced into these proceedings by Cameroon itself, not by Nigeria. Cameroon's original request to the Court, in paragraph 17(f) of its *Additional Application*, was that the Court should "specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea" ("préciser définitivement la frontière entre elle et la République Fédérale du Nigéria du Lac Tchad à la mer"). Cameroon having raised the prospect of a definitive specification of the land boundary then failed completely to say what it meant by that term. Since Cameroon had introduced the notion of

'definitive specification' of the boundary without any explanation of what it meant, Nigeria had to set out what it understood by that Cameroonian term and to add that it would welcome such a definitive specification of the boundary (NC-M, paragraph 18.2), while noting that what Cameroon was actually asking from the Court was inadequate to meet the request which Cameroon itself had originally made (NC-M, paragraphs 18.3-18.10). Far from Nigeria being responsible for introducing a confusing concept into the argument over the land boundary, any confusion was entirely due to Cameroon's introduction of that concept in its own formal request to the Court but without any indication of what it meant by it.

6.21 It was for these reasons that Nigeria felt it necessary to state (as noted by Cameroon, RC paragraph 2.35) that it "does not agree that the terms of those instruments [invoked by Cameroon] are sufficient in themselves to constitute the 'definitive specification' of the land boundary for which Cameroon has asked" (NC-M, paragraph 18.59, p. 503). The insufficiency to which Nigeria referred (and explained in detail elsewhere in its *Counter-Memorial*) was expressly related to the needs of the 'definitive specification' which Cameroon had said that it was seeking from the Court.

6.22 Cameroon's wilful misunderstanding of what Nigeria said in its *Counter-Memorial* is similarly apparent from its immediately following quotation of a passage from Nigeria's *Counter-Memorial* (RC paragraph 2.37, citing NC-M, paragraphs 19.1-19.3). Cameroon quoted Nigeria's acceptance in principle of the delimitation of the land boundary as set out in the relevant instruments while noting that, principally for three stated reasons, those instruments did not constitute an adequate 'definitive specification' of the land boundary as sought by Cameroon and that it was for those reasons that Nigeria qualified its acceptance of the delimitation of the boundary by the relevant instruments as an acceptance in principle. Cameroon then (RC, paragraphs 2.38-2.39) makes a wholly unjustified leap to the suggestion that in some way this statement by Nigeria seeks to impugn the *validity* of the instruments. Nigeria was not in any way impugning the validity of the instruments dealing with the land boundary between Lake Chad and Bakassi; indeed, Nigeria expressly and repeatedly stated that it accepted their validity (NC-M paragraphs 18.55[14], 18.57[15], 19.67[16], 19.81[17], 19.91[18], 19.107[19] and 19.109[20]). It is clear from the language used by Nigeria that it was solely the *delimitation* which in some respects Nigeria was impugning *as an adequate manifestation of the 'definitive specification' which Cameroon was then seeking*. Such a jump from Nigeria's actual concerns with the adequacy of the delimitation contained in an instrument, to the unjustified allegation that Nigeria questioned the validity of the instrument itself is evident elsewhere in Cameroon's *Reply* (e.g. paragraphs 2.43, 4.139). Cameroon has wilfully misrepresented and distorted Nigeria's position.

(iv) Delimitation and Demarcation

6.23 An associated aspect of this part of the argument in Cameroon's *Reply* is that Nigeria consistently confuses delimitation with demarcation, and both with 'definitive specification' (e.g. RC, paragraphs 2.36-2.37, 2.45, 2.116-2.132, 4.7, 4.138-4.139). This is untrue.

6.24 Previous paragraphs have explained that Nigeria's concern with the need for 'definitive specification' was entirely in response to Cameroon's introduction of the concept, without further

definition, into its formulation of its request to the Court in its *Additional Application*. As regards Nigeria's alleged confusion of the separate processes of delimitation and demarcation, Nigeria has throughout its *Counter-Memorial* sought to use these terms carefully. In short, it has used 'delimitation' to refer to the process whereby the course of a boundary is described in words or maps in a legal instrument, and has used 'demarcation' to refer to the process whereby the course of the boundary so described is marked out on the ground. Although there may sometimes be no hard and fast line to be drawn between the two processes, and although terminology used by tribunals and writers (especially in older times) is not always consistent in the sense just described, the distinction adopted by Nigeria conforms to what Nigeria believes to be the general practice (see also above, paragraphs 4.30-4.32).

6.25 The point of crucial practical importance, however, is that those charged with the responsibility of *demarcating* a boundary must be given a sufficiently clear *delimitation* of the boundary as the basis for their work. Delimitation is usually (and was in the present case) a political matter for agreement between Governments; demarcation is essentially a technical matter for officials, carrying out the political decision arrived at by their Governments. The essentially technical process of demarcation necessarily involves a limited degree of flexibility in order to apply on the ground (and thus at a scale of 1:1) a delimitation expressed in words and perhaps delineated on a map (at a scale of, say, 1:50,000, and often more), and possibly also in order to take account of social realities on the ground: but the technical process of demarcation must not be allowed to usurp the functions which properly form part of the political process of delimitation. In short, unless those carrying out the demarcation of a boundary are given sufficiently clear guidance as to the course of the boundary which they are supposed to be demarcating, they will find themselves having to make essentially political and legal decisions as to the course which they suppose the boundary should follow.

6.26 A simple example will be sufficient to illustrate the position. A treaty may provide that between points A and B the boundary will follow a particular river. If the river does in fact flow between those two points, the precise line to be followed by the boundary can readily be identified and if necessary demarcated (e.g. by suitably inscribed pillars on the bank). But if on examination of the ground it appears that the river at point A is not the same river as that at point B, and if in fact there is no single river running between those two points, a demarcation team has no agreed basis on which it can fulfil its task. If it invents its own line as it thinks best, it would not be carrying out a delimitation of the agreed line but replacing the parties' defective agreement with its own political and legal judgment as to what they would have had in mind had they realised the true geographical situation. Just such a situation arose in respect of a stretch of the boundary between Argentina and Chile: it led to resolution not by a demarcation team but by a reference to an arbitral tribunal which decided upon the line to be followed (see below, paragraph 7.6, as to the *Argentine-Chile Frontier Case*). That Tribunal was engaged in delimitation, not demarcation. The boundary was defectively delimited: the result of the Tribunal's decision was a definitive specification of the boundary. That is precisely what Nigeria seeks as to the land boundary, irrespective of the most recent change in Cameroon's position.

6.27 In the present case, Nigeria not only believes that, as it explained in its *Counter-Memorial*, the delimitation provided in the legal instruments relevant to the land boundary between Lake Chad and Bakassi is in places inadequate *as a definitive specification* as originally requested by Cameroon, but

also believes that, as will be explained in later parts of this *Rejoinder*, that delimitation fails in places to give adequate guidance as to the course of the boundary so as to enable a true demarcation of the boundary to take place. While the problems which ensue may be problems of demarcation in the sense of arising in the context of seeking to apply the agreed delimitation on the ground, they are nevertheless also, and primarily, problems of delimitation in that the demarcation team must be given proper instructions as to the line which is to be demarcated. Some less substantial deficiencies can, of course, properly be left for resolution during such agreed demarcation as might eventually take place. But in respect of those places where the delimitation gives inadequate guidance to a demarcation team, Nigeria will invite the Court to acknowledge that the boundary as delimited in the relevant instruments is defective as it stands and is in need of clarification, interpretation or variation in order to represent its true course, and will further invite the Court to provide the correct terms for the delimitation of the boundary on the basis of which a true demarcation can take place.

6.28 The Court's competence to do this is inherent in its competence to rule upon the case brought before it by the Parties. Where a dispute has been brought before the Court, it is competent to decide all matters which are necessary in order to resolve that dispute, even if some specific matter has not been put to it by the Applicant for decision. Thus in the *Nuclear Tests*[21] cases the Court

> "emphasized that the Court possesses an inherent jurisdiction enabling it to take such action as may be required ... to provide for the orderly settlement of all matters in dispute... Such inherent jurisdiction, on the basis of which the Court is fully empowered to make whatever findings may be necessary for the purposes just indicated, derives from the mere existence of the Court as a judicial organ established by the consent of States, and is conferred upon it in order that its basic judicial functions may be safeguarded."

6.29 Nigeria draws attention in this *Rejoinder* to certain specific deficiencies in the various relevant instruments. These deficiencies are manifest. Given their existence, the Court, which is asked to confirm that the boundary is properly delimited by those instruments, is faced with a theoretical choice between (a) confirming the instruments while disregarding the manifest deficiencies to which attention has been drawn; (b) deciding that all the deficiencies raise matters which can be resolved in some possible, eventual demarcation procedure; and (c) confirming the instruments subject to correction of those deficiencies. Nigeria submits that only the third of those courses would represent a proper judicial determination of the issues raised by the present proceedings regarding the land boundary. The judicial resolution of the dispute which the Court has found to exist along the land boundary requires a determination by the Court of the correct delimitation of the boundary. To the extent that that delimitation is still represented by the terms of the relevant instruments it is proper for that delimitation to be confirmed; but where that delimitation is defective, there is no proper alternative to the Court providing the necessary clarification or interpretation to correct the deficiency. Only in that way can the Parties have, as a result of the Court's Judgment, a clear, complete and contemporary delimitation of their common land boundary.

(v) Maps

6.30 In paragraphs 2.68-2.76 of its *Reply* Cameroon makes certain general observations regarding the weight to be given to maps in international litigation. Most, if not all, of the quotations relied on by Cameroon concern the use of maps in relation to claims of title to territory.

6.31 In the present proceedings, however, and in relation to the land boundary between Lake Chad and Bakassi (which is all that this and the next two Chapters are concerned with), maps are invoked by Nigeria for a different purpose. Nigeria accepts (subject to the deficiencies to which it has drawn attention) that, to the extent that the land boundary is capable of application on the ground, it is delimited by the four instruments relied on by both parties: that delimitation accordingly disposes of questions of territorial title on either side of the boundary line so delimited. Maps are thus not so much relevant to the question of title but to two other matters:

(1) first, they are relevant to the topographical accuracy of the delimitation in the respective instruments; and

(2) second, certain maps of official Cameroonian provenance are evidence of Cameroon's assertion of a boundary which is not in conformity with the boundary as delimited in the instruments on which Cameroon relies.

6.32 As regards the use of maps to assess the topographical accuracy of the earlier delimitations, it is clear that modern mapping, based on aerial photography, satellite imagery and GPS technology, is vastly more accurate than the older maps relied on in preparing the earlier delimitation texts. It is in part because of the high degree of accuracy now achieved with modern maps that the delimitation in those earlier texts can, in some places, be seen to be defective.

6.33 As regards Cameroon's official maps, Nigeria draws attention to them because they demonstrate that Cameroon itself is either clearly departing from the textual delimitation on which it relies, or is at best adopting an interpretation of those texts which differs from that adopted by Nigeria, thus showing that the text is in need of interpretation by the Court before it can be observed on the ground by the inhabitants of the areas in question and, eventually, applied by an agreed demarcation process.

6.34 As to that last matter, Nigeria notes that in paragraph 2.36 of its *Reply* Cameroon states that confirmation by the Court of the boundary as delimited in the relevant instruments "sera certainement suivie d'une démarcation soigneuse et précise par les Parties".[22] Nigeria agrees that a careful and precise demarcation will be highly desirable. In many of the relevant agreements delimiting the boundary the parties envisaged that the boundary they had delimited would soon be demarcated, but nevertheless either no further action was taken or any action taken was very limited. Moreover, there has been no formally agreed demarcation of any part of the land boundary since Nigeria and Cameroon attained Independence in 1960, apart from a local arrangement in 1965-66 affecting a 4 km stretch in the area around Danare and Boudam.[23]

6.35 Although Cameroon asserts the imminence and inevitability of a boundary demarcation, and although both parties have in their discussions acknowledged the need to demarcate the land boundary, no demarcation has in fact ever occurred. A firm proposal by Nigeria's President Shagari for an Arbitration Panel to "look into different positions concerning the boundaries" met with no favourable response from Cameroon (see below, the Appendix to Chapter 16, paragraph 38). Demarcation of the land boundary between Lake Chad and Bakassi will be a very expensive process. Nigeria does not believe that the prospect of an eventual demarcation diminishes in any way the necessity for an adequately clear, topographically accurate, and unambiguous delimitation, on the basis of which the Parties can act immediately following the Judgment to be handed down by the Court.

6.36 It follows from what has been said that Cameroon's list, in the *Reply* (paragraph 2.74), of maps which it considers "constituent une preuve significative parce qu'elles figurent en annexe d'instruments contraignants"[24] is not directly relevant to the matter presently in issue. Nigeria does not suggest that those maps are to be ignored, but instead considers them to be part of the problem rather than the answer to it. So far as concerns the land boundary, they are all old maps; they do not accurately represent the topography of the area with which they deal. It is precisely because the delimitation instruments are based on those maps, and those maps are now evidently of inadequate accuracy (as well as being on a scale which makes them unsatisfactory for delimitation or demarcation purposes[25]), that the accuracy and clarity of the delimitation contained in those instruments has now to be questioned.

6.37 As to the four land boundary maps referred to by Cameroon in the *Reply* (paragraph 2.74), they have obvious deficiencies, particularly as regards scale. Nevertheless, they are clearly relevant to any consideration of the land boundary in the areas to which they relate. It is not, however, their relevance which is in issue, but their topographical adequacy and accuracy: for delimitation and even more so for eventual demarcation purposes they are lacking in both respects. Nigeria has the following more particular comments on the maps referred to.

(1) The three maps accompanying the Anglo-German Agreement of 19 March 1906 are at a scale of 1:100,000, prepared by the Nigeria-Kamerun Boundary Commission in 1903-1906 and signed by the Commissioners on 19 March 1906. A red line shows the Anglo-German boundary. Only Sheet 3 is relevant and its depiction of river courses and hill features is limited, but reflects the understanding of the topography that existed at that time.

(2) The maps attached to the Anglo-German Agreement of 11 March 1913 consist of two sets of maps first used to illustrate the original unratified delimitation agreement of 1909.[26] The original versions were prepared in 1905-1909, one set at a scale of 1:125,000, the other at a scale of 1:100,000. Revised versions of the 1:125,000 series were produced in 1912-1913 and given the series reference GSGS 2700. These revised maps illustrated the demarcation recorded in the Anglo-German Agreement of April 1913 and were attached to that Agreement, but, again, the depiction of features is limited.

(3) The map attached to the Milner-Simon Declaration of 1919 "to illustrate the description of the above frontier" was on a scale of 1:2,000,000 (see Article 3(2)): this is manifestly inadequate for accurate

delimitation or demarcation purposes. The Declaration also referred to numerous sheets of Moisel's map (see Article 3(1)). This map series was first prepared in 1908, on the basis of observations made by German travellers[27] and if there were no travellers' reports for an area, Moisel was unable to portray the topography. Moreover, at a scale of 1:300,000 its ability to record relevant features accurately enough to serve as a sufficiently detailed boundary map was limited.[28]

(4) The map annexed to the published text of the Thomson-Marchand Declaration 1929-1931 was on a scale of 1:1,000,000, which is little better than the Milner-Simon map. Moreover, its origins are somewhat obscure, but it is clear that it is not what it purports to be, namely a map prepared and published contemporaneously with the Declaration to which it relates. The records available at the Public Record Office, Kew, show that

(a) the map published with the printed version of the 1931 Exchange of Notes was not the map annexed by Thomson and Marchand to their Declaration;

(b) indeed, that map was not only not available at the time the Declaration was concluded, but it was not even available at the time the Exchange of Notes was signed on 9 January 1931, only becoming available some months later; and

(c) that map was a purely British creation, without, apparently, any French contribution.

The so-called 'Thomson-Marchand map' must, accordingly, be treated with very considerable caution as a definitive illustration of the intended effect of the Thomson-Marchand Declaration.

6.38 The history of the map's preparation appears to be as follows. The original Thomson-Marchand Declaration was sent to the Colonial Office by the Deputy Governor of Nigeria with his Despatch of 24 March 1930.[29] The enclosures to the Despatch consisted of an undated typed 'original' of the Declaration in English with original signatures by Thomson and Marchand, and an undated typed lower (carbon) copy in French, also with original signatures. No maps were enclosed with the Despatch, even though the Declaration referred to "the frontier ... as is traced on the map annexed to this declaration". The English original (but not the French copy), however, contained in its left-hand margin a number of typed notations alongside particular paragraphs: these were sequentially as follows - R.O. 1120, R.O. 1119, Moisel's map, R.O. 1014, R.O. 1043, R.O. 1082, R.O. 1083, Moisel's map, G.1. The covering Despatch (paragraph 4) read: "The references marginally noted in the enclosures to this despatch refer to the maps relevant to the agreement". In May 1930 the Colonial Office, noting that copies of the maps referred to had not been received, requested the Governor of Nigeria to furnish a few sets of the maps.[30] The files[31] show that Thomson transmitted four sets of maps with his Despatch of 28 June 1930, but this Despatch itself has been destroyed (i.e. was 'weeded' when the file was sent to the archives). The Foreign Office wanted maps for publication with the Exchange of Notes which it was anticipated would be concluded in due course to confirm the Thomson-Marchand Declaration, but considered the set of maps available from the Colonial Office to be too bulky for the purpose and in October 1930 asked the War Office to

produce a more suitable composite map.[32] The War Office did not complete the task until after the Anglo-French Exchange of Notes had been concluded on 9 January 1931:[33] the first proof was only sent to the Foreign Office in May 1931, and the final copies only arrived at the Foreign Office on 11 August 1931. The composite map duly appeared in the United Kingdom's Treaty Series, No. 34 (1931), "to illustrate the Anglo-French Declaration defining the Cameroons Boundary": that map has the series number GSGS 3914, confirming that it was constructed by Geographical Section, General Staff, i.e. by Military Survey, London.

(vi) Confirmation of relevant instruments delimiting the boundary

6.39 It is now clear from Cameroon's *Reply* that Cameroon has dropped its former request that the Court should 'specify definitively' the boundary from Lake Chad to the sea, including therefore the land boundary between Lake Chad and Bakassi. Instead, Cameroon does not ask for any more detailed specification than that given in the various relevant legal instruments. Cameroon's Submissions at paragraph 13.01 of the *Reply*, in relation to the land boundary between Lake Chad and Bakassi, may be summarised as requesting the Court to adjudge and declare that the land boundary follows a line which

(1) begins at a point the co-ordinates of which are given and then runs to another point the co-ordinates of which are given (and which is said by Cameroon to represent the location of the mouth of the Ebeji), in accordance with the Franco-British declaration of 10 July 1919 and with the Thomson-Marchand Declaration of 29 December 1929 and 31 January 1930 confirmed by the Exchange of Letters of 9 January 1931;

(2) thence follows the course fixed by those instruments to the fairly prominent, pointed peak referred to by Cameroon as "Mount Kombon";

(3) thence heads towards Pillar 64, following the course described in the Nigeria (Protectorate and Cameroons) Order in Council 1946;

(4) thence follows the course described by relevant paragraphs in the Obokum Agreement of 12 April 1913 as far as pillar 114 on the Cross River; and

(5) thence follows a course determined by specified paragraphs of the Anglo-German Agreement of 11 March 1913.

6.40 Nigeria notes at the outset that Cameroon itself wants rather more than just an affirmation of the relevant instruments. For the beginning of the land boundary line Cameroon stipulates that the line should run through a point whose co-ordinates are given, said to be the mouth of the Ebeji. Despite the impression which Cameroon seeks to give that this point is included in the instruments to which it refers, the co-ordinates do not form part of the text of those instruments: as Nigeria has several times stated,[34] the various instruments which delimit the land boundary do not do so by reference to geographical co-

ordinates identifying successive points along which the land boundary runs. Nigeria will comment later (paragraphs 7.10 *et seq.*) on the particular co-ordinates offered by Cameroon; for the present Nigeria simply notes that Cameroon has shown that it too believes that the relevant instruments are in themselves inadequately precise and therefore has to introduce further extrinsic definition of relevant points along the boundary line.

6.41 Notwithstanding that addition by Cameroon to the terms of the instruments on which it relies, Cameroon is for the most part in effect merely asking the Court to affirm the terms of those instruments. Nigeria regrets that Cameroon is thus now backing away from a request that the Court should specify the line of the land boundary with adequate precision to enable an effective demarcation to take place. Such a detailed specification of the land boundary is necessary if border problems are to be avoided because, as Nigeria has shown in its *Counter-Memorial*, the terms of the instruments on which Cameroon is now content to rely are in places inadequate.

6.42 Nevertheless, Cameroon, as the Applicant, is content to seek from the Court merely an affirmation of the land boundary in terms of existing instruments whose adequacy as a boundary delimitation is in places manifestly lacking. Nigeria has all along said that the land boundary as a whole between Lake Chad and Bakassi is not in dispute (see NC-M, paragraphs 18.54 *et seq.*). Cameroon, having misled the Court, by reference to a spurious issue about Tipsan (see below, paragraph 7.169 *et seq.*), into concluding that the dispute is not limited to Lake Chad and Bakassi, now seeks to resile from the consequences of doing so. For the reasons given above and in further detail in Chapter 7, Nigeria does not accept this attempt by Cameroon to withdraw issues from the Court. Subject to what is said in paragraphs 6.44-6.48, Nigeria respectfully submits that the Court can begin its consideration of the land boundary by affirming that the boundary is, in principle, delimited by the terms of the four legal instruments identified above. But, it is further submitted, the Court should not stop there.

6.43 In this context Nigeria wishes to reaffirm what it said in paragraphs 26.4-26.5 of its *Counter-Memorial:*

> "26.4 Cameroon having defined the issue in terms of Article 17(f) of its *Application* - and the Court having held, by reference to an alleged dispute over Tipsan, that the whole boundary is in dispute - it is in Nigeria's view not open to Cameroon now to say that all it asks the Court to do is to make a declaration in terms of particular instruments, without reference to the actual boundary *in situ*. There is however a risk that Cameroon will resile from the position taken in its *Application*, and the effect of the *ne ultra petita* rule might then present a difficulty. Against that contingency, Nigeria accordingly asks the Court (pursuant to Article 80 of the Rules, if necessary) to specify definitively the course of the boundary from the mouth of the River Ebeji to the sea.
>
> 26.5 Nigeria reserves the right to ask the Court to specify definitively the course of the boundary *in situ*, to the extent that it may emerge in subsequent pleadings that Cameroon does not accept that course, as described in more detail by Nigeria. In other words, it

> reserves the right to ask the Court, to the extent that further differences of opinion arise between the parties in the course of the pleadings, to resolve those differences by interpreting and applying the relevant instruments, so as to allow the boundary to be subsequently fixed *in situ* by ordinary process of demarcation."

6.44 As Nigeria has demonstrated (and will show further, below), the boundary delimited in the relevant boundary instruments is in places seriously defective. A simple affirmation of the relevant boundary instruments requested by Cameroon will consequently not afford a workable basis on which the Parties could, after the Court has delivered Judgment, proceed to a demarcation of the land boundary; nor will it in the meantime provide a clear statement of the course of the boundary for the guidance of those living and working in the area and of local authorities. Moreover, such a simple affirmation will do little to avoid future border disputes. It is therefore essential that the Court should in its Judgment remedy the deficiencies of the relevant boundary instruments, and Nigeria's readiness to see those instruments confirmed is subject to the detailed interpretations, clarifications and variations which in Nigeria's submission are called for and which Nigeria will set out in detail in Chapter 7 of its *Rejoinder*.

6.45 In its *Counter-Memorial* Nigeria gave examples of the various kinds of deficiencies which are apparent in the instruments which delimit the boundary. These were, however, only examples, intended to illustrate the basic proposition that Cameroon's request for a "definitive specification" of the boundary could not be met by reference only to the terms of the relevant instruments. In this *Rejoinder*, Nigeria will both expand upon the examples which it gave previously and, for completeness, will identify other boundary areas where either the delimitation in the relevant boundary instruments is defective or Cameroon has asserted a boundary inconsistent with that delimitation.

6.46 The deficiencies in the relevant boundary instruments calling for interpretation, clarification or variation arise where

(1) the terms of the existing instruments are manifestly defective, since there is no benefit to the parties in the Court confirming as the delimitation of the boundary a delimitation which is defective; or

(2) the terms have been varied or clarified by subsequent practice and agreement, since it would be wrong for the parties and the Court to ignore developments on the ground over the past three quarters of a century.

6.47 In Section A of Chapter 7 of this *Rejoinder* Nigeria, in respect of each of these boundary areas, will explain the inadequacy of the original instrument, will comment upon any observations made by Cameroon, and will offer an alternative form of words which properly describes the boundary.

6.48 In addition, in Section B of Chapter 7 Nigeria will deal with certain boundary areas where the original delimitation in the relevant instruments stands in no need of interpretation or clarification but where nevertheless Cameroon

(1) has criticised Nigeria's position and has itself asserted a boundary inconsistent with that original delimitation, or

(2) has delineated the boundary on maps submitted by Cameroon with its *Memorial* or *Reply*, or on other official Cameroon maps, in a manner inconsistent with the original delimitation.

6.49 In conclusion Nigeria will submit that the land boundary follows the line stipulated in the original instruments delimiting the boundary, subject to the alternative forms of words proposed in respect of each boundary area needing clarification or interpretation; and in respect of the other boundary areas where Cameroon asserts a boundary inconsistent with the delimitation set out in the relevant instruments, Nigeria will request the Court to declare that the land boundary correctly follows the course described by Nigeria.

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1 This particularisation of Nigeria's objection related in terms to the boundary "from the tri-point in Lake Chad to Mount Kombon", but for the reason given in para. 6.2 the present Chapter excludes the boundary within Lake Chad.

2 This particularisation of Nigeria's objection related in terms to the boundary between pillar 64 "and the sea", but for the reasons given in para. 6.2 that part of the boundary which lies in the area of the Bakassi peninsula is excluded from the present Chapter.

Although previous pleadings referred to the land boundary as being 1,600 kms long, a more recent and more detailed calculation shows the length of the land boundary to be nearer to 1,800 kms.

4 "establish that the boundary between the two States is contested along its entire length, *as the Court acknowledged by rejecting the fifth Preliminary Objection made by Nigeria*".

5 Nigeria noted in its *Counter-Memorial* (para. 9.41) that Cameroon gave co-ordinates for the starting point of the boundary on the shores of Lake Chad (although those co-ordinates are not included in the instruments on which Cameroon relies), and that the approximate co-ordinates for a single point were given in one of the instruments relied on by Cameroon.

6 See n.5 above.

7 "International law gives a special status to treaties establishing boundaries".

8 See below, para. 15.47(i).

9 "International law presumes that the treaties delimiting a boundary establish a permanent, defined and complete boundary, in the absence of clear proof to the contrary".

10 I.L.R., Vol. 38, at p. 81. See also below, para. 7.6.

11 *Additional Application*, para. 17(f).

12 "A "Definitive specification" should not be erected into a new concept, grouping delimitation and demarcation, the consequence of which would be to place the problems of demarcation at the same level as the problems of delimitation .... It is not at all a question of a term of art but of an expression used by Nigeria to generate confusion".

13 "uses the notion of "definitive specification" which it considers equivalent to delimitation".

14 "As regards the land boundary between Lake Chad and Bakassi, Nigeria does not call into question the validity as such of the instruments on which that land boundary is based."

15 "Nigeria ... in principle accepts the validity of all of [the instruments primarily concerned] as the basis for the land boundary between Lake Chad and Bakassi."

16 "Nigeria does not challenge the legal validity of the Milner-Simon Declaration, its adoption by reference as part of the Mandates for the British and French Cameroons, or the legal validity of the Thomson-Marchand Declaration as confirmed by the Exchange of Notes of 9 January 1931."

17 "... in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of the Order in Council."

18 "...in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of that Agreement [i.e. the Anglo-German Demarcation Agreement of 12 April 1913]."

19 "... in relation to the Sector of the boundary now under consideration, Nigeria does not challenge the legal validity of that Treaty [i.e. the Anglo-German Treaty of 11 March 1913]."

20 Regarding the land boundary between Lake Chad and Bakassi, Nigeria referred to "the instruments relied on by Cameroon, the validity of which Nigeria does not question."

I.C.J. Reports 1974, at pp. 259-260.

22 "will certainly be followed by careful and precise demarcation by the Parties".

23 This merely confirmed the previously demarcated Anglo-German boundary on the ground along a 4 km stretch between boundary pillars 110 and 113: see Report on the First Stage of Nigerian-Cameroun Boundary Survey May 1966, signed on 2 and 6 June 1966 (Annex NR 146). The work involved clearing straight lines 12 metres wide through the forest between adjacent boundary posts. No traces of these lines now remain.

24 "constitute significant evidence since they appear in annexes to binding instruments".

25 See NC-M paras. 18.60-18.62.

26 NC-M Vol. V, Annex NC-M 42.

27 See NC-M para 18.60.

28 *ibid.*

29 Annex NR 147.

30 Annex NR 148.

31 See n. 22.

32 Annex NR 149.

33 Annex NR 150.

34 e.g. NC-M paras. 18.5, 18.56, 18.59; and paras. 6.5(6) and 6.6(1) above.

PART III

THE LAND BOUNDARY

CHAPTER 7

THE CORRECT DELIMITATION OF THE BOUNDARY

A. Areas of Defective Delimitation

(i) Introduction

7.1 This section of the *Rejoinder* will focus on the border areas where it is not sensible or possible to apply the terms of the original legal instruments and where they therefore have to be clarified or interpreted so as to provide a delimitation which is accurate enough to enable demarcation to take place: these border areas include areas where the terms of the original delimitation instruments have been varied by subsequent practice and agreement. In Nigeria's *Counter-Memorial* examples of such border areas were identified as

the "mouth of the Ebeji" (NC-M paragraphs 19.40-19.43);

Jimbare (NC-M paragraphs 19.44-19.47);

Namberu-Banglang (NC-M paragraphs 19.48-19.49);

Yin Crossing (NC-M paragraphs 19.50-19.51);

median line of the Gamana River to BP64 (NC-M paragraph 19.83);

Sapeo (NC-M paragraphs 19.32-19.38).

In this section these examples will be further elaborated, and additional instances will be given for the sake of completeness. The deficiencies in the governing texts to which Nigeria will thus draw attention are only those which give rise to difficulties of some substance. There are a number of other deficiencies which are of lesser significance, and which Nigeria believes can be best left until an agreed demarcation of the boundary takes place.

7.2 Before noting the specific instances of defective delimitation which are of concern to Nigeria, there

are five general points to be made. The first is that in a number of places there are material differences between the English and French texts of the Thomson-Marchand Declaration. Thus, for example, (with the differences underlined):

(1) in Article 8 the English version refers to "about a kilometre and a half", where the French text refers to "environ 1 kilomètre";

(2) in Article 41 the English version refers to "2 kilometres to the south-west", where the French text refers to "environ 2 kilomètres au sud-ouest";

(3) in Article 48 the English version refers to "Hosere Lowul, which is well over 2 kilometres from the Kwancha-Banyo road", where the French text refers to "le mont Lowul, qui se trouve à environ 2 kilomètres de la route..."

(4) in Article 49 the English version refers to "a prominent conical peak, Hosere Gulungel", where the French text refers to "un pic de forme conique, le mont Gulungel";

(5) also in Article 49 the English version refers to a point "5 miles from Genderu Rest-House", where the French text has no equivalent reference;

(6) in Article 52 the English version refers to "a very lofty and desolate plateau", where the French text refers to "un plateau assez bas et désolé";

(7) in Article 60 the English version refers to "a fairly prominent, pointed peak", where the French text refers to "un pic assez proéminent".

Nigeria submits that great care must be exercised before confirming, as the correct delimitation of a boundary, texts containing such discrepancies.

7.3 The second point is that, throughout this Chapter, Nigeria will quote latitudes and longitudes to two distinct levels of precision:

(1) Where reference is being made to a position which has no physical marker on the ground, latitude and longitude will be quoted to the nearest half minute, a precision of about 900 metres.

(2) Where reference is being made to a position where a marker of some sort (such as a cairn) is present or to a geographical feature which is not ambiguous (such as the summit of a hill or the junction of two rivers), latitude and longitude will be quoted to the nearest second, a precision of about 30 metres.

Positions quoted in this *Rejoinder* in the above formats are not to be given any greater precision than that indicated. Nigeria accepts that positions quoted as in (1) above will require further consideration during demarcation. Unless otherwise indicated, Nigeria will quote latitude and longitude in terms of

Minna Datum, the national mapping datum of Nigeria.

7.4 The third general point to be made is that many of the place names used in the Thomson-Marchand Declaration, the Second Schedule to the Nigeria (Protectorate and Cameroon) Order in Council 1946 and the Anglo-German Agreements of 1913 were, even at the time of the Declaration, Order in Council and Agreements, subject to local variation, and a place or feature might have been known by more than one name. By now, many of the names used in those two instruments are different from those used then. Many villages have moved, taking the name of the village with them. Further confusion can arise when the site of an old village is occupied by inhabitants from another village who move there complete with a new, different name. In the following paragraphs of this Chapter, Nigeria will, as appropriate, draw attention to these changes in nomenclature, and will, for clarity, often use the old name alongside the current name. For convenience, however, Nigeria sets out at p. 115 of the *Atlas* the principal changes of name which have occurred: the name changes which concern places and features on the Cameroonian side of the boundary are subject to confirmation by Cameroon.

7.5 The fourth general point is that, as the subsequent paragraphs in this Chapter will make apparent, Nigeria accepts as a sufficiently complete and accurate delimitation of the boundary between Nigeria and Cameroon, the description of that boundary contained in the Anglo-German Demarcation Agreement of 12 April 1913, for the stretch between boundary pillars 64 and 114, and the Anglo-German Agreement of 11 March 1913, Articles XV to XVII, so far as concerns the boundary running southwards from boundary pillar 114 to a point north of the Bakassi peninsula, identified in Chapter 11 of the *Counter-Memorial*.

7.6 The fifth general point to be made concerns the similarities which exist between many of the instances of defective delimitation and the circumstances which gave rise to the Arbitration Award in the *Argentine-Chile Frontier Case* concerning those States' common frontier in the region of the Rivers Palena and Encuentro.[1] There the original delimitation of the frontier took the boundary to the confluence of the two rivers, from where the boundary was to follow the River Encuentro to its source on Cerro Virgen; and from there the boundary was to go to a pre-existing boundary pillar located on the shores of Lake General Paz. In fact, the delimitation was erroneous: the main stream of the River Encuentro did not have its source on the stated mountain, Cerro Virgen, but on another mountain. The approach taken by the Tribunal (Lord McNair, President) was to conclude that the clear intention of those performing the delimitation was that the boundary should link three successive points, namely the confluence of the two rivers, Cerro Virgen, and the boundary pillar on Lake General Paz, and that in getting to Cerro Virgen the boundary should follow the main channel of the River Encuentro. Accordingly, having ascertained which was the main channel of the river, the Tribunal followed its course until the point at which it departed in a marked degree from the direction of Cerro Virgen, then drew a new line which left the River Encuentro at that point and made for Cerro Virgen in a manner as far as possible consistent with the general practice evident elsewhere in the delimitation, and then continued on to the boundary pillar on the shores of Lake General Paz. It is noteworthy that

(1) the parties did not leave the matter to be resolved by those responsible for demarcating the boundary:

the defect in the delimitation was too great to be resolved in such a technical process, and indeed a Mixed Boundary Commission could do no better than report its difficulties in this boundary sector; and

(2) the Tribunal gave effect *so far as it could* to the terms in which the boundary had been delimited and to what it saw as the essential requirements of that delimitation, but sought to overcome its defect by constructing a line which was in its view consistent with the principle which in general seemed to have guided those drawing up the delimitation.

7.7 In the following paragraphs of this section of this Chapter, Nigeria will deal with the following land boundary areas in respect of which the governing texts are in need of clarification or interpretation:

The "mouth of the Ebeji" (paragraphs 7.8-7.25)

Narki (paragraphs 7.26-7.30)

River Kirawa (paragraphs 7.31-7.35)

The Kohom River (paragraphs 7.36-7.44)

From Mount Kuli to Bourha (paragraphs 7.45-7.59)

Kotcha (Koja) (paragraphs 7.60-7.63)

Source of the Tsikakiri River (paragraphs 7.64-7.69)

Jimbare (paragraphs 7.70-7.76)

Sapeo (paragraphs 7.77-7.83)

Namberu-Banglang (paragraphs 7.84-7.87)

The position of Mount Kombon (paragraphs 7.88-7.98)

The Boundary from Tonn Hill to the Mburi River (paragraphs 7.99-7.111)

(i) the Prominent peak which marks the Franco-British frontier

(ii) Lip and Yang

Sama River (paragraphs 7.112-7.116)

BP64 (paragraphs 7.117-7.120).

A locator key for these boundary areas is opposite page 366, below.

(ii) The "mouth of the Ebeji"

7.8 Nigeria explained the defective nature of the reference in the delimitation to the "mouth of the Ebeji" in NC-M 19.40-19.43. In brief, the Thomson-Marchand Declaration describes a line from a point in Lake Chad[2] to "the mouth of the Ebeji" and thence "from this mouth" along the course of the River Ebeji, etc. A map extract of the area in question is at Fig. 7.1.

7.9 This description is defective because it does not define accurately the location of the boundary at the mouth of the Ebeji River, and it assumes that the Ebeji has a single mouth. In reality the Ebeji does not have a single mouth, but rather has two branches which lead into Lake Chad, as well as several smaller waterways in that region, together giving it the character of a small delta.[3] Cameroon accepts that "L'Ebeji présentait en effet deux embouchures possibles..."[4] (RC, paragraph 3.20), and that "le cours de l'Ebeji ne semble pas avoir changé depuis le début du siècle"[5] (RC, paragraph 3.21): thus Cameroon accepts that in 1931 the Ebeji had two mouths.

7.10 Cameroon, in its *Memorial*, could not of course invoke any specific identification of the "mouth of the Ebeji" in the instruments on which Cameroon relies because there was none. Instead Cameroon implicitly sought from the Court confirmation of the location of the mouth of the Ebeji at longitude 14_ 12' 11.7" E, latitude 12_ 32' 17.4" N, which was the location proposed by technical experts meeting in September 1988 (MC, paragraphs 4.120-4.121). In its *Reply* Cameroon substantially repeats that location as, implicitly, the mouth of the Ebeji, although further refining it to longitude 14_ 12' 11"7005E, latitude 12_ 32' 17"4013N (RC, paragraph 13.01(a)). The precision of this latter set of co-ordinates is 3 millimetres, a level quite unjustified by technology or geography. Cameroon seems to be seeking to improve its case by bogus accuracy.

7.11 In its *Reply* Cameroon follows the co-ordinates of that location with the words "conformément à la Déclaration franco-britannique du 10 juillet 1919 et à la Déclaration Thomson-Marchand des 29 décembre 1929 et 31 janvier 1930 confirmée par l'Echange de lettres du 9 janvier 1931".[6] In this way Cameroon seeks to suggest that the co-ordinates are part of the Milner-Simon and Thomson-Marchand Declarations. This is incorrect: neither of those instruments gives co-ordinates for the "mouth of the Ebeji" to which each refers. The co-ordinates given by Cameroon are an addition to, not a part of, the instruments which Cameroon now asserts delimit the boundary.

7.12 Moreover, the co-ordinates used by Cameroon for the mouth of the Ebeji are the co-ordinates proposed in 1988 by technical experts appointed within the framework of the LCBC. As Cameroon puts it in its *Reply*, "le point identifié par la C.B.L.T. correspond à l'embouchure de l'Ebeji telle qu'elle

existait en 1931 et telle qu'elle était décrite sur la carte Thomson-Marchand".[7] (RC, paragraph 4.79; also paragraph 3.21). This is an incomplete account of the facts: it fails to note that the 1988 recommendation as to the point at which the mouth of the Ebeji was said to have been located was never finally agreed.

7.13 The point represented by the co-ordinates was the point recommended by national experts (NC-M, paragraph 16.48), and was endorsed by the national Commissioners in their resolution No. 2 adopted at their 36th Session in December 1988 (NC-M, paragraphs 16.48 and 16.50 at p. 404). Their decision was not final. The whole matter of the boundary in Lake Chad was the subject of a *Report of the Marking-Out of the International Boundaries in Lake Chad*, adopted at N'Djamena on 14 February 1990 (Annex 5 to Cameroon's *Additional Application*; NC-M, paragraph 16.50). Various problems arose over boundary matters in Lake Chad (NC-M, paragraphs 16.52-16.54), and the result *inter alia* was that (i) the LCBC referred the question of the southern extremity connecting with the Ebeji River to the two countries concerned (NC-M, paragraph 16.55), and (ii) the Commission, at its 41st Session in 1993, referred the documents relating to the border demarcation exercise to the Heads of State and Government of the Member States "for a final decision" (NC-M, paragraph 16.56). Thus by 1993 the question of the location of the boundary point at the mouth of the Ebeji was still to be finally decided. The Eighth Summit of the Heads of State and Government, in 1994, decided to approve the technical document on the demarcation of the international boundaries of Member States, but subject to the adoption by each Member State in accordance with its national laws and subject, further, to signature by the next Summit of the Commission (NC-M, paragraphs 16.57-16.58). At the next Summit, in 1996, which the Heads of State of neither Cameroon nor Nigeria attended, the Summit decided "to defer discussions on the issue" and authorised the President of the Summit to contact the Heads of State of Cameroon and Nigeria to find an amicable solution to the problem (NC-M, paragraph 16.59). Thus the whole question was expressly deferred, no final decision was reached and no final documents were signed recording the necessary agreement to the report of the technical experts which had embodied the recommendations as to the location of the mouth of the Ebeji on which Cameroon now seeks to rely.

7.14 Cameroon seeks to brush aside the implications which flow from Nigeria's conclusion as to the non-binding nature of the experts' 1988 recommendations, in saying that it "ne change rien à l'exactitude de la détermination, par les experts de la C.B.L.T., de l'embouchure de l'Ebeji"[8] (RC, paragraph 3.22). Two points must be noted.

(1) First, Cameroon does not dispute Nigeria's conclusion that the outcome of the LCBC's consideration of Lake Chad boundary issues, including the location of the mouth of the Ebeji, was that the experts' proposals were never finally agreed.

(2) Second, however 'exact' the LCBC's proposals might have been, the fact remains that they never got to the stage of being agreed at a Summit, as the Commissioners had themselves considered necessary.

7.15 Cameroon can thus be seen to be itself departing from the delimitation set out in the relevant instruments on which it relies by seeking to add to those terms a set of co-ordinates which do not appear in those instruments, and is seeking from the Court confirmation, as though it were an already agreed

fact, of a definition of the mouth of the Ebeji which in fact is *not* agreed.

7.16 The *only* agreed terms delimiting the boundary in this area are the words "the mouth of the Ebeji". That is a geographical reference. The map extract at Fig. 7.1 shows the locations of the two branches of the Ebeji and the location of the co-ordinates given by Cameroon (marked "Pt. V"). The map is based on aerial photographs and greater clarity can be achieved by examining the photographs themselves. The aerial photography, in showing clearly the channels now leading out into Lake Chad, reflects the water flow of earlier years which were responsible for the creation of those channels. An aerial photographic mosaic is provided at Fig. 7.2.

7.17 The co-ordinates given by Cameroon, whatever their origin may be, do not reflect a true geographical "mouth of the Ebeji". Neither Fig. 7.1 nor Fig. 7.2 show any trace of any well-defined channel in the vicinity of the position chosen by the experts as the mouth of the Ebeji; nor is there any discernible channel which could be said to connect the experts' chosen 'mouth' to the clearly defined channel of the Ebeji above the bifurcation. Consequently, if the experts' location were to be treated as the mouth of the river, it would be a mouth without a river leading to it (and it would be impossible to apply the terms of the delimitation, which require the boundary to run "from the mouth along the course of the Ebeji").

7.18 Cameroon asserts that "ils [les négociateurs] ont choisi un point de repère géographique identifiable, l'embouchure de l'Ebeji"[9] (RC, paragraph 3.15). However, "the mouth of the Ebeji" cannot be an identifiable *point* of reference. As Cameroon's Map R3 shows, there is a wide variation in the high water mark of Lake Chad: this has continued over many years. It is almost impossible to fix, as a matter of geography, the mouth of a river which debouches into a lake whose area varies continuously over the years; it is even more difficult when large parts of the lake dry up, leaving the area of water miles away from the channels of rivers flowing into it.

7.19 Finally, the mapping relied on by the experts was seriously defective, in a number of respects.

(1) The experts used as their base map the map published with the 1931 Thomson-Marchand Declaration ("the 1931 map"). The inappropriateness of using that map as a reliable basis for the interpretation of the Declaration has already been made clear: above, paragraphs 6.37(4) and 6.38.

(2) Even taken at face value, that map is so generalised and inaccurate that it makes no attempt to differentiate between the eastern and western channels.

(3) Even a perfect map has a limitation known as 'plottable error'. The experts used the 1931 map on which the Ebeji River is marked by a line 0.2 mm thick. At the scale of 1:1,000,000, this represents a width of 200 metres. Thus the plottable error on this map, even if it were perfect, would on the ground represent 200 metres or, in latitude-longitude terms, 7". But the 1931 map was not perfect. It was a compilation from several other earlier maps (see paragraph 6.38 above), and for clarity at the much smaller scale the map was constructed on the basis of a great deal of generalisation (for example,

straightening out bends in rivers). It was constructed on a graticule of latitude and longitude which would have been based on local astronomical observations, rather than a modern survey datum. Taken together, these factors could give rise to further errors of 100m-400m (3"-15").

(4) The experts who submitted their recommendations in 1988 measured the position of the mouth of the Ebeji from this map and quoted the result to the nearest tenth of a second of arc, that is to say 3 metres on the ground, or 0.003mm on the map. It is impossible for such a map to support a position quoted to such accuracy. The best precision it could be on a *perfect* map would be 200 metres, or 7". But the map they used was not perfect and errors of at least 1 kilometre can be detected on it when it is compared with modern mapping.

(5) The latitude and longitude thus obtained was then plotted by the experts on to the LCBC map, which was constructed on Adindan Datum. Adindan is a town in the Sudan, and in the area of Lake Chad there is a difference in latitude and longitude values of 3" in latitude (about 100m) and 3" in longitude (again, about 100m) between positions derived from Adindan Datum and those derived from Minna Datum, the basis for Nigeria's own mapping.

7.20 This is not just a problem of demarcation, since a demarcation team has no basis for determining which of the possible choices was in the minds of the negotiators of the relevant instruments. Before demarcation (or other identification on the ground of the location in question) can be attempted, the language of the relevant instruments needs interpretation, given its fundamental deficiency in assuming, wrongly, that the Ebeji had only one mouth. There is a clear parallel to be drawn with the facts of the *La Palena* arbitration between Argentina and Chile (above, paragraph 7.6) where the relevant delimitation assumed, wrongly, that the river in question had its source on a particular mountain. Moreover, the Award in that Arbitration noted

> "the general principle that where an instrument (for example, a treaty or an award) has laid down that a boundary must follow a river, and that river divides into two or more channels, and nothing is specified in that instrument as to which channel the boundary shall follow, the boundary must normally follow the major channel. The question which is the major channel is a geographical question .... In the Court's opinion, the major channel can be determined on both historical and scientific grounds... [The historical evidence was specific to the circumstances of the River Encuentro.] ... In the Court's opinion the three principal criteria to be applied in a problem of this kind are length, size of drainage area, and discharge."[10]

These principles need some adaptation in respect of Lake Chad, where normal considerations and calculations of drainage area and discharge applicable to upper reaches of rivers are impossible to apply or calculate in relation to a bifurcation of a water-course into two channels in which the flows are seasonal and can occur in both directions. But the north-east channel is the longer of the two possible channels, has a well-defined course, and leads to a more substantial outfall in the area marked "Pond" on Figs. 7.1 and 7.2, whereas the north-west channel just peters out.

7.21 Nigeria submits that the correct interpretation of the phrase "the mouth of the Ebeji" as used in the Milner-Simon and Thomson-Marchand Declarations is that it is the location at which the north-east channel as shown on Fig. 7.1 flows into the feature marked "Pond" on that same Map, which location is at latitude 12° 31' 45" N, longitude 14° 13' 00" E (Adindan Datum).

7.22 Wherever the "mouth of the Ebeji" is held to be located, it seems to be agreed between the parties that the two branches of the Ebeji divide at a bifurcation located at latitude 12_ 30' 14" N, longitude 14_ 12' 03" E (Adindan Datum).

7.23 Following Nigeria's submission at paragraph 7.21 above, Nigeria submits that the course of the boundary from the mouth of the north-eastern channel of the Ebeji follows the middle of that channel upstream until it meets the point of bifurcation identified in paragraph 7.22 above.

7.24 It is relevant for the Court to be aware that local Nigerian communities have habitually fished in the waters on the Nigerian side of the north-eastern channel without protest.

7.25 For the foregoing reasons Nigeria submits that the words "the mouth of the Ebeji" appearing in the Thomson-Marchand Declaration are to be understood as bearing the meaning given in paragraph 7.21 above, so that Article 2 reads as follows:

> "(2) On a straight line as far as the mouth of the Ebeji [El Beid], in latitude 12° 31' 45" North, longitude 14° 13' 00" East. "

(iii) Narki

7.26 Article 14 of the Thomson-Marchand Declaration provides that, after reaching a marsh named Agzabame (in accordance with Article 13), the boundary

> "Thence cross[es] this marsh where it reaches a river passing quite close to the village of Limanti (Limani) to a confluence at about 2 kilometres to the north-west of this village."

The aerial photography shows greater detail in this area than does the DOS 1:50,000 map. An aerial photographic mosaic covering the area considered below is at Fig. 7.3: a sketch map identifying the relevant features is at Fig. 7.4.

7.27 Between Agzabame Marsh and the modern town of Banki (3 kms NW of Limani) there are several courses of the river which might meet the terms of Article 14. These can be clearly seen in Fig. 7.3. The Article is thus defective in so far as it provides no guidance as to which of these courses constitutes the boundary. The map attached to the Thomson-Marchand Declaration is on a scale which does not resolve the question.

7.28 Map 5 in Cameroon's *Reply* (RC, Vol. II) places the boundary on a river course running about 1.5 kms north of Limani: such a course for the boundary takes it to the north of the substantial Nigerian villages of Narki and Tarmoa (not shown on Cameroon's Map 5, but marked on the sketch at Fig. 7.4). However, a sketch map signed by officers of the French and British administrations[11] and delineating the provisional boundary in May 1921[12] shows the boundary passing within some 250 metres of Limani - i.e. over a kilometre south of the line shown on Cameroon's Map 5. The river channel in this location passes to the south of Narki and arrives at a bifurcation with the main river opposite Banki: this bifurcation is at a point about 2 kms north-west of Limani, as required by Article 14. A boundary following this course accords with the position observed by the local population on the ground, as was seen during a visit by members of the Nigerian Legal Team to Narki in March 2000.

7.29 Tarmoa and Narki are both well-established Nigerian villages with significant populations.

7.30 For the foregoing reasons Nigeria submits that the reference in Article 14 of the Thomson-Marchand Declaration to "a river passing quite close to the village of Limanti" is to be understood as referring to the river course running about 250 metres north of Limani, to its confluence with the main river opposite Banki. This river course is delineated with red crosses on Fig. 7.4. Article 14 should then read:

> "Thence, crossing this marsh, the boundary reaches the more southerly of two defined channels of the Ngassaoua River. From this point, the boundary follows the most southerly of four channels of the Ngassaoua River. The channel runs south-west to the latitude of Limani, then turns to the west to pass some 250 metres to the north of that village, leaving Narki to Nigeria, and joins the main channel of the Ngassaoua River 2 kms north-west of Limani and opposite the town of Banki."

(iv) Kirawa River

7.31 Article 18 of the Thomson-Marchand Declaration provides that, after following the River Kolofata as far as its confluence with the River Gwaje or Keraua (as provided for in Article 17), the boundary runs

> "Thence following the Keraua as far as its confluence in the mountains with a river coming from the west and known by the "Kirdis" inhabiting the mountains under the name of Kohom (shown on Moisel's map under the name of Gatagule), cutting into two parts the village of Keraua and separating the two villages of Ishigashiya."

A map extract covering the area considered below is at Fig. 7.5.

7.32 This provision is defective in that there are in this area two courses of the Keraua (now Kirawa) River, and the Thomson-Marchand Declaration provides no guidance as to which channel forms the

boundary.

7.33 Between Gange and Ngabrawa Kuba (in roughly 11_ 15' N latitude) two courses of the Kirawa River can be seen on the map and on aerial photography (dated 1963): see Fig. 7.5 and the photo-mosaic at Fig. 7.6. Cameroon treats the boundary as constituted by the western channel. At the northern end of the river section in question it is not possible to detect on the 1963 aerial photography any significant difference in size between the two channels. However, the western channel is only well-defined from Gange southwards to a point where it peters out near the village of Ndabakora. From Ndabakora to the village of Blakoltchi, there is no discernible channel.

7.34 By contrast, there is a well-defined eastern channel all the way from Gange to Blakolchi and it is this channel which should form the boundary. The greater significance of the eastern channel is supported by the depiction on the DOS map at Fig. 7.5. On this map, the southern end of the eastern channel is depicted by a solid blue line whereas the western channel is depicted by a broken blue line. This conclusion is supported by Moisel's map, sheet B3 (an extract of which is at Fig. 7.7: this map was used by Milner and Simon to record their agreed boundary,[13] and was signed by them). This map shows a village named 'Schriwe' and a village named 'Ndeba' to the west of the river channel shown as forming the boundary. On Fig. 7.5, two villages named Chérivé and 'Ndabakora' are shown as lying between the two channels of the river. These villages are clearly the same as the villages marked on Moisel's map, and their locations on the Moisel map show that it is the channel to the east of these villages (i.e. so that the villages lie to the west of that channel) which forms the boundary.

7.35 For the foregoing reasons Nigeria submits that the reference in Article 18 of the Thomson-Marchand Declaration to "the Keraua" is to be interpreted as meaning

> "Thence following the Kirawa River, and between Gange and Ngabarawa Kuba its eastern channel, as far as its confluence ..."

(v) The Kohom River

7.36 Article 19 of the Thomson-Marchand Declaration provides that, after the confluence of the Rivers Keraua and Kohom (as provided for in Article 18), the boundary runs

> "Thence ... from this confluence as far as the top of Mount Ngossi in a south-westerly direction given by the course of the Kohom (Gatagule) which is taken as the natural boundary from its confluence as far as its source in Mount Ngossi; the villages of Matagum and Hijie being left to France, and the sections of Uledde and of Laherre situated to the north of the Kohom to England; those of Tchidoui (Hiduwe) situated to the south of Kohom to France."

A map extract covering the area considered below is at Fig. 7.8.

7.37 This provision is defective in that it assumes that the River Kohom has its source in Mount Ngossi. This assumption is incorrect.

7.38 The meaning of Article 19 depends on a correct understanding of which tributary of the Kirawa River goes by the name of Kohom. The names given to rivers are not decisive of their identity over their full length. The practice in this part of the world is for streams to take different names for different parts of their course especially where, as in this instance, there is a significant gap between the populated areas, and different tribes reside in the upper and lower reaches of the river.

7.39 Article 19 requires that from the confluence of the Kirawa and Kohom rivers referred to the boundary must follow a river (the Kohom), that this river flows in a south-westerly direction, and that the boundary goes to the source of the river in Mount Ngossi. Within the limits of those three 'givens' the course of the boundary is defectively delimited because the river which rises on Mount Ngossi is the Bogaza River (not the Kohom) and, at a crucial point along its course, it makes an abrupt change of direction from flowing north-east to flowing south-east. The Bogaza River, like the Kohom, is a tributary of the Kirawa.

7.40 The error arose out of a delimitation carried out by officers of both British and French Administrations in March 1926. They signed a map (Fig. 7.9) which shows the Kohom branching off the Kirawa at a confluence immediately to the south of a significant loop to the east in the course of the latter: this confluence is at latitude 10° 59' 30" N. The loop can be clearly identified on modern 1:50,000 maps (Fig. 7.8) and lies a little way south of latitude 11_ N. The 1926 map shows the course of the Kohom as running straight up to the village and mountain of Ngossi on the main watershed, first in a west-southwest direction and then in a south-west direction. These directions coincide with the requirement of Article 19 of the Declaration. This 1926 map was used in the preparation of the Thomson-Marchand Declaration, and is clear evidence of what the parties had in mind when referring, in that Declaration, to the Kohom River.

7.41 Modern maps show the error in the 1926 depiction. In reality, the Bogaza River flowing down from Ngossi towards the north-east does an abrupt (and what would be, to most travellers, a most unexpected) turn right round to the south-east, forming a large loop into Cameroonian territory: it is this stream, and not the Kohom River, which has its source on Mount Ngossi. The very unexpected sharp change in the course of the Bogaza River with its source on Mount Ngossi gave rise to the error of thinking that the river with its source in Mount Ngossi was the same river as that which joined the Kirawa as the Kohom, since in their upper reaches both flowed in a generally similar north-easterly direction. That error, made in 1926, and repeated in the Thomson-Marchand Declaration, was very understandable.

7.42 Cameroon's choice of the river intended to be referred to as the Kohom (RC, Vol. II, Map 6) cannot be the river referred to as the Kohom in Article 19, and its confluence with the Kirawa therefore cannot be the confluence there referred to. Cameroon's choice of river is a tributary rising well to the north of Mount Ngossi (and not "in Mount Ngossi" as Article 19 requires); and it flows first north then east,

joining the Kirawa some 1500 metres NNE of the tributary referred to above. This, however, is also inconsistent with Article 19, which refers to the course of the Kohom as taking the boundary "in a south-westerly direction".

7.43 Given the terms of Article 19, Nigeria submits that the intention of the framers of that provision is to be taken to be that the confluence referred to is that where the Kirawa River is joined by the Kohom River flowing from the direction of the source of the Bogaza River (see paragraph 7.41 above), and from that confluence, the boundary should follow the course of the River Kohom to its source nearest to the point at which the Bogaza River makes its abrupt turn to the south-east: that source is on a low saddle about 1 km south of the Nigerian triangulation point MM154, Matakam. From that point the boundary should descend for 600 metres to the sharp bend in the Bogaza River, then should follow that river to its source on Mount Ngossi and from there should run to the summit of the mountain.

7.44 For the foregoing reasons Nigeria submits that the relevant part of Article 19 of the Thomson-Marchand Declaration should be interpreted as stipulating that the boundary runs as follows:

> "Thence it runs from this confluence in a west-southwesterly direction given by the course of the Kohom River to its source 1 kilometre south of the Nigerian triangulation point MM154, Matakam. Thence by a line to join the Bogaza River at a point where it makes an abrupt change of direction from north-east to south-east. Thence by the course of this river south-westwards to its source on Mount Ngossi and from there to the most northerly summit of Mount Ngossi by a straight line."

(vi) From Mount Kuli to Bourha

7.45 The first part of Article 25 of the Thomson-Marchand Declaration provides that, after crossing Mount Kuli (in accordance with Article 24), the boundary

> "Thence run[s] due south between Mukta (British) and Muti (French) the incorrect line of the watershed shown by Moisel on his map being adhered to, leaving Bourha and Dihi on the French side, Madogoba Gamdira on the British, ...".

Map extracts covering the area considered below are at Figs. 7.10 and 7.11.

7.46 This Article is defective in that the requirement to follow a watershed line which is expressly admitted to be incorrect, shown on a 90 year old map which displays very little detail, can be interpreted in a number of ways. The choice of interpretation should not be left to the demarcation process.

7.47 Article 25 appears to begin the "incorrect line of the watershed" at Mount Kuli. In reality, Moisel's "incorrect" line has a significant impact on the boundary only from a point some 8 kms south of Hosere Kilda (which is believed to be the modern name for the mountain referred to in Article 24 as "Mount Kuli"). Between Hosere Kilda and that point Nigeria accepts as the boundary the watershed line adopted

by Cameroon in its *Reply* (RC Vol II Map 7) which approximates to Moisel's incorrect watershed.

7.48 As to the boundary south of that point, one possibility is that the intention behind the terms of Article 25 was that the boundary should follow the true watershed which Moisel thought he was describing, instead of the incorrect line which he in fact delineated. The relevant extract from Moisel's map is at Fig. 7.12. Moisel's error lay in not knowing (because of the lack of reports from any German travellers in the area) the correct course of the streams which he shows rising to the south of Humseki, one of which he names Waldocho. Moisel showed these streams as part of the Maio Kebbi catchment to the east whereas it is now known that they are part of the Maio Yedseram catchment to the west. Thus, it is now apparent that the line of the correct watershed would take the boundary far over to the east, into Cameroon. Such a line does not fit with the rest of the requirements of the Thomson-Marchand Declaration regarding the relationship of the boundary to various named locations, especially Mukta and Muti (shown as Moudi on Fig. 7.10). It therefore seems that this approach to the proper meaning of Article 25 should not be adopted.

7.49 An alternative approach would be to treat Article 25 as requiring that the Moisel watershed line be adhered to, even though it is incorrect. This requires the transposition of the "incorrect watershed" line on Moisel's map to the modern map which shows the correct topography.

7.50 Before doing this, it is necessary to establish the limits of that part of Moisel's line which represents the watershed incorrectly. This can be done by comparing the river drainage on Moisel's map with a modern map of the same area.

7.51 Moisel's most serious error arose in his depiction of the streams rising to the south of Humseki (now Roumsiki), including the Waldocho. These streams are shown as joining up to the north-east of Muti (now Moudi) and the resultant river is shown flowing southwards, passing to the east of Muti and to the west of Schua (now Choua) and Gili (now Guili) to a point 2.5 kms north-east of Bourha. It is then shown swinging round to the north-east as far as the vicinity of Wuda where it turns south-east and flows down to Mahau and onwards, further into Cameroon.

7.52 However, the latter part of this depiction is wrong. Between Schua and Gili the river (marked 'Dyou' on Fig. 7.11) swings round to the *west* towards Meafa. Moisel takes the river 5 kms further south before swinging it to the *east*. As a result, he incorrectly assigned the various upper streams above Schua to the French (i.e. Cameroon) catchment area: the correct course of the river placed those streams in the British (i.e. Nigerian) catchment area.

7.53 If one relied on Moisel's map one would assume that the main watershed between the French (i.e. Cameroon) catchment area and the British (i.e. Nigerian) catchment area ran in a southerly direction to the west of the upper streams and then of the river into which they converged, the Maio Bela. This is not, in fact, the case; once it is understood that these upper streams flow into the Dyou (Diwu), part of the Nigerian catchment, it becomes clear that the main watershed runs to the *east* of these upper streams, and close to the Cameroon town of Guili. As Moisel's imaginary course of the Maio Bela reaches the

area south of Guili where the streams *do* flow eastwards into Cameroon, then the error disappears and a watershed deduced from Moisel coincides with that derived from modern mapping. Moisel's incorrect line thus ends some 5 kms north of Bourha, at 10° 18' 00" N, 13° 31' 08" E.

7.54 The correct watershed line is shown in orange on Fig. 7.11 and Moisel's incorrect line in red. For the purposes of delimitation, Moisel's incorrect line can be regarded as a series of lines joining conveniently located hills at the following points:

Point	Latitude	Longitude
Hill NNW of Moudi	10° 24' 28" N	13° 31' 41" E
Hosere Paliroum	10° 20' 31" N	13° 32' 00" E
Hill A	10° 19' 05" N	13° 31' 20" E
End of "incorrect watershed"	10° 18' 00" N	13° 31' 08" E

7.55 It may be noted that an attempt was made in September 1920 by officers of the British and French Administrations to interpret Moisel's incorrect watershed on the ground and the result was set out in a *Procès-Verbal* of 27th September 1920 (Annex NR 152). This document goes into greater and more helpful detail than the eventual Thomson-Marchand Declaration and suggests that the boundary should follow the centre of a track from Muti towards Bourha and that the latter town should lie 2 kms to the east of the frontier.

7.56 Article 25 requires Moisel's incorrect line to be followed, and goes on to require Bourha to be left on the French side of the boundary. A direct transfer of Moisel's incorrect watershed to the modern map, ending at a point in 10° 18' 00" N, 13° 31' 08" E, means that the boundary continues thereafter to the south (now on a correct watershed) in such a way that it approaches Bourha from the north-east before curving round to the south. This alignment shows a considerable degree of similarity with the alignment of the boundary around Bourha as drawn on Moisel's map to illustrate the Milner-Simon Agreement of 1919. It also meets the condition laid down in the 1920 *Procès-Verbal* that it should leave Bourha 2 kms to the east.

7.57 In these circumstances the proper interpretation of Article 25 is, Nigeria submits, that from the point identified in paragraph 7.47 above, the boundary follows Moisel's incorrect watershed line until the point at which it rejoins the correct watershed line, from which point it continues along the correct watershed following the prescriptions set out in Article 25 as regards the relationship of various locations with the boundary line.

7.58 Another line, even further to the west (and into Nigeria), has been put forward by Cameroon. This line does not comply with the requirements of Article 25 of the Thomson-Marchand Declaration as to

the relationship between the boundary and the incorrect watershed. Thus, for example, it does not "run due south" between Mukta and Moudi, but at that point runs west-southwest; and it passes to the west of Ouango Bourha, a village which is located by Moisel with the name Wamengo Burha at a point 5 kilometres west of the border line and the incorrect watershed. Nor is this line consistent with the 1920 *Procès-Verbal*, since it passes more than 2 kms to the west of Bourha. Accordingly, this Cameroon line cannot be supported as a correct interpretation of Article 25.

7.59 For the foregoing reasons, Nigeria submits that the name "Hosere Kilda" should be substituted for "Hosere Kuli" in Article 24 of the Thomson-Marchand Declaration and that the first part of Article 25 of the Thomson-Marchand Declaration should be interpreted as stipulating a boundary -

> "Thence from Hosere Kilda the boundary follows a watershed between the tributaries of the Maio Muri to the west and those of the Maio Dyou to the east, leaving the village of Amsa to Cameroon, as far as the summit of a hill some 1300 metres NNW of Moudi (Muti), which summit is in latitude 10° 24' 28" N and longitude 13° 31' 41" E. From this summit, the boundary follows a series of three straight lines that closely follow the incorrect line of the watershed shown on Moisel's Map B3 attached to the Milner-Simon Declaration of 1919. In so doing, the village of Moudi, which lies on the south bank of the Maio Potoki, is left to Cameroon. The co-ordinates of the end points of the three straight lines are as follows:

Point	Latitude	Longitude
Hill NNW of Moudi	10° 24' 28" N	13° 31' 41" E
Hosere Paliroum	10° 20' 31" N	13° 32' 00" E
Hill A	10° 19' 05" N	13° 31' 20" E
End of "incorrect watershed"	10° 18' 00" N	13° 31' 08" E

> "From this last point, which marks the end of Moisel's "incorrect watershed", the boundary follows the main watershed southwards between the catchment of the Maio Yedseram (Nigeria) and that of the Maio Kebbi (Cameroon), passing 1500 metres to the west of Bourha and leaving Dihi to Cameroon and Maduguva and Gandira to Nigeria.....[14]"

(vii) Koja (Kotcha)

7.60 Article 27 of the Thomson-Marchand Declaration provides that, after running through Mount Mulikia (in accordance with Article 26), the boundary runs

> "Thence from the top of Mount Mulikia to the source of the Tsikakiri, leaving Kotcha to

> Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition."

A map extract of the area considered below is at Fig. 7.13.

7.61 This provision is defective because, while Article 27 provides that Kotcha and Dumo lie respectively on the British and French sides of the boundary, it only describes the course of the boundary itself between Mount Mulikia and the source of the Tsikakiri by reference to four provisional landmarks erected in 1920 by Vereker and Pition. There is no indication, either in Article 27 or elsewhere, as to the location of the four landmarks, although a cairn has been found at latitude 10° 04' 43" N, longitude 13° 17' 49" E which might be one of them.

7.62 The position of Mount Mulikia can be deduced from a comparison of Moisel's map C3 (Fig. 7.12) with Fig. 7.13. From Mount Mulikia, the boundary, following the principle which is commonly adopted in the Thomson-Marchand Declaration, should follow the line of the watershed. That line runs just south-east of Kotcha (now called Koja), leaving it to Nigeria as expressly required by Article 27. Koja is a well-spread-out village lying across the watershed. Since the 1930s Koja has expanded, and Nigerian farming south-east of the watershed has been unchallenged. The boundary now runs up to 1 kilometre to the south-east of the watershed between Boudjouma and the cairn of stones in the Paka Hills at latitude 10° 04' 43" N, longitude 13° 17' 49" E.

7.63 For the foregoing reasons Nigeria submits that the last part of Article 27 should be interpreted as stipulating that the boundary runs -

> "...leaving Koja and its associated farmlands to Nigeria and Dumo to Cameroon, following the line of the watershed passing through a cairn at latitude 10° 04' 43" N, longitude 13° 17' 49" E..."

(viii) Source of the Tsikakiri River

7.64 The first part of Article 27 of the Thomson-Marchand Declaration provides that, after running through Mount Mulikia (in accordance with Article 26), the boundary runs

> "Thence from the top of Mount Mulikia to the source of the Tsikakiri, ...".

A map extract of the area considered below is at Fig. 7.14.

7.65 This provision is defective because there appear to be three possible sources of this river. Two of these rise to the east of a prominent 1200m mountain, one flowing round the north of the mountain to its western flank, the other to the south of the mountain joining the former on the western side of the mountain. A third source rises on the south-western side of the mountain, flowing down to join the

southern tributary before its confluence with the northern one.

7.66 Uncertainty about the source of the Tsikakiri River also affects Article 28, since that Article provides that the boundary continues from the source by following the course of the Tsikakiri River: determination of the source clearly determines which course of the river is to be followed as the boundary. Article 28 states expressly that the course to be followed is *not* the course as shown on Moisel's map: it is to follow the course of the river "as it exists in reality and not as it is shown on Moisel's map".

7.67 Cameroon's Map 8 (RC Vol. II) shows the boundary as following a line from west of Doumo (Dumo) some way to the north of the watershed, eventually merging with the northern tributary of the Tsikakiri River. This line does not reflect the correct application of Article 27. It only follows the northern tributary for part of its length and not from its source (as is expressly required by Article 27); and the place at which the line joins the tributary some 1500 metres below its source can only with difficulty be joined with the preceding instruction in Article 26 of the Thomson-Marchand Declaration which requires the boundary to run through the top of Mount Mulikia to the source of the Tsikakiri.

7.68 For its part Nigeria believes that, correctly understood, Article 27 requires that the boundary should follow the southern tributary of the Tsikakiri all the way from its source (thus complying with the clear terms of Article 27). That source is easily joined with the watershed line around Dumo.

7.69 For the foregoing reasons Nigeria submits that

(1) the first part of Article 27 of the Thomson-Marchand Declaration should be interpreted as stipulating that the boundary runs -

> "... following the line of the watershed passing through a cairn at latitude 10° 04' 43" N, longitude 13° 17' 49" E, and then along the main watershed to the highest source of the southern branch of the Tsikakiri River at latitude 10° 01' 57" N and longitude 13° 17' 18" E"; and

(2) the reference to "the course of the Tsikakiri" in Article 28 should be construed accordingly.

(ix) Jimbare

7.70 Articles 35, 36 and 37 of the Thomson-Marchand Declaration provide that, after following a line to the summit of the Wamni Range (as provided for in Article 34),

> "(35) Thence the frontier follows the watershed from the Maio Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it follows the line of the watershed of the Benue to the north-west and of the Faro to the south-east as far as the south peak of the Alantika Mountains to a point 2 kilometres to the north of the source of

the River Mali.

(36) Thence from this peak by the River Sassiri, leaving Kobi to France and Kobi Leinde to Great Britain, Tebou and Tscho to France, as far as the confluence with the first stream coming from the Balakossa Range (this confluence touches the Kobodji Mapeo Track), from this stream towards the south, leaving Uro Belo to Great Britain and Nanaoua to France.

(37) Thence the boundary rejoins the old boundary about Lapeo in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west."

A map extract of the area considered below is at Fig. 7.15.

7.71 These three Articles are defective in that they contain errors of substance which make their meaning unclear, or which at least render their terms misleading. These errors are as follows:

(1) As to Article 35: the text takes the boundary as far as "the south peak of the Alantika Mountains", but it is unclear what the next following words signify ("to a point 2 kilometres to the north of the source of the River Mali"): the boundary cannot at one and the same time run both to a peak of the Alantika Mountains and to a point 2 kms north of the source of the River Mali. The French text of the words following the reference to the Alantika Mountains is "en un point situé ...", and it may be that it has been mistranslated as "to" rather than "at", since "the south peak of the Alantika Mountains" *is* located about 2 kms north of the source of the River Mali.

(2) As to Article 36: the Article refers to a waterway flowing from an identified peak (i.e. the south peak of Alantika Mountains) "as far as the confluence with the first stream coming from the Balakossa range", and names this waterway (which is flowing westwards) as the River Sassiri. However, in reality that waterway is named the Leinde or Lugga, and it is the waterway flowing northwards from Nanoua to the same confluence which is the River Sassiri.

(3) As to Article 37:

(a) the text refers to the boundary rejoining "the old boundary about Lapeo", which is not clearly defined. It may refer to the (mistaken) belief which underlay the Milner-Simon Agreement 1919 that the Alantika and Balakossa (also Balkosa) Mountains formed a continuous range, the watershed along which constituted the boundary (see Article 15 of the 1919 Agreement): Moisel's map, which was used in preparing the 1919 Agreement, shows a continuous mountain watershed. But in fact there is no such continuous mountain range or watershed, and thus no "old boundary" following its course. Alternatively, it may refer to the provisional alignment which was agreed between officers of British and French Administrations on 12 November 1920 (Annex NR 153) and which followed a line some way to the east

of the Sassiri stream and Nanoua. If this is so, its description in the signed document is vague, and thus the meeting point with the "old boundary" referred to in Article 37 is equally vague. As a further alternative, the reference may be to some other "old boundary", but in that case it is wholly unclear what that other boundary might be.

(b) Article 37 assumes that a watershed can be followed without interruption among the Balkosa Mountains to a point near the source of the Labidje River. This, however, is untrue, since the Kadam River (which, contrary to the terms of Article 37, is not another name for the Labidje River but is a separate river) cuts right through the mountain range and has its source on its northern slopes and in the plain to the north. This river would have to be crossed on the way to the source of the Labidje River: a clear need for a crossing of the Kadam River is not provided for in Article 37.

(c) The final words of Article 37 do not make sense. The text refers to the boundary as "following the line of the watershed as far as a point situated to the west of the source of the Labidje or Kadam River"; it goes on to describe that river with the words "which flows into the River Deo". To that point the text makes sense. But it then continues with the words "and from the River Sampee flowing into the River Baleo to the north-west". There is nothing in the sentence to which the words "and from the River Sampee" can relate.

7.72 Cameroon agrees with Nigeria that a description of this section of the boundary is given at greater length in a *Procès-Verbal* signed by Logan and Le Brun on 16 October 1930 (Annex NR 154). Cameroon's *Reply* quotes the first part of this document in full (RC, paragraph 4.84). Surprisingly, Cameroon then goes on to say

> "Il [i.e. the Logan-Le Brun description of the boundary] est cohérent avec les termes de la Déclaration Thomson-Marchand, ce que le Nigéria ne conteste pas. Il est aussi conforme à la carte camerounaise I.G.N. de la région (carte no. 12 de l'atlas cartographique joint à la présente réplique, également reproduite page suivante). On peut souligner en particulier que la lettre Logan-Le Brun précise que la rivière Sassiri (contrairement à ce qui est présenté sur la carte 69 du Nigéria) se dirige vers le sud, ce qui fait que la frontière figurant sur la carte no. 12 de l'atlas du Cameroun avec une ligne qui suit la rivière vers le sud à partir du point de confluence correspond au texte. La frontière est donc correctement délimitée par la Déclaration Thomson-Marchand..."[15] (RC, paragraph 4.85).

Although Nigeria observes that the Logan-Le Brun description of the boundary does, in fact, correspond to the terms of the Thomson-Marchand Declaration in the area between the south peak of the Alantika Mountains and Nanaoua, it does not correspond to those terms in the area south of Nanaoua, nor does it conform to the Cameroonian IGN map of the region (RC Vol. II Map 12).

7.73 Nigeria has sent members of its legal team to the area and they have travelled along much of the boundary described in the Logan-Le Brun document, between the confluence referred to in Article 36, Nanaoua and Namberu. As a result Nigeria has revised the opinion it expressed in paragraph 19.44 *et*

seq. of its *Counter-Memorial* and is able to state where the boundary defined by the Logan-Le Brun *Procès-Verbal* runs. To the south of Nanoua, the boundary as described by Logan-Le Brun follows a very different line from that originally envisaged in the Thomson-Marchand Declaration. South of Nanoua, near the prominent rock slide known as Kombunga, it turns west up a stream valley and leaves the bulk of the Balakossa Range to Cameroon. It then follows the Kadam River through the western outliers of these mountains to a point north-east of Jumba (shown on Fig. 7.16) and thence in straight lines through a series of cairns to the Maio Namberu south of Sapeo. Thus Sapeo is left to Nigeria as is the whole of the Sapeo range of mountains.

7.74 Furthermore, it is clear, from discussions with the local inhabitants, that the boundary as described in the Logan-Le Brun *Procès-Verbal* is the boundary which has been observed by them for the past 70 years, and is still being observed today. Nigeria would draw the attention of the Court to the fact that, in relying on the Logan-Le Brun *Procès-Verbal*, Nigeria is giving up any claim to the northern slopes of the Balakossa Range as allocated to Nigeria by the Thomson-Marchand Declaration.

7.75 As a final point Nigeria notes that Logan, in a letter of 17 October 1930 to the Resident, Yola, with which he forwarded a copy of the *Procès-Verbal* which had been agreed with Le Brun (Annex NR 155), justified their choice of boundary line by referring to "the existence of the frontier, as shown on the map, for the last ten years".

7.76 For the foregoing reasons Nigeria submits that Articles 35, 36 and 37 of the Thomson-Marchand Declaration should be understood in the light of the Logan-Le Brun *Procès-Verbal*, and are therefore to be interpreted as stipulating that the boundary follows a line -

> "(35) ... as far as the south peak of the Alantika Mountains, known as Hosere Bila, lying 2 kilometres to the north of the source of the Maio Mali and in latitude 8° 38' 30" N, longitude 12° 30' 00" E.
>
> (36) Thence from this peak by the course of the Maio Leinde (or Lugga) to its confluence with the Maio Sassiri running from the south, which confluence lies on the Kojoli-Jimbare [So'o][16] road. From the confluence, the boundary follows the Maio Sassiri upstream to its source in a marsh approximately 300 metres north of the site of the village of Nanaoua, and thence crosses the watershed, leaving the site of Nanaoua to Cameroon, to reach the source of the Maio Nyemsenga.
>
> (37) Thence the course of the stream Nyemsenga downstream to its confluence with the Maio Silba, thence the course of the Maio Silba downstream to its confluence with a stream known as Jetwunga, flowing from the west. About 100 metres up the Jetwunga from the confluence is a prominent rock slide over which the stream flows, known locally as Kombunga. The boundary follows the Jetwunga upstream until it meets a path running to the west at a point 400 metres to the south of a Nigerian village called Wuro Lawal. From this point, the boundary follows a footpath until it reaches a point close to the source

of the Wusima stream, thence by this stream southwards, leaving Nyagan to Nigeria, to its confluence with the Maio Kadam..."

(x) Sapeo

7.77 Articles 37 and 38 of the Thomson-Marchand Declaration provide that, after running south from a particular stream coming from the Balakossa Range (as provided for in Article 36),

> "37. Thence the boundary rejoins the old boundary about Lapeo in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west.
>
> 38. Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the Kordo River."

A map extract of the area considered below is at Fig. 7.16.

7.78 Nigeria has already explained the meaning of these provisions, how they relate to the topography of the area and how they were affected by a long-established variation to the boundary as delimited by Articles 37 and 38 (NC-M, paragraphs 19.32-19.38). The main elements of Nigeria's explanation were -

(1) the terms of the delimitation (stating that the boundary follows "the line of the watershed ... along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, ... which is in Nigeria ...") would place Sapeo on the Cameroon side of the boundary (NC-M, paragraph 19.32);

(2) the DOS map sheet of the area, at Map 67 in the *Atlas* to Nigeria's *Counter-Memorial*, clearly indicates the relevant features (*ibid.*);

(3) the Thomson-Marchand Declaration built on earlier agreements and discussions, notably the Milner-Simon Declaration of 1919 (which was too crude to be of much practical use) and the Mair-Pition proposed delimitation (which gave a more detailed description of the relevant sector of the boundary) (NC-M, paragraphs 19.33-19.35);

(4) the effect of the Mair-Pition delimitation was to place Namberu and Sapeo on the British/Nigeria side of the boundary, and a certain other area on the French/Cameroon side (*ibid.*);

(5) prevailing opinion in the 1920s and 1930s was that the boundary delimitations in the various formal instruments were in a sense merely indicative, the real boundary on the ground being left for

determination by the eventual demarcation which it was expected would take place (NC-M, paragraph 19.36);

(6) the attribution of Sapeo to the British side of the boundary was confirmed by the Logan-Le Brun agreement of 16 October 1930 (i.e. after the Thomson-Marchand Declaration was adopted, but before its formal approval in 1931) (NC-M, paragraph 19.37);

(7) however, while the Mair-Pition proposal for Namberu to go to Britain and the other specified area to go to France were incorporated into the eventual Thomson-Marchand Declaration, for some unexplained reason the proposal affecting Sapeo was omitted from the text, although the map attached to it (NC-M *Atlas*, map 68) showed a boundary line running to the south of Sapeo and thus placing it on the British/ Nigerian side of the boundary (NC-M, paragraph 19.38);

(8) extensive practice since the 1920s, i.e. for some three quarters of a century, has confirmed that Sapeo has been treated by the Nigerian authorities and by the local inhabitants as being in Nigeria, as recommended by Mair-Pition and confirmed by Logan-Le Brun (*ibid.*).

7.79 In March 2000, the Nigerian legal team visited the area and found three large cairns in good condition in the expected positions in the immediate vicinity of Sapeo and the bearing between them was within 1_ of the expected 219_ as quoted by Logan and Le Brun in section 2 of their *Procès-Verbal*. These are annotated on Fig. 7.16 as GPS 22, GPS 23 and GPS 24 respectively. Photographs of two of these cairns are at Plate 1. Their condition suggests that they have been respected and preserved by the local communities for seventy years.

7.80 As already noted (above, paragraph 7.75) Logan, in a letter of 17 October 1930 to the Resident, Yola, with which he forwarded a copy of the *Procès-Verbal* which had been agreed with Le Brun, justified their choice of boundary line by referring to "the existence of the frontier, as shown on the map, for the last ten years". It is clear that Sapeo was included as part of Northern Cameroons for the purposes of the plebiscite of 1959 (Annexes NR 156 and NR 157), and also that the villagers participated in the Northern Cameroons Plebiscite of 1961 (Annex NR 158).

7.81 Evidence of Nigerian administration of Sapeo since Independence in 1960 includes the administration of Sapeo Primary school from as early as 1969 by the Nigerian local education authority (Annex NR 159), the maintenance of and provision of medicines to the dispensary at Sapeo (Annex NR 160) and the provision of public Health Care and immunisation programmes by the Nigerian local authority (Annex NR 161), taxation of the residents by the Nigerian local authority from as early as 1962 to 1993 (Annex NR 162)[17] the inclusion of Sapeo in Nigerian local legislation (Annexes NR 163-NR 167), and the participation by the inhabitants of Sapeo in Nigerian elections (Annex NR 168). None of these acts has been the subject of any protest by Cameroon. The legal concept of historical consolidation of title is explained above in paragraph 3.42 *et seq*.

7.82 All of the people of the region in question are part of the Chamba ethnic group. Any disruption of

the Chamba's unity would have serious social consequences.

7.83 For the foregoing reasons Nigeria submits that Articles 37 and 38 of the Thomson-Marchand Declaration should be understood in the light of the Mair-Pition proposals, the Logan-Le Brun *Procès-Verbal* and well-established local practice, and are therefore to be interpreted as stipulating that, in the region of Sapeo, the boundary follows -

> "(37) ...to its confluence with the Maio Kadam, and thence by this river as far as a point from which the summit of a hill known as Wumkola in the Balkossa Mountains has a bearing of 47°.
>
> (38) From this point on the Maio Kadam, the boundary runs in a straight line for a distance of approximately 1600 metres (one mile) on a true bearing of 202° to a small hill called Bomdingba, thence in a direct line on a true bearing of 219° by a series of cairns to a point on the Maio Namberu (Nangua) approximately 3600 metres (2¼ miles) ESE of Namberu village, leaving Sapeo, Jumba and Lainde to Nigeria, thence by this river upstream ..."

(xi) Namberu-Banglang

7.84 Article 38 of the Thomson-Marchand Declaration provides that the boundary runs

> "Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the source of the Kordo River."

A map extract of the area considered below is at Fig. 7.17.

7.85 The text is deficient in that it refers to the boundary "going up a valley north-east and then south-east". There is no valley in this region running in those directions. There is a valley running north-west and then south-west, but that is not what Article 38 says.

7.86 The Logan-Le Brun *Procès-Verbal* rectifies the error in Article 38 in the area beyond Namberu by using the phrase "thence the main course of the Mayo Namberu to its source in a well-defined saddle approx. ½ mile east of the main summit of the Hossere Banglang" (Annex NR 154). There is in fact no saddle at the distance and bearing from the main summit if this main summit is taken to be the Nigerian triangulation station shown as Bangla on Fig. 7.17. However, there is a saddle at a distance of 1600 metres and on a true bearing of 150° which is just above a source of the Maio Namberu. This, Nigeria submits, is the saddle to which Logan and Le Brun refer.

7.87 For the foregoing reasons Nigeria submits that Article 38 of the Thomson-Marchand Declaration should be understood in the light of the Logan-Le Brun *Procès-Verbal*, and is therefore to be interpreted as stipulating that the boundary follows a line defined by Logan/Le Brun as far as a saddle in the Hosere Banglang which saddle is taken to be that lying at a distance of 1600 metres on a true bearing of 150° from the Nigerian triangulation station F6 Bangla. The relevant part of Article 38 would therefore read:

> "... thence by this river upstream first in a north-west direction and then south-west to a saddle above its source, which saddle lies on a true bearing of 150° and at a distance of 1600 metres from the Nigerian triangulation station F6 Bangla."

(xii) The Position of Mount Kombon

7.88 Articles 60 and 61 of the Thomson-Marchand Declaration provide that, after following the watershed between certain specified headwaters (as provided for in Article 59),

> "(60) Thence the Frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe, Maio Gur and Maio Malam to a fairly prominent, pointed peak which lies on a magnetic bearing of 17_ from a cairn of stones, 8 feet high, erected on the 15th September, 1920, on the south side of the above Banyo-Kumbo-Bamenda road at a point 1 mile from N'Yorong Rest-camp and 8½ miles from Songkorong village.
>
> (61) From this peak in the Hosere Hambere (or Gesumi), which is situated just to the east of the visible source of the Maio M'Fi (or Baban), the Frontier follows the watershed, visible all the way from the Cairn, between the Maio Malam to east (French) and the Maio M'Fi (or Baban) to west (British), till it cuts the Banyo-Kumbo-Bamenda road at the Cairn. This Cairn is immediately under the highest peak of the Hosere Nangban, which is shown on Moisel's map F 2 as Hosere Jadji, but Jadji is really the name of the Pagan head of N'Yorong village."

A sketch map of the area is at Fig. 7.18.

7.89 These provisions are defective in that, for several interrelated reasons, they result in considerable uncertainty as to the line to be followed by the boundary.

7.90 Before spelling out the reasons for this uncertainty, Nigeria draws attention, by way of background, to the circumstances in which the boundary came at that time to be described. On 23 January 1927 Mr Izard, Assistant District Officer, wrote a letter to the Resident, Adamawa Province (Annex NR 169), which contained the following passage:

> "3. It is however my duty to record for future reference that practically the whole of the

> boundary from the Maio Yin[18] south to the hill referred to in para 17 of the Mair-Ovignon procés verbale as lying on a bearing of 17 degrees from the Nyurong (or Gidan Serifo) cairn (of the same para) was observed only from the main Dodeo-Banyo-Bamenda road at a distance of in many cases 6 to 8 miles.
>
> 4. From this road (at all events from the cairn and presumably elsewhere also) the Mambila Plateau appears as a wall of mountains of which the crest would offer a distinct and unmistakable boundary. It will however probably be found on delimiting this boundary that the headwaters of several streams if pursued to their most extreme source cut far back from this apparently unmistakable boundary into Mambila occupied lands.
>
> 5. The obvious intention of the Mair-Ovignon procès verbale was a point to point line following the peaks of this scarp; and if this intention be adhered to it is a simple boundary.
>
> 6. If however the French insist on following each stream to the extreme source of its remotest tributary, it would I submit, from what I know of the topography of the country, not only be a breach of the spirit of the procès verbale, but might cause hardships to Mambilas living on top of the plateau and farming such shallow gullies."

It is against this background that the problem of accurate delimitation in these mountainous areas is to be seen.

7.91 First, there is uncertainty as to the location of the 'fairly prominent, pointed peak' referred to in Article 60. A map extract of the area is at Fig. 7.18. At the textual level it is to be noted that the French text does not describe the peak as 'pointed' - "jusqu'à un pic assez proéminent". At the topographical level, there are several peaks to which reference might be being made. Cameroon did not make it clear in its *Memorial* where it thinks Mount Kombon lies. It assigned the name to a hill at the junction of the Thomson-Marchand and 1946 Order in Council delimitations[19] without giving any clear indication where that might be. Crude sketch maps[20] give three quite different positions. In particular, the map in the *Memorial* at p. 424 suggests that the hill lies north-east of Bang. Cameroon, in its *Reply*, has now submitted a map (RC Vol. II, Map 18) which shows the boundary passing to the north of Bang and well to the north of a mountain called "Kombong".

7.92 Nigeria, in its *Counter-Memorial*, while referring to the peak which it believed was intended by the neutral term "Hill 1660" (NC-M, paragraph 19.14), expressed caution about the true position of Mount Kombon. There were two reasons for this caution:

(1) Article 60 does not use the term "Mount Kombon" (or any other name) for the peak being referred to;

(2) the IGN France 1:50,000 Map Sheet NC-32-XVIII-3a-3b (1955) shows two hills between Bang and

Tamnyar as being named "Kombon".

7.93 Since Nigeria's *Counter-Memorial* was prepared, members of Nigeria's legal team have visited the area. On the basis of their observations, and further consideration of the issues which arise, the significance of Article 60 of the Thomson-Marchand Declaration now appears to be as follows:

(1) The crucial reference is to a cairn of stones, 8 feet high, erected on 15 September 1920;

(2) This cairn is now in Cameroon, and Nigeria has not been able to verify its existence: neither in its *Memorial* nor in its *Reply* has Cameroon given its location;

(3) The Thomson-Marchand Declaration requires the cairn to be (i) on the south side of the Banyo-Kumbo-Bamenda road, (ii) 1 mile from N'Yorong rest camp, (iii) 8½ miles from Songkorong village, (iv) on the boundary, and (v) immediately under the highest peak of the Hosere Nangbang (which is shown on Moisel's map as Hosere Jadji, although Jadji is the name of the head of N'Yorong village).

(4) This last observation suggests that the village now known as Yadji was formerly referred to as N'Yorong.

(5) On that basis the cairn can with a fair degree of probability be located at or near a point whose co-ordinates are latitude 6° 24' 05" N and longitude 11° 11' 55" E.

(6) From that location, according to Article 60, a "fairly prominent pointed peak" lies on a magnetic bearing of 17°. The magnetic variation in 1931 would have been about 9°W. Thus, the *true* bearing from the cairn to the pointed peak was, and still is, 8°. This bearing runs direct to the north-westerly of the two summits named "Mount Kombon" on the IGN France map referred to in paragraph 7.92(2) above.

The relevant features are shown on the sketch map at Fig. 7.19.

7.94 Nigeria now believes that the "fairly prominent pointed peak" to which Article 60 refers is this north-westerly summit (now known locally as Itang Hill) and is not the hill referred to as "Hill 1660" in Nigeria's *Counter-Memorial.* Nigeria still asserts that "Hill 1660" is the peak at which the 1946 Order in Council delimitation meets that of the Thomson Marchand Declaration.

7.95 If Itang Hill is taken to be the peak referred to in Article 60 it complicates the delimitation of the boundary north and west of it. This is because Itang Hill does not (as required by Article 60) lie on the watershed referred to in Articles 60 and 61, but rather some 3 kms off it along a branch ridgeline. If this ridgeline were to be followed as the boundary to Itang Hill, it would be strictly necessary, if the watershed were to be adhered to, to regain the watershed described in Article 61 by retracing the route along the same branch ridgeline, but that would clearly be nonsensical.

7.96 Rather than such a nonsensical solution, Nigeria submits that the correct way of proceeding would

be, in accordance with the principle adopted in the *Argentine-Chile Frontier Case,*[21] to follow the watershed until the point at which it runs away from the expressly stipulated boundary peak (i.e. Itang Hill), and then from that point to follow a straight line to Itang Hill, and from there to follow the upper edge of the escarpment to the south-west of Sanya until it rejoins the watershed. This line is shown on the map extract at Fig. 7.18.

7.97 Sanya is a Nigerian village inhabited by the Mambilla tribe. It and its farm and grazing lands have been Nigerian for many generations: it will be recalled that Mr Izard referred to the lands to the north of the escarpment as "Mambila occupied lands" (above paragraph 7.90).

7.98 For the foregoing reasons Nigeria submits that Articles 60 and 61 of the Thomson-Marchand Declaration should be interpreted as stipulating that after following the watershed between the headwaters specified in Article 59,

> "(60) Thence the frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe and the Maio Gur to the summit of a hill, height 1720 metres, lying about 1 kilometre west of Tamnyar. From this hill, the frontier runs in a straight line in a south-westerly direction for about 2300 metres to the summit of a hill, height 1751 metres, shown on Cameroon maps as Mount Kombon but called Itang by the Mambilla people.
>
> (61) From this summit, the frontier follows the edge of the escarpment leaving Sanya to Nigeria until it reaches the watershed between the Ntum and its tributaries to the west and the Dja to the south-east. Thence it follows this watershed southwards for about 900 metres to the most easterly summit of a ridge called Tonn running approximately east-west and having three summits..."

(xiii) The Boundary westwards from Tonn Hill to the Mburi River

7.99 At this point it may be convenient to recall that the boundary running westwards from "Mount Kombon" is determined by the Nigeria (Protectorate and Cameroons) Order in Council 1946, rather than, as with the whole boundary sector southwards from Lake Chad to this point, the Thomson-Marchand Declaration. This means that:

(1) the boundary is not delimited as a continuation of the delimitation of the Thomson-Marchand Declaration (which would take it in a generally east to west direction) but in the opposite direction (i.e. generally running west to east); and

(2) the boundary as described in the Order in Council originally delimited a purely *internal*, provincial boundary within Nigeria, and not, as now, an *international* boundary (see above paragraph 6.9).

7.100 The relevant, final, part of the Second Schedule to the Order in Council reads:

> "thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (alias Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120_ for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi; thence on a true bearing of 100_ for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier."

A map extract of the area considered below is at Fig. 7.20.

7.101 This provision is defective in two respects.

(1) The phrase "to the prominent peak which marks the Franco-British frontier" is used in the 1946 Order in Council to define the junction with the boundary delimited by the Thomson-Marchand Declaration. That reference in the Order in Council is defective since it is ambiguous as to the peak being referred to.

(2) It is also defective in that, in the vicinity of Lip and Yang, it does not fit local topography and it disregards a locally agreed departure from the terms of the Order in Council.

(a) "The prominent peak which marks the Franco-British frontier"

7.102 From the point at which the old Anglo-French boundary after Itang Hill rejoined the watershed, the boundary follows this watershed to the cairn on the Banyo-Kumbo-Bamenda road (Article 61: see paragraph 7.93 (1)-(6) above). That watershed (i.e. between the Malam and M'Fi catchments) takes the boundary from just south-west of Sanya (see paragraphs 7.95-7.96 above) south to the cairn below Hosere Nangban and then onwards further south: this means that the 1931 boundary continued to the west of Itang Hill for 1,500 metres before turning south, and therefore the area immediately west of Itang Hill and south of Sanya was French (and is now Cameroonian) and raises no question of the inter-provincial boundary between British North and South Cameroons (see Fig. 7.18). Consequently, the eastern limit of the Order in Council boundary must be well to the west of Itang Hill, and accordingly the "prominent peak which marks the Franco-British frontier" referred to in the Order in Council cannot be what Cameroon calls "Mount Kombon" (Itang Hill). Rather, that peak is a reference to the easterly summit of the ridge running towards Lip - i.e. Tonn Hill. That summit *is* on the old Franco-British frontier, and satisfies the other measurements stipulated in the Order in Council.

7.103 In order to describe the boundary more coherently and accurately in this stretch up to its junction with the Thomson-Marchand delimitation, it is necessary to consider the alignment of the boundary in the stretch immediately to the west: see next following paragraphs.

(b) Lip and Yang

7.104 The earlier part of the Second Schedule to the Order in Council quoted in paragraph 7.100 above reads:

> " thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (alias Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120_ for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi;..."

7.105 This description of the boundary, in the area between the River Mburi in the west to a kilometre or so before Tonn Hill in the east, does not make sense in relation to the local topography. The Kumbo-Banyo road does not cross the Mburi at Nyan (Yang on modern maps) but at a point 1¼ miles north of that village. Accepting this position as the crossing point, the stream junction is ? miles not 1 mile to the north and follows a valley on a true bearing of 133° not 120°, for a distance of ? miles not 1¼ miles. At this point one cannot be said to be 'near' the source of the Mfi, which is 1½ miles away across the valley of another tributary of the Mburi River.

7.106 The boundary in this area was the subject of uncertainty during the time of British administration of Northern and Southern Cameroons. This was because, even apart from the deficiencies in the delimitation, the boundary was not just an administrative boundary but was also taken as a tribal boundary between the Mambilla people of the high plateau and the Yamba people of the low plains to the south. Correspondence (Annex NR 170) from an officer of the Southern Cameroons Administration to the District Officer, Gembu, Northern Cameroons, reveals that a meeting was held at Yang on 13 August 1953 at which provincial officials and representatives of the local communities were present (see record of meeting at Annex NR 171).

7.107 That 1953 meeting was convened in order to deal with a local dispute. The record stated that

> "The first essential was to establish where the Inter-Regional boundary ran".

Reference was made to an enquiry held by Dr Jeffreys, then Senior District Officer Bamenda, in about 1941, as a result of which he

> "had fixed the boundary, recognised by Government between the two provinces" [i.e. between North and South Cameroons]

No copies of the Order made by Dr Jeffreys were available, but

> "Fortunately, a large cairn of stones on the main Bang-Yang path was accepted by both

> sides as one of the points in this boundary, the area in dispute lying to the west of this cairn between the path and the River Manton (Gertegal)".

The meeting reached agreement on a line from Yang running to the west and north to the Manton River (now known as the Mburi River). The record of the meeting states that:

> "After much discussion both sides agreed that the Jeffreys Boundary ran as follows:
>
> From the Cairn on the Bang-Yang path in a westerly direction for about 600 yards to a group of eight trees. From these trees in a northerly direction for about 100 yards to the head of the Mogog Stream. Following the Mogog Stream to its junction with the Maven Stream. Following the Maven Stream to the Manton River (Gertegal)."

Apart from settling the matter immediately in dispute, the record states that this boundary ("the Jeffreys Boundary") would determine the direction of tax payments and the jurisdiction of the Courts.

7.108 The "Jeffreys Boundary" as confirmed by local agreement in 1953, qualifying the terms of the Order in Council, was the inter-provincial boundary in force at the time of Independence in 1960. Upon Independence, it became the international boundary. The line prescribed by Dr Jeffreys is still accepted locally as the boundary.

7.109 Although that 1953 agreement as to the course of the boundary did not determine its course to the east of Yang, the cairn referred to, which is now destroyed but whose position seems to be accepted by both sides, lies on the watershed between the Cameroonian and Nigerian water-systems. So too does the final point of the inter-provincial (and now international) boundary delimited by the Order in Council (Tonn Hill). The logical and realistic course, which is consistent with the principle adopted generally along the boundary, is to link these two points by following the watershed throughout the intervening distance.

7.110 The boundary as established by Dr Jeffreys from the cairn on the Bang-Yang path and westwards to the River Mburi (Manton), and the watershed boundary running eastwards from that cairn to Tonn Hill, are depicted in red on Fig. 7.20.

7.111 For the foregoing reasons Nigeria submits that the relevant provisions of the Nigeria (Protectorate and Cameroons) Order in Council 1946, from the words "thence the River Mburi southwards" to the words "Franco-British frontier", should be interpreted as stipulating the line of the boundary in the following terms -

> "thence the median line of the Mburi (Manton) River southwards to its confluence with the Maven River, thence the median line of the Maven River eastwards to its confluence with the Mogog stream, thence the median line of the Mogog stream south-eastwards to its source, thence in a southerly direction for 100 metres and thence in an easterly

> direction for about 550 metres to the site of a large cairn (now destroyed) on the Lip-Yang road. From this point, the boundary follows the watershed between the Mburi (Manton) and its tributaries to the north and the Mbatye and Mfi and their tributaries to the south, following the crest of the mountains to the most easterly summit on the ridge known as Tonn where it meets the Nigeria-Cameroon boundary as it is defined in Article 61 of the Thomson-Marchand Declaration of 1931."

(xiv) Sama River

7.112 The relevant provisions of the Order in Council read as follows:

> ".. the line follows the River Gamana upstream to the point where it is joined by the River Sama; thence up the River Sama to the point where it divides into two; thence a straight line to the highest point of Tosso Mountain ... "

A map extract of the area considered below is at Fig. 7.21.

7.113 This provision is defective in that it is unclear at which point the Sama River "divides in two".

7.114 Cameroon, on its Map 21, takes as that point the confluence of the Sama River with a tributary, some 3 kms to the north of its confluence with a more southerly tributary which Nigeria believes to be the correct point. The Order gives insufficient guidance on which to base a clear choice. Nigeria believes that the confluence with the southern tributary meets the criterion of "divides in two" more clearly than does the confluence preferred by Cameroon. The southern tributary itself is three times as long, and drains a much larger catchment. It also runs through a much more clearly defined and larger valley on its way to meet the Sama River. By contrast, the junction with the more northerly tributary preferred by Cameroon is geographically nondescript, and had it been the junction intended by the drafters of the Order in Council it would for that reason have had to have been described with greater particularity (such as "the first junction up the Sama River, approximately 3 kms from the junction with the Gamana River").

7.115 The difference between the two views affects land of an area of some 800 hectares.

7.116 For the foregoing reasons Nigeria submits that the relevant words cited from the Order in Council should be interpreted as stipulating that the boundary follows a line -

> "thence up the Sama River to a point approximately 6.5 kilometres south of its confluence with the Gamana River, where it divides in two; ...."

(xv) BP64

7.117 The relevant provisions of the Nigeria (Protectorate and Cameroons) Order in Council provide

that

> "From boundary post 64 on the old Anglo-German frontier the line follows the River Gamana upstream ..."

A map extract of the area considered below is at Fig. 7.22.

7.118 This provision is defective in that it inaccurately describes the starting point for this section of the boundary, and gives no instruction as to how to proceed from the boundary post to the median line of the Gamana River.

7.119 The old Anglo-German boundary ran northwards from BP66 through BP65 to BP64, which was on the north side of the Gamana River. In providing that the boundary followed the Gamana River, the Order in Council meant the median line of that river. On that basis it would be illogical for the boundary to be described in terms which take it northwards, up to BP64 on the north bank (and thus overshooting the median line of the Gamana River), and then notionally back south again to that median line. The logical description of this point is that it is the point at which a straight line joining BP64 and BP65 intersects with the median line of the Gamana River. Nigeria notes that, in the Table on p. 331 of its *Reply*, Cameroon has accepted the possibility of the boundary established by the 1946 Order in Council being described in this way.

7.120 For the foregoing reasons Nigeria submits that the words "From boundary post 64 on the old Anglo-German frontier" in the Schedule to the 1946 Order in Council are to be understood as meaning

> "From the point of intersection of a straight line joining BP64 and BP65 on the old Anglo-German frontier and the median line of the Gamana River..."

B. <u>Cameroon's failure correctly to apply the agreed delimitation</u>

(xvi) Introduction

7.121 This section of this *Rejoinder* will focus on those boundary areas where the original delimitation in the relevant instruments stands in no need of interpretation or clarification but where nevertheless

(1) Cameroon has criticised Nigeria's position and has itself asserted a boundary inconsistent with that delimitation, or

(2) Cameroon has delineated the boundary on maps submitted with its *Memorial* or *Reply*, or on other official Cameroon maps, in a manner which is inconsistent with the original delimitation.

7.122 In Nigeria's *Counter-Memorial* examples of such boundary areas were identified as

Kamale (NC-M paragraphs 19.7-19.9);

Budunga (NC-M paragraphs 19.10-19.13);

Mount Kombon (NC-M paragraphs 19.14);

Bissaula-Tosso (NC-M paragraphs 19.15-19.19).

7.123 In the following paragraphs of this section, Nigeria will deal with the land boundary areas set out below, which include some additional instances of Cameroon's failure to apply the agreed delimitation correctly:

The watershed from Ngossi to Roumsiki (paragraphs 7.124-7.131)

Turu (paragraphs 7.132-7.136)

Maduguva (paragraphs 7.137-7.144)

BP6-Wamni (paragraphs 7.145-7.164)

Maio Senche (paragraphs 7.165-7.168)

Tipsan (paragraphs 7.169-7.181)

The Mburi River to the old Franco-British frontier (paragraphs 7.182-7.187)

Bissaula-Tosso (paragraphs 7.188-7.196)

Mberogo (paragraphs 7.197-7.204).

A locator key for these boundary areas is opposite page 398 below.

(xvii) The Watershed from Ngossi to Roumsiki

7.124 Articles 20 to 24 of the Thomson-Marchand Declaration provide that, after following the River Kohom to its source in Mount Ngossi (as provided for in Article 19), the boundary runs

"20. Thence on a line in a south-westerly direction following the tops of the mountain range of Ngosi, leaving to France the parts of Ngosi situated on the eastern slopes, and to England the parts situated on the western slopes, to a point situated between the source of

> the River Zimunkara and the source of the River Devurua; the watershed so defined also leaves the village of Bugelta to England and the village of Turu to France.
>
> 21. Thence in a south-westerly direction, leaving the village of Dile on the British side, the village of Libam on the French side to the hill of Matakam.
>
> 22. Thence running due west to a point to the south of the village of Wisik where it turns to the south on a line running along the watershed and passing by Mabas on the French side, after which it leaves Wula on the English side running south and bounded by cultivated land to the east of the line of the watershed.
>
> 23. Thence passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale Mogode on the French side and running along the watershed.
>
> 24. Thence passing Humsiki, including the farmlands of the valley to the west of the village on the French side, the boundary crosses Mount Kuli."

Map extracts of the area considered below are at Figs. 7.23-7.27. [7.23; 7.24; 7.25; 7.26; 7.27]

7.125 Cameroon depicts much the greater part of this stretch of the boundary between Ngossi and Roumsiki (formerly known as Humsiki) as following a course half way down the Nigerian slopes of this range of hills, running in some places as much as 2 kms to the west of the watershed (see Maps 6-7, in RC Vol. II). This is contrary to Articles 20 to 24 of the Thomson-Marchand Declaration, which clearly delimit the boundary as following the watershed.

7.126 Nigeria has already drawn attention to this erroneous delineation of the boundary by Cameroon in relation to that part of the boundary covered by Articles 23 and 24 (NC-M, paragraphs 19.7-19.9). Cameroon has sought to justify its delineation by suggesting that the concept of a watershed is complex and difficult (RC, paragraphs 4.114-4.118). This is not true, at least in the present context. A ready definition of a watershed is to be found in the Oxford English Dictionary as

> "The line separating the waters flowing into different river basins; a narrow elevated tract of ground between two drainage areas,"

and in Le Grand Larousse de la langue française

> "*Ligne de partage des eaux,* crête plus ou moins élevée à la rencontre de deux versants, qui constitue la limite séparant deux bassins hydrographiques."[22]

7.127 Although some international arbitral and judicial decisions have referred to 'watershed' lines, none appears to have essayed a general definition of that term. In the *Temple of Preah Vihear* case the Court

approached questions negatively, noting that a watershed line "would not necessarily, in any particular locality, be the same as the line of the crest or the escarpment".[23] The general sense of the term is nevertheless abundantly clear, as indicating a line of separation between waters flowing to different rivers, basins or seas. It is that sense of the term which was clearly intended by those who drafted the Thomson-Marchand Declaration when using it in e.g. Articles 20, 35, 46, 47, 51, 53, 54, 56, 57 and 59, in all of which places it refers to a watershed between two river catchments: this is what is meant by the same term in relation to the area between Ngossi and Roumsiki.

7.128 The whole of this section of the boundary is farming land set on a rolling plateau with occasional hills. There is a motorable track constructed by Cameroon. For the most part this track follows the watershed. At times, it is forced to leave the watershed to negotiate its way around isolated hills or mountain ridges. On some occasions it moves further into Cameroon, but on several occasions it deviates on to the Nigerian side of the watershed, for example at Ngossi (where there is also a Cameroonian school on the Nigerian side of the watershed), Turu (where there has been a serious infringement as described in paragraph 7.132 *et seq*.), an unnamed hill north of Libam, another east of Roumzou, Hosere Kama north of Roumsiki and Hosere Piouo north-east of that village. These areas are shaded red on extract maps 7.23-7.27.

7.129 While the four latter sites of Cameroon trespass are relatively minor, those at Ngossi and Turu are not. At Ngossi, the Cameroon track deviates into Nigeria by a distance of some 400 metres, curving around the western slopes of Ngossi mountain. There is no engineering reason for adopting a route on this side of the mountain in preference to Cameroon's own side and in any case the road ends at a point in Nigerian territory and does not return to the Cameroon side of the watershed. In a further violation of Nigerian sovereignty, Cameroon has built a school on the Nigerian side of the mountain and hoisted a Cameroon flag. Turu is dealt with separately below at paragraphs 7.132 *et seq*.

7.130 The effect of Cameroon's failure to abide by the terms of the delimitation agreed in the Thomson-Marchand Declaration in the area of Ngossi is that approximately 250 hectares of Nigerian land are being occupied by Cameroon, whilst between Ngossi and Roumsiki a further 2,000 hectares are being claimed, both violations being in direct contravention of the Declaration.

7.131 For the foregoing reasons Nigeria submits that

(1) Cameroon's trespass across the watershed boundary between Ngossi and Roumsiki is in conflict with the delimitation of the boundary in Articles 20 to 24 of the Thomson-Marchand Declaration;

(2) those Articles correctly delimit the boundary in this area;

(3) the boundary delineated by Nigeria in red on Figs. 7.23-7.27 [7.23; 7.24; 7.25; 7.26; 7.27] is in conformity with that delimitation.

(xviii) Turu

7.132 Article 20 of the Thomson-Marchand Declaration provides that, after following the River Kohom to its source in Mount Ngossi (as provided for in Article 19), the boundary runs

> "Thence on a line in a south-westerly direction following the tops of the mountain range of Ngosi, leaving to France the parts of Ngosi situated on the eastern slopes, and to England the parts situated on the western slopes, to a point situated between the source of the River Zimunkara and the source of the River Devurua; the watershed so defined also leaves the village of Bugelta to England and the village of Turu to France."

7.133 The Cameroonian village of Turu has expanded over the years, and now trespasses considerably upon Nigerian territory across the boundary clearly defined in the Thomson-Marchand Declaration. The extent of Cameroon's infringement is shaded red on the map extract at Fig. 7.28.

7.134 Article 20 attributed the village of Turu as it existed in 1931 to France. It equally clearly establishes the boundary at Turu as a line along the watershed. However, Cameroon's Map 6 in RC Vol. II shows the boundary in the vicinity of Turu as running up to some 500 metres to the west of the watershed: i.e. it involves an incursion into Nigeria by that amount.

7.135 Turu is situated on a narrow strip of rolling plateau with the land falling off quickly in altitude on both sides of it. The watershed is quite easy to identify both on the ground and on 1:50,000 maps. Turu has expanded considerably since 1930, and has taken up much of the flatter land on the rolling plateau irrespective of which side of the watershed it lies. There is now a serious amount of building development in Nigeria including Cameroonian homes, shops, a large Catholic church, a school, a clinic and a playing field. It would appear that approximately 100 hectares of land on Nigerian territory are now being used by Cameroon. This is a serious intrusion - the most serious along the whole length of the land boundary in terms of population and building works carried out by Cameroon authorities.

7.136 For the foregoing reasons Nigeria submits that

(1) Cameroon's infringement of the watershed boundary both in respect of its delineation of the boundary on its map and in respect of the expansion of Turu on the ground, is in conflict with the delimitation of the boundary in Article 20 of the Thomson-Marchand Declaration;

(2) that Article correctly delimits the boundary in this area;

(3) the boundary delineated by Nigeria in red on Fig. 7.28 is in conformity with that delimination.

(xix) Maduguva

7.137 Article 25 of the Thomson-Marchand Declaration provides that, after crossing Mount Kuli (as

provided for in Article 24), the boundary:

> "Thence run[s] due south between Mukta (British) and Muti (French) the incorrect line of the watershed shown by Moisel on his map being adhered to, leaving Bourha and Dihi on the French side, Madogoba Gamdira on the British, Bugela or Bukula, Madoudji, Kadanahanga on the French, Ouda, Tua and Tsambourga on the British side, and Buka on the French side".

A map extract of the area considered below is at Fig. 7.29.

7.138 Cameroon, on Map 8 in RC, Vol. II, shows the boundary from Muti southwards as following first a series of streams some 4 kms to the west of Moisel's incorrect watershed, and then a line which places the village of Bourha Ouango in Cameroon and continues southwards at a distance of up to 3-4 kms to the west of the main watershed for a further 10 kms beyond Bourha Ouango, through a point 1 km east of the now-abandoned site of the Nigerian village of Guri, to a point on the main watershed between the hills of Bidwa and Bana. The boundary thus delineated is contrary to Article 25 of the Thomson-Marchand Declaration, and follows an alignment up to 4 kilometres inside Nigerian territory (*cf.* paragraphs 7.45 *et seq*.).

7.139 As explained in paragraph 7.53 above, the "incorrect line of the watershed" ends at a point some 5 kms north of Bourha. From Muti to this end point, the boundary follows a line coinciding with Moisel's incorrect watershed. It does not follow a series of streams as suggested by the Cameroon map.

7.140 South of the said end point, the boundary follows the correct line of the main watershed for a considerable distance, passing 1-2 kms west of Bourha, not 5-6 kms west as on the Cameroon maps.

7.141 On Moisel's map C3, a village named Wamengo-Burha is shown at a position approximately 5 kilometres WNW of Burha itself and approximately 3 kilometres WNW of the boundary line. This is clearly the village named as Bourha Ouango on the DOS map (Fig. 7.29) and, as shown on that map, 4 kilometres from Bourha on a similar bearing. Thus, the village of Bourha Ouango is in Nigeria and not, as the Cameroon map claims, in Cameroon.

7.142 Nigeria submits that in conformity with Article 25 the boundary passes within 2 kms of the main town of Bourha before turning south along the main watershed over Michya Hill (whose correct position is at latitude 10° 13' 45" N, longitude 13° 30' 00" E, and not at the position shown on the Cameroon map), and through Mangawa rock before curving round the south side of Bidwa Hill.[24]

7.143 The villages of Maduguva, Mbidiwa, Gaddamayo and Guri (on its new site, which is 1½ kms south east of its old site) are all Nigerian and Nigerian farmers cultivate the land right up to the border which Nigeria asserts and have always done so.

7.144 For the foregoing reasons Nigeria submits that

(1) the boundary delineated by Cameroon on its Map 8 in RC, Vol. II, is not in accordance with the delimitation in Article 25 of the Thomson-Marchand Declaration;

(2) that Article (subject to paragraphs 7.45-7.59 above) correctly delimits the boundary in this area;

(3) the boundary delineated by Nigeria in red on Fig. 7.29 is in conformity with that delimitation.

(xx) BP6-Wamni

7.145 Articles 33 to 34 of the Thomson-Marchand Declaration provide that, after following the course of the Mao Hesso as far as "landmark No. 6 of the old British-German frontier" (as provided for in Article 32), the boundary continues as follows:

> "33. Thence a line starting from Beacon 6, passing Beacon 7, finishing at the old Beacon 8.
>
> 34. Thence from this mark 8 placed on the left bank of the Mao Youwai, a small stream flowing from the west and emptying itself into the Mayo Foro, in a straight line running towards the south-west and reaching the summit of Wamni Range, a very prominent peak to the north of a chain of mountains extending towards the Alantika Mountains, and situated to the east of the old frontier mark No. 10."

Map extracts of the area considered below are at Figs. 7.30 and 7.31.

7.146 Cameroon, in Maps 10 and 11 in RC, Vol. II, delineates the boundary in the area of Boundary Pillars (BPs) Nos. 6, 7 and 8 by a line which leaves the Maio Hesso about 4½ kms north of Beka and then proceeds in a direct line to the summit of a prominent range of hills which rise some 300m above the surrounding plains. It then descends into the pass through the hills near the summit of that pass before climbing in a series of short straight sectors to the summit of the Wamni Range. This line is contrary to the line of the boundary as delimited by Articles 33 and 34.

7.147 Thus, for 16 kms, this line delineated by Cameroon trespasses by distances of up to 2 kms across the boundary established by the delimitation in Articles 33 and 34, and thus involves a wrongful incursion into Nigerian territory extending to some 2,000 hectares. The correct line of the boundary in this area, as delimited by the Thomson-Marchand Declaration, is delineated on Figs. 7.30 and 7.31.

7.148 The boundary pillars referred to in Articles 33 and 34 are on what is known as the Yola Arc established by the Anglo-German Agreement of 19 March 1906 (see NC-M, paragraph 19.58), but unfortunately no record of their positions has been traced.

7.149 *As regards BP6*, that pillar no longer exists. Its position must therefore be deduced from relevant surrounding circumstances.

7.150 Articles 32 to 34 do not describe the location of BP6. They simply refer to it as the mark of that number on "the old British-German frontier". That is a reference back to the Anglo-German Treaty of 19 March 1906, Annex I, pursuant to which BP6 was erected. In describing the Yola Arc, paragraph 3 of Annex I of that Treaty provides for BP6 to be about 3 kms from Beka, and accordingly Articles 33 and 34 of the Thomson-Marchand Declaration require that the boundary delimited in them should pass through a point some 3 kms from Beka. However, on Cameroonian Map 10 (RC, Vol. II) the point of departure of the boundary from the left bank of the Maio Hesso is 4.2 kms north-west of Beka: that is manifestly not in accordance with the requirement for BP6 under the 1906 Treaty, and thus also not in accordance with Articles 33 and 34 of the Declaration.

7.151 On the foregoing basis, and as explained in NC-M, paragraphs 19.11-19.12, Nigeria puts the location of BP6 at 09_ 04' 39" N latitude, 12_ 53' 21" E longitude. This is in line with the position of BP6 on Moisel's map (Fig. 7.32) (which Cameroon's position is not). It is also consistent with the requirements of the Anglo-German Treaty and thus of Articles 33 and 34 of the Thompson-Marchand Declaration. Cameroon's objections to this location (RC, paragraphs 4.124-4.125) are unfounded.

7.152 *As to BP7*, the original beacon no longer exists (although there appear to be traces of a mark at the location identified by Nigeria as the location of BP7). Again, therefore, its position must be deduced from relevant surrounding circumstances.

7.153 Article 33 does not describe the location of BP7, but again simply refers to it as "Beacon 7". In its context, this is clearly a reference to the pillar of that number on "the old British-German frontier", which is a reference back to the Anglo-German Treaty of 19 March 1906, pursuant to which BP7 was erected. That Treaty (at Annex I, paragraph 4) provided that BP7 was located at

> "a conspicuous rock, on a slight eminence on the road from Gurin to Karin. This rock has a boundary mark (No.7) "D/B" (Deutsch-British) cut into it".

7.154 Cameroon does not indicate any location for BP7.

7.155 In its *Counter-Memorial* (NC-M, paragraph 19.10) Nigeria located BP7 at a low hill (and the only low hill in the vicinity) - that is, the "slight eminence" referred to in the 1906 Treaty; it is also on a straight line between Gurin and Karin (although the modern DOS map does not show a road between the two towns). This is consistent with the requirements described in the Anglo-German Treaty.

7.156 Cameroon has suggested (RC, paragraph 4.126) that, because a cairn of stones has been erected at the site, this in some way invalidates the position claimed because the original mark was an arrow chiselled in the rock. This is not so. It is common practice for surveyors to assist the identification of the

location of ground marks, such as that described at Annex I of the 1906 Treaty, by building a cairn of stones over the mark.

7.157 *As to BP8*, the original post no longer exists. Again, therefore, its position must be deduced from relevant surrounding circumstances.

7.158 Article 33 does not describe the location of BP8, but again simply refers to it as "the old Beacon 8". In its context, this is clearly a reference to the post of that number on "the old British-German frontier" mentioned in Article 32, which is a reference back to the Anglo-German Treaty of 19 March 1906, pursuant to Annex I of which BP8 was erected. That Treaty provided that BP8 was located

> "at the entrance to the pass through the Karin Hills".

Article 34 of the Thomson-Marchand Declaration added the description that

> "this mark 8 [was] placed on the left bank of the Mao Youwai".

7.159 The estimation of where exactly the entrance to a pass lies is to some extent subjective, but even on the most generous (from Cameroon's point of view) interpretation of the position of the entrance, Cameroon has placed BP8 about 1 km *inside* the pass. Cameroon's placing of BP8 is therefore contrary to the terms of the delimitation established by the relevant provisions of the Thomson-Marchand Declaration.

7.160 The direct or indirect requirements of the Thomson-Marchand Declaration are that BP8 should be at the entrance to the pass through the Karin Hills and should be on the left bank of the Mao Youwai. Nigeria, unlike Cameroon, places BP8 at just such a location, which conforms with the position for BP8 shown on Moisel's map D3 (an extract of the relevant section is at Fig. 7.32). The relief of the Tomni Range can be clearly seen on Moisel's map lying to the west of the line joining BP7 and BP8: this is also the case with Nigeria's delineation of the boundary, in contrast to Cameroon's delineation which passes straight through the Tomni Range.

7.161 *As to the boundary beyond BP8*, Article 34 requires that the boundary must run "from this mark 8 ... in a straight line running towards the south-west and reaching the summit of the Wamni Range...". The line delineated on Cameroon's maps does *not*, while the line delineated on Nigeria's map *does*, follow a straight line south-westwards as required by Article 34.

7.162 In its *Counter-Memorial* Nigeria challenged the correctness of Cameroon's line on the basis that it was not "a straight line running towards the south-west" (NC-M, paragraph 19.12). Cameroon dismisses this challenge as unfounded (RC, paragraph 4.128). Cameroon's position is astonishing: a glance at Cameroon's map shows a line which between BP8 and the summit of the Wamni Range is demonstrably not a straight line.

7.163 Since Cameroon has chosen to deny the clear evidence provided by eye-sight, Nigeria must further specify its statement that the Cameroon line is not a straight line. The line from Cameroon's (incorrect) position for BP8 in the Karin Pass to the summit of the Wamni Range as delineated on Map 11 (RC, Vol. II) has five segments:

> a line approximately 2,000m long on a bearing of 175_ (i.e. 5_ *east* of south);
>
> a line approximately 800m long on a bearing of 220_;
>
> a line approximately 1,000m long on a bearing of 180_ (i.e. due south);
>
> a line approximately 600m long on a bearing of 190_;
>
> a line approximately 1,400m long on a bearing of 215_.

These measurements are taken from the Cameroon map in question and there is no question of any distortion occurring because of enlargement, as suggested by Cameroon (RC, paragraph 4.128). It is apparent from the measurements of each of the five segments that Cameroon's line cannot possibly be described as "straight", nor can it be claimed to be running towards the south-west, both of which are requirements of Article 34.

7.164 For the foregoing reasons Nigeria submits that

(1) the boundary delineated by Cameroon on its Maps 10 and 11 in RC, Vol. II, is not in accordance with Articles 33 and 34 of the Thomson-Marchand Declaration and impinges significantly upon Nigerian territory;

(2) those Articles correctly delimit the boundary in this area;

(3) the boundary delineated by Nigeria in red on Figs. 7.30 and 7.31 is in conformity with that delimitation.

(xxi) Maio Senche

7.165 Article 35 of the Thomson-Marchand Declaration provides that, after reaching the summit of the Wamni Range (as provided for in Article 34),

> "Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, [thence] it follows the line of the watershed of the Benue to the north-west and of the Faro to the south-east as far as the south peak of the Alantika Mountains to a point 2 kilometres to the north of the source of

the River Mali."

A map extract of the area considered below is at Fig. 7.33.

7.166 On its Map 12 (RC, Vol. II) Cameroon delineates the boundary in the Alantika Mountains, in the vicinity of longitude 12_ 35' E, by a line which departs from the watershed for a distance of 8 kms, and joins a major tributary of a Nigerian river, the Maio Senche, some 2.5 kms inside Nigeria, putting the village of Batou into Cameroon.

7.167 Article 35 could not be clearer in requiring the boundary to follow the watershed. Cameroon's boundary line is thus in clear contravention of the requirements of that Article. Its erroneous departure from the watershed involves a significant tresspass upon Nigerian territory, involving some 1,200 hectares.

7.168 For the foregoing reasons Nigeria submits that

(1) the boundary delineated by Cameroon on its Map 12 in RC, Vol. II, is not in accordance with Article 35 of the Thomson-Marchand Declaration, and impinges significantly upon Nigerian territory;

(2) that Article (subject to paragraphs 7.70-7.76 above) correctly delimits the boundary;

(3) the boundary delineated by Nigeria in red on Fig. 7.33 is in conformity with that delimitation.

(xxii) Tipsan

7.169 In its *Memorial* (MC, paragraph 6.90 *et seq.*) Cameroon claimed that Nigeria was occupying Cameroon territory when it set up an Immigration Post to the west of the Tipsan River, opposite Kontcha. In its oral presentation of its *Fifth Preliminary Objection* (CR 98/1, pp. 24-25; CR 98/5, p. 42), Nigeria explained that Cameroon's allegation was wholly misconceived and was based on a patently incorrect understanding of the delimitation effected by Articles 40-41 of the Thomson-Marchand Declaration. In its oral response Cameroon reaffirmed its allegations, referring in doing so to the same geographical features as Nigeria has done (although drawing different conclusions from them).[25] Given Cameroon's position, the Court, in rejecting Nigeria's *Fifth Preliminary Objection*, concluded that there was a dispute at Tipsan - the only location along the entire 1,800 km land boundary at which the Court (on the basis of the limited evidence and argument before the Court at that stage) found there to have been a dispute as to the course of the boundary (above, paragraph 6.5(1)).

7.170 Cameroon misled the Court. This is now apparent from Cameroon's *Reply*. It is necessary for Nigeria to explain in some detail what the true position is as regards the course of the boundary in this area.

7.171 Articles 40, 41 and 42 of the Thomson-Marchand Declaration provide that, after reaching the River Kolob (as provided for in Article 39), the boundary runs

> "40. Thence along a line parallel to the Bare Fort Lamy Track and 2 kilometres to the west of this track, which remains in French territory.
>
> 41. Thence a line parallel to and distant 2 kilometres to the west from this road (which is approximately that marked Faulborn, January 1908, on Moisel's map) to a point on the Maio Tipsal (Tiba, Tibsat or Tussa on Moisel's map) 2 kilometres to the south-west of the point at which the road crosses said Maio Tipsal.
>
> 42. Thence the course of the Maio Tipsal upstream to its confluence with the Maio Mafu, flowing from the west, to a point some 12 kilometres to the south-west of Kwancha town."

An extract map of the area considered below is at Fig. 7.34.

7.172 Nigeria has already explained in the *Counter-Memorial* the meaning of these provisions, and how they relate to the topography of the area (NC-M, paragraphs 19.72-19.76). The relevant area was shown on the DOS map sheets comprising Map 73 in Nigeria's map *Atlas* which is reproduced here (with minor modifications) at Fig. 7.34. The main elements of Nigeria's explanation were -

(1) the various features referred to in the delimitation in Articles 41 and 42 of the Thomson-Marchand Declaration (including the road there referred to) were clearly visible on Map 73, and the extract from Moisel's map at Map 74 of the *Atlas* clearly showed the track marked "Faulborn Jan. 08" (NC-M, paragraph 19.75);

(2) the point at which the road crossed the River Tipsan was marked on Map 73, as were the location on the River Tipsan 2 kms to the south-west of that point, and the upstream course of the River Tipsan (*ibid.*);

(3) Cameroon was confused over the geographical relationship between Tipsan and the Cameroonian town of Kontcha some 4 kms away, and over the location of the boundary (which runs between them) (NC-M, paragraph 19.76);

(4) the clear terms of the Thomson-Marchand Declaration showed that the location for the boundary asserted by Cameroon had no basis in those terms, and the location of the Nigerian immigration post at Tipsan was clearly on the Nigerian side of the River Tipsan which is expressly stated to be the boundary (*ibid.*).

7.173 In originally alleging that Nigeria was occupying Cameroon territory when setting up an Immigration Post to the west of the Tipsan River, Cameroon appears to have based itself on a belief that German officials had marked the border with stones several kilometres to the west of Kontcha (MC,

paragraph 6.93). The delimitation in the Thomson-Marchand Declaration makes no mention of any such stones in this area (although where they are relevant in other areas the Declaration does mention stones or cairns). Moreover, Cameroon nowhere explained what role German officials (who left the country before the end of the First World War in 1918) could have played in demarcating a boundary negotiated between British and French officials in the period 1919-1931. On this issue Cameroon is completely misguided.

7.174 In any event, the Thomson-Marchand Declaration is absolutely explicit in relation to this boundary. It refers to the "Maio Tipsal (Tiba, Tibsat or Tussa on Moisel's map)" as the boundary. That river is readily identifiable on Moisel's map (relevant extract at Fig. 7.35[26]). There is a wealth of supporting evidence to show that this river is identical with that referred to today as the Maio Tipsan - a fact which Cameroon has not disputed. Furthermore, Cameroon's own Map 14 (RC, Vol. II) shows the boundary as the Maio Tipsan: Cameroon thus now, belatedly, admits what Nigeria has all along maintained and what Cameroon has hitherto denied (including in earlier written and oral submissions to the Court).

7.175 When during the *Preliminary Objections* phase Nigeria challenged Cameroon's allegations, Cameroon responded by claiming that the Nigerian road from Toungo to Tipsan was the track from Baré to Fort Lamy mentioned in Article 40 of the Thomson-Marchand Declaration (CR 98/6, p. 38). This argument was patently absurd. There is no evidence to support it (and Cameroon cited no evidence). The alignment of the Toungo-Tipsan-Kontcha road means that it could not have been the Baré-Fort Lamy track, since that alignment would not fit with the terms of Article 40. The locations of Baré (close to Nkongsamba, a railhead in roughly the same latitude as Calabar) and Fort Lamy (now N'Djamena, capital of Chad) are known and are shown on Fig. 7.36: the general direction of a track running between them would run through Kontcha at right angles to the Toungo-Tipsan-Kontcha road.

7.176 In its *Counter-Memorial* Nigeria drew attention to the many errors in Cameroon's arguments on this matter (NC-M, paragraphs 19.73-19.76). In its *Reply* Cameroon has dealt with Tipsan in two places, paragraphs 4.95-4.99 and paragraphs 11.218-11.238. There are serious inconsistencies in Cameroon's treatment of the matter in its *Reply*. These simply underline the confusion in Cameroon's position, and the carelessness (or worse) with which it is willing to present its pleadings to the Court.

7.177 In explaining its position in its *Counter-Memorial* Nigeria had asserted that the Immigration Post which it had set up, and which was central to Cameroon's allegations that Nigeria had trespassed upon Cameroonian territory, was well within Nigerian territory, being, as was clear from Map 73 in Nigeria's Map *Atlas*, some 600m to the west of the boundary at the Maio Tipsan. Cameroon now accepts that that Immigration Post is "indiscutablement situé en territoire nigérien comme on le voit sur cette carte"[27] (RC, paragraph 4.99).

7.178 Cameroon seeks to extricate itself from the untenable position into which it had placed itself by its previous incorrect arguments by going on to suggest that there is another settlement called Tipsan which is situated on the Cameroon side of the line of delimitation (by which Nigeria assumes is meant the

Maio Tipsan, although Cameroon does not expressly say so: but, as explained, the Thomson-Marchand Declaration is explicit on the matter and Cameroon cannot be heard to deny it). This 'other' Tipsan is said to be 3 kms from Kontcha. There is no evidence on any maps submitted to the Court of any 'other' Tipsan, not even maps submitted by Cameroon with its *Reply*. Moreover, it is to be recalled (above, paragraph 7.169) that in the hearings on Nigeria's *Preliminary Objections*, Cameroon's arguments about Tipsan were based entirely on the geographical features of the maps submitted by both Parties, and none of those arguments or maps - in particular, not Cameroon's - made any mention of any alleged 'other' Tipsan. The only Nigerian Immigration post - the location of which lies at the heart of Cameroon's complaint - is at the village of Tipsan. Tipsan village consists of houses and Nigerian government buildings in the immediate vicinity of the Nigerian Immigration Post, all situated to the west of the boundary running along the Maio Tipsan. Cameroon's claim (unsubstantiated by any evidence) that a second Immigration Post is being built (RC, paragraph 4.99) is ludicrous.[28]

7.179 In spite of the acceptance by Cameroon in paragraph 4.99 of the *Reply* that the Nigerian Immigration Post at Tipsan is in Nigerian territory, Cameroon goes on to make conflicting claims as to the location of the boundary in Chapter 11 of its *Reply*. Thus Cameroon in one place (RC, paragraph 11.225) suggests that the boundary is 4 kms from Kontcha on a stream known as the Maio Djigawal (which, however, is nowhere mentioned in the Thomson-Marchand Declaration), while in the very next paragraph it suggests that it is 9 kms from Kontcha (RC, paragraph 11.226). Cameroon has produced no maps to clarify the location of its claimed boundary, nor has Cameroon explained anywhere why its claimed boundary (wherever it lies) takes precedence over the delimitation given in the Thomson-Marchand Declaration and the depiction on RC Vol. II, Map 14.

7.180 There is one final matter which Nigeria wishes to clarify, concerning the accuracy of maps used by the Parties. Cameroon has pointed out (RC, paragraph 4.98) that the latest editions of the Cameroon 1:200,000 maps have seen the removal of the error (involving a displacement at the edge of a map sheet) in the depiction of the international boundary which was evident on the earlier editions used by Nigeria for its *Counter-Memorial*. Nigeria welcomes this correction of the Cameroonian error referred to. Cameroon also, however, describes Nigeria's Map 73 as "fallacious" (RC, paragraph 4.96). Nigeria rejects this description. Whether the map is described as being "extracted from sheet 238SW and 258NW" (as Nigeria described it) or as a "partial assembly" (as Cameroon would prefer) is a matter of choice of language. Advances in technology allow the more convenient combination of map sheets which in earlier times would have had to be presented separately. The original separation of map sheets is in any event a function of the sheet sizes traditionally used for maps, and does not affect the substance of the topography depicted on them. There is obvious convenience for the purposes of the present proceedings in being able to refer to a single map made up of adjacent parts of separate original sheets; that this had been done was made clear by Nigeria's terminology.

7.181 For the foregoing reasons Nigeria submits that

(1) the boundary in the region of Tipsan is correctly delimited by Articles 40-42 of the Thomson-Marchand Declaration;

(2) the boundary delineated by Nigeria in red on Fig. 7.34 is in conformity with that delimitation.

(xxiii) The Mburi River to the old Franco-British frontier

7.182 The relevant part of the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946, after delimiting the boundary as following the River Donga to its junction with the River Mburi, provides that the boundary follows -

> "thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (alias Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120_ for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi; thence on a true bearing of 100_ for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier."

A map extract of the area considered below is at Fig. 7.37.

7.183 The deficiencies in this part of the boundary delimitation, because of its ambiguity and its omission to reflect an agreed variation of the Order in Council, have been dealt with in paragraphs 7.99 *et seq.* above.

7.184 Cameroon shows what it claims to be the boundary in the vicinity of the Maven River, Lip and Mount Kombon on Map 18 (RC, Vol. II). This claimed boundary follows the Maven River upstream from its confluence with the River Mburi (Manton) for a distance of about 6 kms, when it then follows the Ntum tributary passing to the north of Bang: from the source of the Ntum it follows a watershed to the vicinity of Tamnyar. This claimed boundary is depicted in blue on Fig. 7.37.

7.185 Cameroon's claimed boundary meets none of the criteria set out in the 1946 Order in Council, and does not take account of the agreement reached in 1953 on the basis of Dr Jeffreys' decision in 1941, and ignores the present day situation. Moreover, Cameroon's claimed line trespasses across the true line of the boundary and encroaches on to Nigeria's territory. More specifically,

(1) it follows a tributary of the Maven stream for 5 kilometres (3 miles) as far as Bang where it appears to switch to following the road for a further 3 kilometres to the watershed north of Sanya village: there is no mention of a stream of such a length nor of a requirement to follow a road in the 1946 Order in Council;

(2) at no stage before reaching the watershed which Cameroon appears to claim to be that referred to in Article 61 of the Thomson-Marchand Declaration does the Cameroon line follow either a true bearing of 100° or a "crest of the mountains" as required by the 1946 Order in Council: nor does it meet that

watershed at a prominent peak, but rather at a saddle;

(3) it leaves the well-established Nigerian settlement of Bang in Cameroon. Bang has never been part of Cameroon. Indeed the DOS 1:50,000 map issued in 1965 annotates it as a sub-district headquarters within the Nigerian Administration. Its inhabitants voted on the Nigerian side in the 1959 and the 1961 plebiscites held in Northern Cameroons;

(4) at no point does the line chosen by Cameroon pass through any of the peaks which would be described as prominent when viewed from the cairn at the foot of Hosere Nangban as required by Article 61 of the Thomson-Marchand Declaration.

7.186 The line delimited in the Order in Council was itself varied in part by agreement in 1953 as described in paragraph 7.106 *et seq* above. This line is shown in red on Fig. 7.37.

7.187 For the foregoing reasons Nigeria submits that

(1) the boundary delineated by Cameroon on its Map 18 (RC, Vol. II) in the sector between Mount Kombon and the Mburi River is not in accordance with the provisions of the Second Schedule to the 1946 Order in Council quoted in paragraph 7.182 above as varied by agreement in 1953 in the manner described in paragraph 7.107 above;

(2) those provisions, as so varied (and subject to paragraphs 7.99-7.111 above), correctly delimit the boundary in this area;

(3) the boundary delineated by Nigeria in red on Fig. 7.37 is in conformity with that delimitation.

(xxiv) Bissaula-Tosso

7.188 The relevant part of the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946 provides that, after the highest point of Tosso Mountain, the boundary runs -

> "... in a straight line eastwards to a point on the main Kentu-Bamenda road where it is crossed by an unnamed tributary of the River Akbang (Heboro on Sheet E of Moisel's map on Scale 1/300,000) - the said point being marked by a cairn; thence down the stream to its junction with the River Akbang; thence the River Akbang to its junction with the River Donga; thence the River Donga to its junction with the River Mburi;..."

A map extract of the area considered below is at Fig. 7.38.

7.189 The tributary of the River Akbang in the area now in question is known as the Akong. This stream, flowing northwards from the point at which it crosses the Kentu-Bamenda road is joined by a

tributary flowing from the north before turning to the east to flow into the Akbang River. In Cameroonian maps the boundary is shown as following the northerly tributary, and then taking the source of that tributary as the starting point for the straight line to Tosso Mountain. The boundary so delineated is not in conformity with the delimitation in the Order in Council.

7.190 The effect of Cameroon's claimed boundary is to assert as being Cameroonian a large slice of Nigerian territory, some 30 kms long, and some 5 kms wide at its widest point: the area involved is approximately 7,500 hectares.

7.191 As Nigeria explained in its *Counter-Memorial*, the Order in Council requires that the "unnamed tributary of the River Akbang" must at some time cross the main Kentu-Bamenda road. Nigeria showed that the northern tributary did not cross that road, whereas the southern tributary did (NC-M paragraphs 19.16-19.19). Moreover, Nigeria recorded that it had located the cairn referred to, at the position shown on its map (NC-M *Atlas* map 64).

7.192 In its *Reply* (RC, paragraphs 4.133-4.137) Cameroon disputes the attribution of the name "Akbang" to the lower course of the two streams in question (after they converge); Cameroon also draws attention to the name Akbang on another tributary of the same river system, some 4 kilometres to the east of the area in dispute, which tributary flows from the south and the course of which is wholly within Cameroon. Cameroon supports this argument with its Map 20 (RC, Vol. II). Cameroon asserts (RC paragraph 4.136) that the course of the River Akbang as flowing in a "north-south" direction to the east of 10_ 30' E longitude "leads to a very different interpretation of the boundary line".

7.193 Cameroon does not, however, in any way explain this "different interpretation". In any event, however, the point is irrelevant. What is at issue is the course of the boundary from Mount Tosso to that point on a tributary of the River Akbang at which it is crossed by the Kentu-Bamenda road. The course of the River Akbang downstream from the place where the northerly and southerly tributaries merge is irrelevant; these two tributaries in the vicinity of the Kentu-Bamenda road are still tributaries of the River Akbang whatever course that river takes upstream, and it is the selection of the correct tributary from these two which is the key to the correct alignment of the boundary. As Nigeria has stated, it is *only* the southern tributary which crosses the Kentu-Bamenda road and therefore this is the tributary to which the Order in Council refers.

7.194 Cameroon attempts to counter the Nigerian argument that the northern tributary does not cross the Kentu-Bamenda road as required by the Order in Council by using a map at a scale of 1:500,000 produced by Nigeria in 1953 (RC, Map R16). This purports to show a tributary flowing from the north and cutting the Kentu-Bamenda road. This map is, of course, on a scale from which it is impossible to draw precise conclusions of the kind now in question. It was constructed using the only source of geographical information available at the time, i.e. Moisel's map of 1908. If the courses of rivers in the area, and especially the Akbang, which are shown on this 1953 map are compared with those shown on the modern map supplied by Cameroon (Map 20, RC Vol. II), it becomes obvious that the 1953 map is very inaccurate in this respect: for example, the point at which the Akbang meets the Donga would, if

accepted as correct, lead to a considerable loss of territory by Cameroon. Furthermore, the depiction of the Cameroonian section of the Kentu-Bamenda 'road' on the map as a motorable track in 1953 is wrong, since it was in fact only a footpath as late as 1958; this reinforces the fact that this map is an inaccurate representation of the area.

7.195 Cameroon offers no further modern evidence that the northern tributary crosses the 'road'. Nor does it make any attempt to suggest that there is a cairn in the vicinity of the headwaters of that northern tributary. As regards Nigeria's location of the cairn, Cameroon criticised Nigeria for not displaying GPS co-ordinates for the cairn to the Court. Coming from a Party which has been singularly reticent about details on practically all aspects of the land boundary, this is a point of remarkable pettiness. Nonetheless Nigeria can provide the co-ordinates for the cairn which are latitude 6° 52.4' N, longitude 10° 29.8' E (Minna Datum). These co-ordinates have a precision of +/- 0.1' (or 180 metres).

7.196 For the foregoing reasons Nigeria submits that

(1) the boundary delineated by Cameroon on its maps in the sector between Mount Tosso and the point on the Kentu-Bamenda road where it crosses the tributary of the River Akbang is not in accordance with the provisions of the Second Schedule to the 1946 Order in Council quoted in paragraph 7.188 above;

(2) those provisions correctly delimit the boundary in this area;

(3) in particular, the "unnamed tributary" referred to in the Order in Council is the southerly of the two tributaries, being the only tributary which crosses the Kentu-Bamenda road;

(4) the boundary delineated by Nigeria in red on Fig. 7.38 is in conformity with that delimitation.

(xxv) Mberogo

7.197 The relevant part of the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946 provides that, from boundary post 64 on the old Anglo-German frontier, the boundary -

> "follows the River Gamana upstream to the point where it is joined by the River Sama; thence up the River Sama to the point where it divides into two; thence a straight line to the highest point of Tosso Mountain;..."

A map extract of the area considered below is at Fig 7.39.

7.198 Cameroon has made incursions into the Nigerian village of Mberogo,[29] and these are the subject of State responsibility claims set out in Nigeria's *Counter-Memorial* and Cameroon's *Reply* (NC-M, paragraph 25.58 *et seq*; RC, paragraphs 12.35-12.38). The delimitation of the boundary in this area is clear: it is shown on Fig. 7.39. However, in responding to Nigeria's assertions of Cameroon incursions

into Mberogo and Tosso, Cameroon has introduced the thought that there are two villages with each of these names, one of each pair being in Nigeria and one in Cameroon (RC, paragraphs 12.36-12.37); and Cameroon has provided in Map R27 an indication of where the two alleged Cameroonian versions of those villages are located.

7.199 Nigeria is very sceptical of Cameroon's recent assertion of the existence of two Cameroonian villages with names similar to those on the Nigerian side of the border. Nigeria notes that in no other maps available to Nigeria or produced by Cameroon are two villages of Mberogo and Tosso recorded as being located in this area of Cameroon. Similarly, the local inhabitants on the Nigerian side of the boundary have no knowledge of any Cameroonian villages of those names in the vicinity.

7.200 Moreover, Nigeria notes that the location at which Cameroon has on its Map 27 depicted its alleged village of Tosso is in fact high on Mount Tosso at an elevation of 1,070 metres and perched on the side of a sharp conical summit of the mountain whose peak is at 1,140 metres. There is no evidence of any local permanent water supply (which would present great difficulties in such a location), or of any nearby land on which to grow crops. Altogether, this supposed location of a Cameroonian Tosso is highly improbable. That there are two villages named Tosso in the area is not disputed. These are sometimes referred to as Tosso North and Tosso South. The former is on the north bank of the Gamana River some 2.7 kilometres from Mberogo. The latter is to the south of the Gamana River and some 600 metres south-east of Mberogo. Both are in Nigeria (see Fig. 7.39).

7.201 As to Mberogo, members of the Nigerian Legal Team visited the village in March 2000 and heard at first hand from the villagers their accounts of incursions by Cameroonian officials and gendarmes: further details are given below, in Chapter 18, in connection with Nigeria's counterclaims. But of more direct interest in the present context is an account provided by Cameroon of a visit which they claim was made to the Cameroon village of Mberogo (Annex RC 224). At p. 1790 the account tells of a question asked by

> "Panso Kimalaki, a Nigerian who identified himself as a teacher in Toso, a Nigerian village located at about one kilometre from Mbelogo at the extreme boundary of Nigeria and Cameroon."[30]

The record continues:

> "He advanced the idea that most of the children of Mvelogo attend school in Tosso and so automatically Mbelogo was in Nigerian soil. He went further to say that there is no map that indicates the boundary to be on the river. In response to this, the principal of G.H.S. Furu-Awa, Mr Achuo John asked Mr. Panso who is so versed with boundaries on maps to tell the assembly where the boundary between Cameroon and Nigeria is found. Here, our ill-informed speaker was tongue-tight as he found it very difficult to express him self in English or pidgin. Intervening here, the Sub-Prefect warned him very seriously to stop intoxicating the people of Mbelogo with wrong information. He then called on the

> villagers to be very careful with this type of individuals who came into down-play over them. Speaking further, the Sub-Prefect called the people's attention to the fact that there are so many Nigerians who study in Cameroon and they have not been compelled to become Cameroonians just as if one were to go into big cities in Nigeria, he will find many Cameroonians studying. He warned Mr. Panso Kimalaki very seriously and told him in concrete terms that Mvelogo is in Cameroon territory and he as a foreigner must respect the laws of Cameroon and not to teach the population rebellion against their own fatherland."

7.202 It is clear from this discussion that Mr Kimalaki was referring to the Mberogo which is "about one kilometre from" Tosso and which in the opinion of the Cameroonian official acting as note-taker is "at the extreme boundary of Nigeria and Cameroon". There can be no doubt that this is the Nigerian village of Mberogo located at latitude 6_ 55' 25" N, longitude 10_ 13' 40" E, and that the "Nigerian village" of Tosso to which he referred, and whose location was not disputed by Cameroon officials, was the village at latitude 6_ 56' 00" N, longitude 10_ 12' 40" E and sometimes referred to as Tosso North (the positions given for these villages were obtained by GPS by members of the Nigerian legal team in March 2000). Mr Kimalaki's question whether the Sub-Prefect was sure that the boundary between Cameroon and Nigeria was actually on the river separating the two villages can only be taken as a reference to the River Gamana, with the clear implication that local Cameroonian officials believe this to be the boundary and try to enforce it as such,[31] with *this* (Nigerian) Mberogo consequently regarded as being in Cameroon.

7.203 Cameroon's position, as represented by the conduct of its local officials, is inconsistent with the delimitation in the 1946 Order in Council. It is clear from the relevant passages (quoted above in paragraphs 7.188 and 7.197) that to the east, south and west of Tosso the boundary follows two straight lines, one from the point where the River Sama divides in two and running to the highest point of Mount Tosso, and the second running from that highest point to where the Kentu-Bamenda road crosses a tributary of the River Akbang. There can be no suggestion that in this section the boundary follows the course of a river. Cameroon recognises this in its own maps submitted with its *Reply* (Map R27 in Vol. I, p. 581, and Map 21 in Vol. II).

7.204 The implications of the foregoing paragraphs for questions of Cameroon's international responsibility for the conduct of its officials at the Nigerian village of Mberogo are dealt with in Chapter 18. For present purposes it is sufficient for Nigeria to ask the Court to declare that:

(1) the boundary asserted by Cameroon is not in accordance with the relevant provisions of the Order in Council cited in paragraphs 7.188 and 7.197 above;

(2) those provisions (subject to paragraphs 7.112-7.116 above) correctly delimit the boundary in this area;

(3) in particular, the boundary follows two straight lines running to the east, south and west of the Nigerian villages of Tosso and Mberogo located at the places identified by their co-ordinates in

paragraph 7.202 above; and

(4) the boundary delineated by Nigeria in red on Fig. 7.39 is in conformity with that delimitation.

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1 Argentine-Chile Frontier Dispute (1966), International Law Reports, vol. 38, p. 10 (commonly referred to as the *La Palena* arbitration).

2 As to the validity of this description today, see Chapter 4.

3 See, for example, Sikes, Lake Chad (1972), pp. 56, 111, "The delta of the Bahr el Beïd, also called the Ebedji or Ebeji River, ... forms the western part of the complex of deltas built by the Chari-Logone River system and its distributaries"; "... developing over the clay sediment of the El Beïd and Yobe deltas...".

4 "the Ebeji actually had two possible mouths".

5 "the course of the Ebeji does not seem to have changed since the start of the century".

6 "in accordance with the Franco-British declaration of 10 July 1919 and with the Thomson-Marchand Declaration of 29 December 1929 and 31 January 1930 confirmed by the Exchange of letters of 9 January 1931".

7 "the point identified by the LCBC corresponds to the mouth of the Ebeji as it existed in 1931 and as it was described on the Thomson-Marchand map".

8 "does not alter in any way the exactness of the determination, by the LCBC's experts, of the mouth of the Ebeji".

9 "they [i.e. the negotiators] chose an identifiable, geographic point of reference, the mouth of the Ebeji".

10 I.L.R., Vol. 38, at pp. 93-95.

In the period 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 1919. Their work was later the basis for the Thomson-Marchand Declaration.

12 Annex NR 151.

13 This boundary is shown in green on the map.

14 The apparently single name "Madogoba Gamdira" in Article 25 is in fact a reference to two adjacent groups of villages now known as Maduguva and Gandira.

15 "It [i.e. the Logan-Le Brun description of the boundary] corresponds to the terms of the Thomson-Marchand Declaration, which Nigeria does not contest. It also conforms to the Cameroonian I.G.N. map of the region (Map No. 12 in the cartographic atlas appended to the present Reply, also reproduced overleaf). It should be particularly emphasised that the Logan-Le Brun letter specified (contrary to the information given on Nigeria's Map 69) that the Sassiri River runs to the South, which means that the boundary shown on Map No. 12 in Cameroon's Atlas by a line which follows the river to the South from the point of confluence corresponds to the text. The boundary is therefore correctly delimited by the Thomson-Marchand Declaration..."

16 So'o is the modern name for Jimbare.

17 *Haraji* tax, which was paid in naira, is the local community charge.

18 The Maio Yin is some 80 kms to the north of the section of boundary delimited in Articles 60 and 61.

19 MC, p. 669, para. 9.1(a).

20 See maps in the *Memorial* at pp. 349, 415 and 424.

21 See above, paras. 7.6 and 7.20.

22 "*Ligne de partage des eaux*", crest, more or less pronounced, at the junction of two slopes, constituting the boundary between two hydrographic basins.

23 I.C.J. Reports 1962, at p. 15. Distinctions between watershed lines and other relevant lines were much discussed, for example, in the *Plateau of Manica Arbitration* (1897), but no general definition of a 'watershed' was put forward by the Arbitrator: Moore, *International Arbitrations*, Vol. 5, p. 4485, esp. p. 4995 *et seq.*

24 During a visit to the area by the Nigerian legal team in March 2000, it was established that names on existing maps for hills in the area were misplaced as a result of cartographic errors. Mitchya Hill is situated at the co-ordinates given in para. 7.142 above and not immediately south of Mbidiwa village. Bidwa Hill is immediately south of Mbidiwa village and not south of Gaddamayo. The hill named as Bidwa south of Gaddamayo is in fact called Bana.

25 CR 98/4, p.14; CR 98/6, pp. 37-38.

26 Fig. 7.35 is the version of Moisel's map annexed to the Milner-Simon Declaration 1919. The green line marks the boundary as delimited in that Declaration: the section of the boundary north of Kontcha was varied in the Thomson-Marchand Declaration.

27 "indisputably located in Nigerian territory as the map shows".

28 See further, paras. 16.52-16.53.

29 There are three spellings - Mberogo, Mbelogo and Mvelogo: all refer to the same village.

30 The description of Mr Kimalaki, and the location of Tosso, would appear to be explanatory comment provided by the Cameroonian note-taker.

31 This erroneous Cameroonian view is confirmed by the document appearing at p. 339 of Annex OC 1: see NC-M paras. 24.304-24.305.

PART III

THE LAND BOUNDARY

CHAPTER 8

CONCLUSION AS TO THE COURSE OF THE LAND BOUNDARY BETWEEN LAKE CHAD AND BAKASSI

Conclusion as to the course of the land boundary between Lake Chad and Bakassi

8.1. It will be apparent from Chapters 6 and 7 that, so far as concerns the boundary running southwards from BP64 to a point at the north of the Bakassi Peninsula, Nigeria accepts as a sufficiently complete and accurate delimitation of the boundary between Nigeria and Cameroon the description of that boundary contained in the Anglo-German Demarcation Agreement of 12 April 1913 and the Anglo-German Agreement of 11 March 1913 (as far south as prescribed by Article XVII).

8.2. So far as concerns the boundary from the mouth of the River Ebeji southwards to BP64, Nigeria's acceptance of the delimitation of that boundary in the Thomson-Marchand Declaration and the Second Schedule to the Nigeria (Protectorate and Cameroon) Order in Council 1946, is, as explained, subject to the need for interpretation and clarification in the areas referred to in paragraphs 7.8-7.120 (and subject to the observation made in the last two sentences of paragraph 7.1)

8.3. Accordingly, for the reasons given in Chapters 6 and 7 Nigeria submits that, subject to the clarifications, interpretations and variations explained in Chapter 7, and subject also to what is said elsewhere as to the boundaries in the Bakassi[1] and Lake Chad[2] areas, the land boundary between[3] Lake Chad and Bakassi is delimited by the terms of:

(1) the Thomson-Marchand Declaration, paragraphs 2 (from the words "the mouth of the Ebeji") to 61;

(2) the Second Schedule to the Nigeria (Protectorate and Cameroons) Order in Council 1946;

(3) the Anglo-German Demarcation Agreement of 12 April 1913, for the stretch between boundary pillars 64 and 114 established by that Agreement; and

(4) the Anglo-German Agreement of 11 March 1913, Articles XV to XVII.

8.4. The effect of those instruments, as clarified, interpreted or varied in the manner identified by Nigeria, is for convenience set out in the Appendix to this Chapter and is delineated in the maps in the *Atlas* submitted with this *Rejoinder*. This *Atlas* sets out the complete delimitation of the land boundary

either in the terms used in the relevant instruments or in the terms in which, in Nigeria's submission, those terms are now properly to be understood. Such a delimitation affords, in Nigeria's submission, both

(1) a clear statement of the course of the boundary for immediate application by those living and working on both sides of the boundary, and by the authorities in boundary areas; and

(2) a sure basis on which those who may in the future be charged with the necessary task of demarcating the boundary may carry out their task, and effectively resolve, in the exercise of the normal limited discretion conferred upon demarcation commissions, any remaining minor local problems which may arise during their work.

8.5. To the extent that the Court does not accept Nigeria's submissions as to the course to be followed by the boundary, and in any event in relation to sectors of the boundary which may give rise to problems which are considered too insubstantial to put before the Court, Nigeria reserves its position in relation to any future negotiations, discussions, developments or activities.

8.6. For the convenience of the Court, Nigeria attaches to this *Rejoinder*

(1) an *Atlas* containing a complete map of the Nigeria-Cameroon land boundary from the mouth of the Ebeji to the point where the boundary reaches Archibong Creek, on which is marked in red the boundary as Nigeria believes it to be; and

(2) (in the Appendix to this Chapter) a complete delimitation of that boundary in the terms used in the Thomson-Marchand Declaration and the 1946 Order in Council, as interpreted and clarified in the manner and for the reasons explained by Nigeria in Chapter 7.

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1 See Chapters 1-3.

2 See Chapters 4-5.

3 See above para. 6.2.

PART III

THE LAND BOUNDARY

CHAPTER 8

APPENDIX

The Texts of the 1931 Thomson-Marchand Declaration

and

1946 Nigeria (Protectorate and Cameroon) Order in Council

with Nigeria's Proposed Amendments

1931 Thomson-Marchand Declaration

Art No	Textual description	Nigeria's Proposed Text
2.	[On a straight line as far as] the mouth of the Ebeji.	[On a straight line as far as] the mouth of the Ebeji [El Beid], in latitude 12° 31' 45" North, longitude 14° 13' 00" East.
3.	Thence from this mouth along the course of the River Ebeji which bears on the upper part the names of Lewejil, Labejed, Ngalarem, Lebei et [*sic*] Ngada, as far as the confluence of the Rivers Kalia and Lebaiit.	
4.	Thence from the confluence of the Rivers Ngada, Kalia, and Lebaiit along the course of the Rivers Kalia or Ame as far as its confluence with the River Dorma or Kutelaha (Koutelaha).	
5.	Thence from the confluence of the Rivers Kalia and Dorma or Kutelaha, along the course of this last river as far as a point to the south of the village of Segage where it meets a marsh stretching towards the south.	
6.	Thence by a line through the middle of this marsh to where it meets the road from Segage towards a marsh named Sale	

7.	Thence following the road to a point about a kilometre and a half to the north of the said marsh.	
8.	Thence passing about a kilometre and a half to the west of the marsh as far as a point about a kilometre and a half to the south of the marsh on the road leading to the village of Gourgouron.	
9.	Thence following this road to a point situated about 2 kilometres to the north-east of the village of Gourgouron and passing through a marsh nearly a kilometre to the north of this village to a point situated about 2 kilometres to the west on the Gourgouron-Ferfarti road, leaving the villages of Sale, Mada and Gourgouron to France.	
10.	Thence following the road and meeting a number of waterholes (shown on Moisel's map under the name of Amjumba), to a point situated about a kilometre from the village of Ferfarti and entering a marsh situated 500 metres to the north of this village which is still assigned to France.	
11.	Thence turning to the west, south-west and south as far as the bed of a defined river and following the bed of this river in a south-westerly direction to a large marsh named Umm Jumba (Amjumba), leaving the villages of Galadima Jidda, Abu Kharaza and Ulba to England.	
12.	Thence following a line through the middle of this marsh, passing the bed of a small stream which is frequently lost in the marsh, as far as a water-hole called Diguilaba and a confluence with another line of marsh running more to the south in the direction of Wasa rock..	
13.	Then going on and meeting the bed of a better defined stream crossing the marsh of Kulujia and Kodo as far as a marsh named Agzabame.	

14.	[Thence crossing this marsh where it reaches a river passing quite close to the village of Limanti (Limani) to a confluence at about 2 kilometres to the north-west of this village.]	Thence, crossing this marsh, the boundary reaches the more southerly of two defined channels of the Ngassaoua River. From this point, the boundary follows the most southerly of four channels of the Ngassaoua River. The channel runs south-west to the latitude of Limani, then turns to the west to pass some 250 metres to the north of that village, leaving Narki to Nigeria, and joins the main channel of the Ngassaoua River 2 kms north-west of Limani and opposite the town of Banki.
15.	Thence following the Limanti-Wabisei (Uagisa) road as far as a brook situated about a kilometre to the east of Wabisei and passing through the middle of the villages of Bangimami and Imchide, and leaving the village of Djarandioua to France.	
16.	Thence following this brook as far as a marsh situated about 3 kilometres to the west of Wabisei.	
17.	Thence crossing this marsh to a point where it meets the River Kolofata and following this river as far as its confluence with the River Gwanje or Keraua.	
18.	[Thence following the Keraua as far as its confluence] in the mountains with a river coming from the west and known by the "Kirdis" inhabiting the mountains under the name of Kohom (shown on Moisel's map under the name of Gatagule), cutting into two parts the village of Keraua and separating the two villages of Ishigashiya.	Thence following the Kirawa River, and between Gange and Ngabarawa Kuba its eastern channel, as far as its confluence ... .
19.	[Thence it runs from this confluence as far as the top of Mount Ngosi in a south-westerly direction given by the course of the Kohom (Gatagule) which is taken as the natural boundary from its confluence as far as its source in Mount Ngosi; the villages of Matagum and Hijie being left to France, and the sections of Uledde and of Laherre situated to the north of the Kohom to England; those of Tchidoui (Hiduwe) situated to the south of Kohom to France.]	Thence it runs from this confluence in a west-southwesterly direction given by the course of the Kohom River to its source 1 kilometre south of the Nigerian triangulation point MM154, Matakam. Thence by a line to join the Bogaza River at a point where it makes an abrupt change of direction from north-east to south-east. Thence by the course of this river south-westwards to its source on Mount Ngossi and from there to the most northerly summit of Mount Ngossi by a straight line ....

20.	Thence on a line in a south-westerly direction following the tops of the mountain range of Ngosi, leaving to France the parts of Ngosi situated on the eastern slopes, and to England the parts situated on the western slopes, to a point situated between the source of the River Zimunkara and the source of the River Devurua; the watershed so defined also leaves the village of Bugelta to England and the village of Turu to France.	
21.	Thence in a south-south-westerly direction, leaving the village of Dile on the British side, the village of Libam on the French side to the hill of Matakam.	
22.	Thence running due west to a point to the south of the village of Wisik where it turns to the south on a line running along the watershed and passing by Mabas on the French side, after which it leaves Wula on the English side running south and bounded by cultivated land to the east of the line of the watershed.	
23.	Thence passing Humunsi on the French side the boundary lies between the mountains of Jel and Kamale Mogode on the French side and running along the watershed.	
24.	Thence passing Humsiki, including the farmlands of the valley to the west of the village on the French side, the boundary crosses Mount Kuli.	
25.	[Thence running due south between Mukta (British) and Muti (French) the incorrect line of the watershed shown by Moisel on his map being adhered to, leaving Bourha and Dihi on the French side, Madogoba Gamdira on the British,] Bugela or Bukula, Madoudji, Kadanahanga on the French, Ouda, Tua, and Tsambourga on the British side, and Buka on the French side.	Thence from Hosere Kilda the boundary follows a watershed between the tributaries of the Maio Muri to the west and those of the Maio Dyou to the east, leaving the village of Amsa to Cameroon, as far as the summit of a hill some 1300 metres NNW of Moudi (Muti), which summit is in latitude 10° 24' 28" N and longitude 13° 31' 41" E. From this summit, the boundary follows a series of three straight lines that closely follow the incorrect line of the watershed shown on Moisel's Map B3 attached to the Milner-Simon Declaration of 1919. In so doing, the village of Moudi, which lies on the south bank of the Maio Potoki, is left to Cameroon. The co-ordinates of the end points of the three straight lines are as follows: Point Latitude Longitude

		Hill NNW of Moudi 10° 24' 28" N 13° 31' 41" E Hosere Paliroum 10° 20' 31" N 13° 32' 00" E Hill A 10° 19' 05" N 13° 31' 20" E End of "incorrect 10° 18' 00" N 13° 31' 08" E Watershed" From this last point, which marks the end of Moisel's "incorrect watershed", the boundary follows the main watershed southwards between the catchment of the Maio Yedseram (Nigeria) and that of the Maio Kebbi (Cameroon), passing 1500 metres to the west of Bourha and leaving Dihi to Cameroon and Maduguva and Gandira to Nigeria...
26.	Thence the boundary runs through Mount Mulikia (named also Lourougoua).	
27.	Thence from the top of Mount Mulikia to the source of the Tsikakiri, [leaving Kotcha to Britain and Dumo to France and following a line marked by four provisional landmarks erected in September 1920 by Messrs. Vereker and Pition.]	... leaving Koja and its associated farmlands to Nigeria and Dumo to Cameroon, following the line of the watershed passing through a cairn at latitude 10° 04' 43" N, longitude 13° 17' 49" E and then along the main watershed to the highest source of the southern branch of the Tsikakiri River at latitude 10° 01' 57" N and longitude 13° 17' 18 E.
28.	Thence along the course of the Tsikakiri, as it exists in reality and not as it is shown on Moisel's map, to its confluence with the River Tiel.	
29.	Thence the course of the Mayo Tiel as far as its confluence with the Benue.	
30.	Thence along the course of the Benue upstream as far as its confluence with the Faro.	
31.	Thence along the course of the Faro as far as the mouth of its branch, the Mao Hesso, situated about 4 kilometres south of Chikito.	
32.	Thence along the course of the Mao Hesso as far as landmark No. 6 of the old British-German frontier.	
33.	Thence a line starting from Beacon 6, passing Beacon 7, finishing at the old Beacon 8.	

34.	Thence from this mark 8 placed on the left bank of the Mao Youwai, a small stream flowing from the west and emptying itself into the Mayo Faro, in a straight line running towards the south-west and reaching the summit of Wamni Range, a very prominent peak to the north of a chain of mountains extending towards the Alantika Mountains, and situated to the east of the old frontier mark No. 10.	
35.	Thence the frontier follows the watershed from the Mao Wari to the west and from the Mao Faro to the east, where it rejoins the Alantika Range, it follows the line of the watershed of the Benue to the north-west and of the Faro to the south-east [as far as the south peak of the Alantika Mountains to a point 2 kilometres to the north of the source of the River Mali.]	...as far as the south peak of the Alantika Mountains, known as Hosere Bila, lying 2 kms to the north of the source of the Maio Mali and in latitude 8° 38' 30" N, longitude 12° 30' 00 E.
36.	[Thence from this peak by the River Sassiri, leaving Kobi to France and Kobi Leinde to Great Britain, Tebou and Tscho to France, as far as the confluence with the first stream coming from the Balakossa Range (this confluence touches the Kobodji Mapeo track), from this stream towards the south, leaving Uro Belo to Great Britain and Nanaoua to France.]	Thence from this peak by the course of the Maio Leinde (or Lugga) to its confluence with the Maio Sassiri running from the south, which confluence lies on the Kojoli-Jimbare [So'o] road. From the confluence, the boundary follows the Maio Sassiri upstream to its source in a marsh approximately 300 metres north of the site of the village of Nanaoua, and thence crosses the watershed, leaving the sites of Nanaoua to Cameroon, to reach the source of the Maio Nyemsenga.
37.	[Thence the boundary rejoins the old boundary about Lapao in French territory, following the line of the watershed of the Balakossa range as far as a point situated to the west of the source of the Labidje or Kadam River, which flows into the River Deo, and from the River Sampee flowing into the River Baleo to the north-west.]	Thence the course of the stream Nyemsenga downstream to its confluence with the Maio Silba, thence the course of the Maio Silba downstream to its confluence with a stream known as Jetwunga, flowing from the west. About 100 metres up the Jetwunga from the confluence is a prominent rock slide over which the stream flows, known locally as Kombunga. The boundary follows the Jetwunga upstream until it meets a path running to the west at a point 400 metres to the south of a Nigerian village called Wuro Lawal. From this point, the boundary follows a footpath until it reaches a point close to the source of the Wusima stream, thence by this stream southwards, leaving Nyargan to Nigeria, to its confluence with the Maio Kadam, and thence by this river as far as a point from which the summit of a hill known as Wumkola in the Balkossa Mountains has a bearing of 47°.

38.	[Thence from this point along the line of the watershed between the River Baleo and the River Noumberou along the crest of the Tschapeu Range, to a point 2 kilometres to the north of Namberu, turning by this village, which is in Nigeria, going up a valley north-east and then south-east, which crosses the Banglang range about a kilometre to the south of the source of the Kordo River.]	From this point on the Maio Kadam, the boundary runs in a straight line for a distance of approximately 1600 metres (one mile) on a true bearing of 202° to a small hill called Bomdingba, thence in a direct line on a true bearing of 219° by a series of cairns to a point on the Maio Namberu (Nangua) approximately 3600 metres (2¼ miles) ESE of Namberu village, leaving Sapeo, Jumba and Lainde to Nigeria, thence by this river upstream first in a north-west direction and then south-west to a saddle above its source, which saddle lies on a true bearing of 150° and at a distance of 1600 metres from the Nigerian triangulation station F6 Bangla.
39.	Thence from this point on a straight line running towards the confluence of the Rivers Ngomba and Deo until the line meets the River Kolob.	
40.	Thence along a line parallel to the Bare Fort Lamy Track and 2 kilometres to the west of this track, which remains in French territory.	
41.	Thence a line parallel to and distant 2 kilometres to the west from this road (which is approximately that marked Faulborn, January 1908, on Moisel's map) to a point on the Maio Tipsal (Tiba, Tibsat, or Tussa on Moisel's map) 2 kilometres to the south-west of the point at which the road crosses said Maio Tipsal.	
42.	Thence the course of the Mayo Tipsal upstream to its confluence with the Maio Mafu, flowing from the west, to a point some 12 kilometres to the south-west of Kwancha.	
43.	Thence a straight line running south-west to the highest peak of the Hosere Jongbi (Dutschi-n-Djombi of Moisel's map).	
44.	Thence the watershed between the basins of the Maio Taraba on the west and the Maio Deo on the east to the second from the north of the four peaks of the Hosere Bakari Be (Dutschi-n-Bertua on Moisel's map). These four peaks run from north to south parallel to and about 3 kilometres to west of the road from Bare to Fort Lamy.	

45.	From this second peak issues the Maio Tapare which, flowing east to the Maio Deo, forms the boundary between the Districts of Kwancha and Dodeo. This peak is the source of the Maio Tapare, and is 2 miles due west of the Maio Tapare Rest-house. This line leaves the villages of Mafou and Kounti in French territory.	
46.	Thence following the watershed between the Maio Tapare (and its affluents) and the Maio Deo (and its affluents) along, successively, the two remaining peaks of the Hosere Bakari Be (running form north to south), the three peaks of the Hosere N'Yamboli, the two peaks of the Hosere Maio Baji, Hosere Lainga. These three little groups of Hosere N'Yamboli, Hosere Maio Baji and Hosere Lainga run south-west and form the Bapai range. Behind the Bapai range is the Sapbe Kauyel, which is in British territory.	
47.	Thence across the saddle connecting the Bapai range and the imposing Genderu Mountains. From this saddle the frontier climbs to the first prominent peak in the Genderu Mountains (known as Hosere Jauro Gotel or as Hosere Jagam), thence along the remaining three peaks of Hosere Jauro Gotel (or Hosere Jagam), thence along the four peaks of Hosere Sangoji to Sapbe M'Bailaji. These last three groups of hills constitute part of the watershed between the Maio Taraba and the Maio Yim.	
48.	Thence to Hosere Lowul, which is well over 2 kilometres from the Kwancha-Banyo main road. This peak (Hosere Lowul) lies on a magnetic bearing of 296 from the apex of the Genderu Pass on the above-mentioned main road. From this apex, which is distant 3½ miles from Genderu Rest-house, and which lies between a peak of Hosere M'Bailaji (to the west) and a smaller hill, known as Hosere Burutol, to the east, Hosere M'Bailaji has a magnetic bearing of 45 and Hosere Burutol one of 185.	

49.	Thence a line, crossing the Maio Yin at a point some 4 kilometres to the west of the figure 1,200 (denoting height in metres of a low conical hill) on Moisel's map E 2, to a prominent conical peak, Hosere Gulungel, at the foot of which (in French Territory) is a spring impregnated with potash, which is well-known to all cattle-owners in the vicinity. This Hosere Gulungel has a magnetic bearing of 228 from the point (5 miles from Genderu Rest-house, which is known locally as "Kampani Massa" on the main Kwancha-Banyo road where it (Hosere Gulungel) first comes into view. From this same point the magnetic bearing to Hosere Lowul is 11. The Salt lick of Banare lies in British Territory.	
50.	This peak, Hosere Gulungel, is the first of six forming the little chain of the Hosere Golurde (not "Gorulde" as on Moisel's map E. 2). The frontier runs along these six Golurde peaks, thence to a little isolated peak (Hosere Bolsumri) leaving the Bolsumri potash spring on the British side. The magnetic bearings from Maio Lelewal (otherwise known as Yakuba) Rest-house are: to Rosere Gulungel 356, to the sixth peak of Hosere Golurde chain 323, and to Hosere Bolsumri 302. Hosere Bolsumri, the nearest peak on the frontier to the Kwancha-Banyo road, is over 2 kilometres from this road.	
51.	Thence along the chain of hills known as Hosere N'Getti, which form the watershed between the Maio Gangan and the Maio Yin (and Taraba), and which ends in a high flat peak on a magnetic bearing of 248 from Maio Lelewal (or Yakuba) Rest-house.	

52.	Thence a line over a high plateau, crowded with mountain-tops, forming the watershed between the Maio Gangan to the west (British) and Maio Dupbe to east (French) and the Maio Banyo to west (French). These two last-named rivers flow into the Maio M'Bamti. The whole of this line is entirely uninhabited for fully 5 miles on either side, and it extends for some 13 or 14 miles in length. It is, moreover, impassable at the very height of the rains. It lies on a very lofty and desolate plateau, and, starting first in a southerly direction, swings to the south-west as it winds among a sea of mountain-tops forming in succession the groups known locally as Hosere N'Yamn'Yeri, Sapbe Bnokni, Sapbe Pelmali, Sapbe Wade, Sapbe Gallal and Sapbe Sirgu.	
53.	Sapbe Sirgu, known to the local Pagans as "Yajin", and called loosely "Gotel Berge" on Moisel's map E2, is the last part of the watershed between Maio Gangan and Maio Banyo. The Banyo-Gashaka-Ibi road climbs steeply up this Sapbe Sirgu and cuts the Frontier at the apex of the pass 6 miles to the north-west of the Gandua Rest-house (the last rest-house on this road in French Territory).	
54.	Thence to a point at the south-west end of the Sapbe Sirgu, 2 kilometres to the north of the letter "i" in the word "Tukobi" on Moisel's map E 2. This point is on the common watershed between the three sets of head-waters of the Maio Gashaka (British), the Maio Donga (or Kari), British and also of the Maio Teram (French).	
55.	Thence a line running, generally, due south, to cross the Banyo-Kuma road 2 miles to west of the 1,630 metres hill on Moisel's map E 2.	

56.	Thence the Frontier swings to the east, following the watershed between the Maio Donga (or Kari) and the Maio Teram, thence to the south-east, among the Hosere N'Tem. Leaving the Sabri potash spring in the Gashaka District in British Territory. Thence south-south-west through, successively, the crests of the Hosere N'Dangani, Hosere Kewal, Hosere Wajuru, and the Hosere Bangaro, which last lie to the west-north-west of the Pagan village of Bangaro, to a point on a saddle which connects the more westerly of the two parallel ridges forming the Hosere Bangaro with the higher Sapbe Ma (still further to the west). This saddle forms the watershed between the source of the Mai N'Gum (French), which later joins the Maio Teram 6 miles south of Banyo Town, and the source of the Maio Kemme, which is one of the head-waters of the Maio Donga. The Maio Kemme was traced for 6 miles from its source as it flowed east towards the large Pagan village of Kabri. The above-mentioned saddle is 4 miles from Bangaro village, and is on the Banyo-Kabri path. Thus the prominent rocky bluff, Hosere Tongbau, lies entirely in French territory.	
57.	From this saddle the Frontier follows the watershed to a prominent peak, the second of the Sapbe Ma group of mountains. This peak is on a magnetic bearing of 215 from the above-mentioned point where the Banyo-Kabri path cuts the watershed between the Maio N'Gum (French) and the Maio Kemme (British).	
58.	Thence the watershed runs generally south-west along, in succession, the peaks of the Sapbe Ma, the Hosere Jin (in front of which range is a very prominent, detached, fang-like, rocky peak - also called Jin - visible for many miles from the north, east and south, which is entirely in French Territory), the Hosere Maio Dalle and the Hosere Gesumi. In front of, and parallel to, the Hosere Gesumi is the chain of the less lofty Hosere Ribao. These Hosere Ribao are close to, and overlook, the Ribao Rest-house (the third rest-house from Banyo) and are wholly in French Territory.	

59.	Thence the Frontier continues amongst the peaks of the Hosere Gerumi, following the watershed between the head-waters of the Maio Donga to the north, and the Maio Kwi (French) to the south, and the Maio Mabe (French) to the south. These head-waters of the latter two (French) rivers emerge from between the Hosere Chemo, the Hosere Lu, the Hosere Atta and the Hosere Songkorong, which, in succession, form the foothills to the loftier Gesumi range behind them to the north-west north of Songkorong village, which is on the Banyo-Kumbo-Bamenda road, these Hosere Gesumi are called by the local Pagans Hosere Hambere.	
60.	[Thence the Frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe, Maio Gur and Maio Malam to a fairly prominent, pointed peak which lies on a magnetic bearing of 17º from a cairn of stones, 8 feet high, erected on the 15th September, 1920, on the south side of the above Banyo-Kumbo-Bamenda road at a point 1 mile from N'Yorong Rest-camp and 8½ miles from Sonkorong village.]	Thence the frontier follows the watershed amongst these Hosere Hambere (or Gesumi) to the north of the sources of the Maio Kombe and the Maio Gur to the summit of a hill, height 1720 metres, lying about 1 kilometre from Tamnyar. From this hill, the frontier runs in a straight line in a south-westerly direction for about 2300 metres to the summit of a hill, height 1751 metres, shown on Cameroon maps as Mount Kombon but called Itang by the Mambilla people.
61.	[From this peak in the Hosere Hambere (or Gesumi), which is situated just to the east of the visible source of the Maio M'Fi (or Baban), the Frontier follows the watershed, visible all the way from the Cairn, between the Maio Malam to east (French) and the Maio M'Fi (or Baban) to west (British), till it cuts the Banyo-Kumbo-Bamenda road at the Cairn. This Cairn is immediately under the highest peak of the Hosere Nangban, which is shown on Moisel's map F 2 as Hosere Jadji, but Jadji is really the name of the Pagan head of N'Yorong village.]	From this summit, the frontier follows the edge of the escarpment leaving Sanya to Nigeria until it reaches the watershed between the Ntum and its tributaries to the west and the Dja to the south-east. Thence it follows this watershed southwards for about 900 metres to the most easterly summit of a ridge called Tonn running approximately east-west and having three summits.

1946 Order in Council

Textual Description	Nigeria's Proposed Text

[From boundary post 64 on the old Anglo-German frontier the line follows the River Gamana upstream] to the point where it is joined by the River Sama;	From the point of intersection of a straight line joining BP64 and BP65 on the old Anglo-German frontier and the median line of the Gamana River, the line follows the Gamana River upstream...;
[Thence up the River Sama to the point where it divides into two;]	Thence up the Sama River to a point approximately 6.5 kilometres south of its confluence with the Gamana River, where it divides in two;
Thence a straight line to the highest point of Tosso Mountain; thence in as straight line eastwards to a point on the main Kentu-Bamenda road where it is crossed by an unnamed tributary of the River Akbang (Heboro on Sheet E of Moisel's map on Scale 1/300,000) - the said point being marked by a cairn;	
Thence down the stream to its junction with the River Akbang; thence the River Akbang to its junction with the River Donga; thence the River Donga to its junction with the River Mburi;	
[Thence the River Mburi southwards to its junction with an unnamed stream about one mile north of the point where the new Kumbo-Banyo road crosses the River Mburi at Nyan (*alias* Nton), the said point being about four miles south-east by east of Muwe; thence along this unnamed stream on a general true bearing of 120° for one and a half miles to its source at a point on the new Kumbo-Banyo road, near the source of the River Mfi;]	Thence the median line of the Mburi (Manton) River southwards to its confluence with the Maven River, thence the median line of the Maven River eastwards to its confluence with the Mogog stream, thence the median line of the Mogog stream south-eastwards to its source, thence in a southerly direction for 100 metres and thence in an easterly direction for about 550 metres to the site of a large cairn (now destroyed) on the Lip-Yang road.
[Thence on a true bearing of 100° for three and five-sixths miles along the crest of the mountains to the prominent peak which marks the Franco-British frontier.]	From this point, the boundary follows the watershed between the Mburi (Manton) and its tributaries to the north and the Mbatye and Mfi and their tributaries to the south, following the crest of the mountains to the most easterly summit on the ridge known as Tonn where it meets the Nigeria-Cameroon boundary as it is defined in Article 61 of the Thomson-Marchand Declaration of 1931.

PART IV

THE MARITIME BOUNDARY

CHAPTER 9

PRELIMINARY ISSUES

A. Introduction

9.1 This Part of Nigeria's *Rejoinder* deals in further detail with the maritime boundary, building on the arguments set out in Chapters 20-23 of Nigeria's *Counter-Memorial*. Cameroon's arguments and claims are set out in Part Two (Chapters 7-9) of its *Reply*.

9.2 There are a number of eccentricities in Cameroon's treatment in its *Reply*. For example, it is suggested that the Court should treat Nigeria under Article 53 of the Statute as having "fail[ed] to defend its case".[1] This requires no further comment. Cameroon also alleges that Nigeria is seeking to reopen its *Seventh Preliminary Objection* in calling on the Court to exercise its discretion to deal with the land boundary first.[2] Nigeria remains of the view that this would be an efficient and orderly way of dealing with the case. In calling on the Court to conduct the case in this way, Nigeria was merely calling on it to exercise a power which its judgment on *Preliminary Objections* had expressly affirmed and reserved for later consideration.[3]

B. What is Cameroon's Claim Line?

9.3 Turning to the substance of the case, a serious initial doubt arises as to the actual claim line of Cameroon. Cameroon depicts that claim in its Map R21, which is reproduced several times in its pleadings under the rubric "La Ligne Equitable".[4] Cameroon makes it clear that the claim line continues further out to sea, although it declines to say how far.[5] On Map R21 the line is shown extending approximately a further 105 km (58 n.m.) out to sea, inclining slightly further towards the Nigerian coast to a point which can be called Point "L". Points "H", "I", "J" and "K" are shown on Cameroon Map R21, and Point "L" may easily be read from it.

9.4 Cameroon also gives the co-ordinates of its claim line in the text of its *Reply*, as follows:

Point "G" 4° 17' 00" N

8° 22' 19" E

Point "H" 4° 17' 00" N

8° 21' 16" E[6]

Point "I" 3° 46' 00" N

7° 55' 40" E[7]

Point "J" 3° 12' 35" N

7° 12' 08" E[8]

Point "K" 3° 01' 05" N

6° 45' 22" E[9]

Thus it is possible to read from the text of the *Reply* a claim line passing through Points "H"-"K" with the above co-ordinates, and to infer from the *Reply* that the line is to be extended at least out to Point "L", which would have approximately the following co-ordinates: 2° 40' 41" N; 5° 55' 18" E.

9.5 Unfortunately the co-ordinates of the turning points shown on Cameroon's Map R21 are quite different from those given in the text of its *Reply*. This can be seen from Fig. 9.1. The line to the south-east (G-H-I-J-K-L) is the line shown on Cameroon's map as its claim line. The line to the north-west (shown on Fig. 9.1 as G-H-I'-J'-K'-L') is the line described in the text of its *Reply*, extended to point " L' ".

9.6 The differences between the six turning points, as shown in Map R21 and as derived from the text of Cameroon's *Reply*, are as follows:

Co-ordinates of point as described in text of RC	Co-ordinates of point as estimated from Map R21	Distance between two points (km)
Point "G": 4° 17' 00" N 8° 22' 19" E	4° 17' 24" N 8° 24' 00" E	±3 km
Point "H": 4° 17' 00" N 8° 21' 16" E	4° 16' 56" N 8° 19' 54" E	±2 km

Point "I": 3° 46' 00" N 7° 55' 40" E	3° 46' 37" N 7° 58' 53" E	6.7 km
Point "J": 3° 12' 35" N 7° 12' 08" E	3° 02' 40" N 7° 22' 51" E	27 km
Point "K": 3° 01' 05" N 6° 45' 22" E	2° 44' 52" N 6° 56' 17" E	36 km
Point "L": 2° 40' 41" N 5° 55' 18" E	2° 18' 36" N 6° 04' 27" E	Approx. 44 km

9.7 So far as Points "G" and "H" are concerned, the difference between Cameroon's textual claim and its graphical representation of its claim is relatively minor. But as the depicted line proceeds in a south-westerly and then more westerly direction, it increasingly diverges from the described line, as can be seen from Fig. 9.2. The black line G-H-I on Fig. 9.2 is that which appears in Cameroon's Map R22. The red dashed line follows the co-ordinates given in its text. It can be seen that by the time Cameroon's line passes by or through Equatorial Guinea's Zafiro field,[10] the difference is significant and it becomes ever more significant with distance. The area affected by the difference between the claim lines Cameroon chooses to describe in its *Reply* and to depict in its maps is approximately 7,400 square kilometres in size.

9.8 This does not seem to be a technical lapse in a single map. Cameroon graphically depicts its claim line in its *Reply*, on an accurately drawn map of the region, several times.[11] Moreover *both* Map R21 and the textual co-ordinates are referred to in the relevant paragraph of Cameroon's submissions (RC, paragraph 13.01 (c)). Thus, far from making Cameroon's intentions clear, its submissions encapsulate and maintain the conflict.

9.9 This is presumably the last written pleading in the present proceedings. Cameroon is the Applicant in this case and has had a full opportunity to express its claims in clear and consistent terms. It has not done so. *Nigeria still does not know what is Cameroon's maritime claim.* It is presented with radically different versions of a claim line in the same document, and in Cameroon's submissions.

9.10 In this extraordinary situation, Nigeria is in a dilemma. All it can do is to respond to both maritime claims - the more extreme maritime claim specified in the co-ordinates set out in the text of Cameroon's *Reply*, as well as its repeated graphical representation of its claim - notwithstanding that the latter follows a different line from the former. No doubt, in due course, Cameroon will tell the Court which aspect of its submissions in paragraph 13.01 (c) is to be ignored.

C. What is Cameroon's Actual Maritime Claim?

9.11 Cameroon seeks "to use the ratio of coastal lengths as of itself determinative of the seaward reach and area of the continental shelf proper to each Party".[12] Its method is to take what it sees as the relevant coastal lengths, including those of Equatorial Guinea and Gabon, and to use them to construct its points "I", "J" and "K", and presumably also its notional point "L".[13] However it uses this method - repeatedly condemned by the Court in other cases - not to determine the area of continental shelf proper to Cameroon but merely to construct a line. Cameroon nowhere actually says what its maritime claim is, i. e. what is the extent of its continental shelf or potential EEZ.

9.12 Nigeria made this point in its *Counter-Memorial*,[14] but without effect. Cameroon was no more open in its *Reply*: it still declines to say what is the extent of its maritime claim. It seeks to construct a maritime exclusion line against Nigeria, and to have the Court endorse it.[15] Nigeria is thus to be excluded from any relationship with the other coastal States in the Gulf of Guinea, by order of the Court, and on the basis of a Cameroon calculation which is multilateral in its character but unilateral in its effect. There is thus a fundamental contradiction in Cameroon's method - quite apart from its manifest contradiction with the practice and activity of all the four States concerned, a matter discussed in further detail in the following Chapter.

9.13 To summarize, Cameroon's maritime claim line is profoundly unclear. Its submissions refer to a line which is described textually by reference to one set of co-ordinates and shown graphically by reference to another quite different set, and (since both are referred to in the submissions) the Court is given no basis for choosing between them. But whichever way Cameroon's claim is described or depicted, whether it involves 7,400 km^2 more or less, Cameroon's is a mere paper claim, unrelated either to the requirements of international law or to the actual practice of the two States parties to the present case. Moreover it is a line with no indication of the width of Cameroon's maritime zones lying behind it. In that sense it represents a merely negative and unilateral claim. Cameroon argues that Nigeria should be excluded from any area to the east of its claim line. But a decision to this effect by the Court would not have any implication for the existence or extent of Cameroon's maritime zones, especially as the line proceeds southwards and westwards. The further into the Gulf one goes, the more likely it is that areas immediately on the other side of Cameroon's claim line pertain, not to Cameroon, but to a third State, and in these proceedings Cameroon cannot be heard to say that they do not. In short, there is no way for the Court to assess the extent of Cameroon's claim. The secondary test of proportionality cannot be applied to a mere line.

9.14 In the following Chapters, Nigeria will show that the two Parties to the present case have, subject to certain minor areas of overlap, effectively already delimited their respective areas of sovereign rights to the north-west of Bioko - subject to the resolution of the underlying dispute over the Bakassi Peninsula itself. As to the maritime areas, however, the parties (and licensees claiming through them) have engaged in a long and uninterrupted course of practice over nearly 40 years, involving the drilling in the disputed area of over 400 wells each, representing a total of several billion dollars of drilling and other

forms of exploration and use of the spaces concerned. In Nigeria's respectful submission, this long established practice is completely inconsistent with Cameroon's maritime claim, however it may be described or depicted.

9.15 It should be stressed in this context that the dispute over sovereignty over the Bakassi Peninsula has developed, and been pursued by both parties, in substantial disregard of the question of exploitation of the hydrocarbon resources to the south of the Peninsula. Nigeria has not protested the substantial Cameroon activity to the south of the Peninsula (which is depicted in further detail in the next Chapter). No more has Cameroon objected to any Nigerian activity to the waters slightly further west and south, apart from the unresolved question of the area of overlapping licenses. This long-standing activity and acquiescence by both Parties must have legal consequences for vested rights and legitimate expectations in the maritime domain, however the issue of sovereignty over the Bakassi Peninsula may be resolved.

9.16 In addition, it may well be that Cameroon has claims to a projection to the south of Bioko into the "gap" between Equatorial Guinea and São Tomé e Príncipe. But in the first place, any such claims plainly arise as between three States (Cameroon, Equatorial Guinea and São Tomé e Príncipe), two of which are not parties to the present case. Cameroon's claim could affect Nigeria only on the hypothesis that those three States were to agree, or it were validly decided as between them, that Cameroon has a projection through the "gap" and into waters further offshore which are claimed by Nigeria. Cameroon has never mentioned that possibility, not even in its pleadings.[16] Any such claim is well outside the jurisdiction of the Court in the present case, for at least two reasons. First, there is the fact that neither Equatorial Guinea nor São Tomé e Príncipe are parties to the case. Secondly, whether or not there is a dispute between Cameroon and either of those States, there is at present no dispute between Cameroon and Nigeria as to any possible projection of Cameroon's coastal frontage into the "gap" to the south of Bioko. Cameroon has made no claim vis-à-vis Nigeria to such a projection and has never issued any licences in this area.

9.17 This does not mean that Cameroon's silence in this matter is irrelevant. First of all, the "global" division of the Gulf of Guinea which Cameroon calls on the Court to make would require the Court to take into account *all* the maritime zones appurtenant to each of the Gulf of Guinea States,[17] but of course the Court cannot do that. Secondly, there is a question of the consistency of Cameroon's conduct. It may be asked why Cameroon now makes an extended maritime claim into the heavily exploited, historically licensed waters to the north-west of Bioko, when it makes no equivalent claim into the unexploited waters to the south. Cameroon's claim in the present case has all the appearance of a grab for oil resources, resources intensively claimed, explored, developed and maintained by and through other States, and never hitherto claimed by Cameroon. It may be asked whose future Cameroon is seeking to "mortgage".[18] There has never been the slightest suggestion, outside of the pleadings in this case, that it was Cameroon's.

D. Structure of this Part

9.18 In the next Chapter (Chapter 10) Nigeria will set out in detail the history of the maritime areas

concerned, and of the Parties' use of those areas, as well as the present state of maritime negotiations between Nigeria and the other States in the Gulf of Guinea. Next (Chapter 11) it will discuss the present extent of the Court's jurisdiction over the maritime boundary, having regard to the fact (which Cameroon effectively seeks to deny) that only Nigeria and Cameroon are before the Court as Parties to the case. It will then discuss Cameroon's extraordinary extended claim to a projection right out into the Gulf of Guinea, at the expense of the other three Gulf of Guinea States, and the associated "global" approach of Cameroon to delimitation of the Gulf of Guinea as a whole. That claim is clearly inadmissible and impermissible in law (Chapter 12). Rather, the actual dispute over which the Court has jurisdiction is confined to the smaller area of the Gulf, the Bight of Bonny, which lies between Nigeria, Cameroon and Bioko. In a concluding chapter (Chapter 13), Nigeria will discuss the issues of delimitation in this area.

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1 RC, paras. 1.60, 7.40.

2 RC, para. 7.17.

3 See I.C.J. Reports 1998 at p. 321 (para. 106).

4 See RC, p. 411 (R 21), reproduced in its Map Annex as Map 29.

5 RC, para. 9.93.

6 RC, para. 9.86.

7 RC, para. 9.88.

8 RC, para. 9.90.

9 RC, para. 9.92.

10 The Zafiro field is a major oil field, discovered in the early 1990s, which went into production under Equatorial Guinea licence in 1996. It is an extension of Nigeria's Ekanga field, i.e. the oil-bearing structure straddles the boundary. See further below, para. 10.21 and Fig. 10.5. In either of its versions, Cameroon's claim as depicted on its Map R22 embodies a claim to all or most of the Ekanga-Zafiro field.

11 This is in stark contrast to the sketch which was the basis for Cameroon's claim in its *Memorial*, as to which see NC-M, para. 20.11, and see NC-M, Fig. 20.2. Evidently the new map was drawn especially for the *Reply* and in response to earlier criticisms of Cameroon's inaccuracy. Cameroon could have been expected to get it right the second time.

12 This is the phrase used by the Court in the *Case concerning the Continental Shelf (Libyan Arab Jamahriya/ Malta)*, Judgment of 3 June 1985, I.C.J. Reports 1985 at p. 45 (para. 58). The passage is cited in full in NC-M,

para. 21.33. The Court went on to reject the criterion of the ratio of coastal lengths as a method of delimitation: I.C.J. Reports 1985 at p. 45 (para. 58).

13 See MC, p. 556, repeated in RC, Map R23. But Cameroon also implies that Point "L" is not the end of its claim line: RC, para. 9.93. It declines to say how far the claim extends into waters all of which are well within 200 n.m. from Nigeria's coast, even though they are beyond 200 n.m. from any point of Cameroon's coast (*ibid*: "Cameroon will avoid doing so...").

14 NC-M, para. 23.13-23.17.

15 It also refuses, in advance, any negotiations with Nigeria on the maritime boundary: RC, para. 9.39.

16 As noted already, Cameroon's pleadings on the maritime boundary in this case bear no relation to its practice as a coastal State.

17 In its Map R23 (RC, p. 423), Cameroon draws lines from Campo, Cabo San Juan and Cap Lopez, in order to determine the size and shape of Nigeria's maritime zones.

18 RC, para. 7.26.

PART IV

THE MARITIME BOUNDARY

CHAPTER 10

MARITIME CLAIMS, OIL PRACTICE AND

AGREEMENTS IN THE GULF OF GUINEA

A. Introduction

10.1 This Chapter describes and analyses the oil practice of the four most concerned States in the Gulf of Guinea.[1] It outlines the current state of their claimed boundaries, their oil licensing practice and their existing agreements or negotiations on maritime delimitation. The information contained in this Chapter is up to date (as at December 2000) so far as Nigeria is aware, but it is possible that there are developments involving other Gulf of Guinea States of which Nigeria is not aware or which have not been made public.[2]

10.2 It is proposed to deal with the situation under the three rubrics of claimed maritime boundaries, oil practice and maritime delimitation agreements.

B. Present Maritime Boundary Claims of the four Gulf of Guinea States

(i) Nigeria

10.3 The position of Nigeria was described in paragraph 20.7 of Nigeria's *Counter-Memorial*. It will change so far as Equatorial Guinea is concerned if and when the Treaty of 23 September 2000 is ratified. That Treaty is described below.[3]

(ii) Cameroon

10.4 The position so far as Cameroon is concerned remains as described in paragraphs 20.8-20.9 of Nigeria's *Counter-Memorial*.

10.5 It should be noted that Cameroon has still not brought its legislation into line with its obligations under the 1982 Law of the Sea Convention. It is still listed by authoritative sources as claiming a 50 mile territorial sea.[4] Nor has it enacted EEZ legislation or made any formal claim to an EEZ. This raises two preliminary points.

10.6 As to the *first preliminary point* (Cameroon's failure to amend its 1974 legislation declaring a 50 n. m. territorial sea), in its *Reply* Cameroon argues that this legislation is superseded by virtue of the combination of the Law of the Sea Convention and Article 45 of its Constitution.[5] Article 45 of the Cameroon Constitution is textually the same as Article 55 of the French Constitution. This constitutional provision purports only to disapply inconsistent treaties on a basis of reciprocity. On this basis Cameroon would appear still to have a 50 n.m. territorial sea, at least vis-à-vis States not parties to the Law of the Sea Convention. Cameroon seeks to demonstrate that the true effect of Article 45 is to repeal its Law of 1974.[6] For the reasons already given, Nigeria is not at all convinced by this "demonstration". It sees every reason to apply the statement by the French *Conseil constitutionnel* in relation to the equivalent French constitutional provision:

> "The superior position in the legal hierarchy of treaties over laws provided for by Article 55 is... both relative and contingent. It is limited to the field of application of the treaty and dependent on a condition of reciprocity whose realisation may vary according to the conduct of the signatory State to the treaty and the moment when respect for this condition falls to be determined. The simple fact that a law is contrary to a treaty does not make it [*sc*. the law] contrary to the Constitution."[7]

In any event, it may be asked, if Cameroon's Law is inoperative *erga omnes*, why is it still on the statute book?[8]

10.7 As to the *second preliminary point* (the absence of a Cameroon EEZ), Nigeria accepts that Cameroon has an entitlement to an EEZ and that the Court can delimit the scope of that entitlement. Moreover the parties agree that there is no reason in the present case to delimit their EEZs in any different manner from their continental shelves.[9] With respect to the maritime areas within the Court's jurisdiction in the present case, it is appropriate to determine a single maritime boundary, having regard to the dominance in the waters concerned of continental shelf resources as compared with fisheries.

10.8 With respect to *both* preliminary points, there is however an underlying feature of Cameroon's position. In this as in other respects, Cameroon's professions in its pleadings are completely inconsistent with its practice as a maritime State. This inconsistency will be further demonstrated throughout this Part.

(iii) Equatorial Guinea

10.9 Equatorial Guinea, having been granted leave to intervene in the present proceedings as a third party, will no doubt deal in its intervention with its current maritime claims.[10] These will be affected by the Treaty of 23 September 2000, described below, if and when that Treaty enters into force.[11]

(iv) São Tomé e Príncipe

10.10 The position of São Tomé e Príncipe was briefly referred to in Nigeria's *Counter-Memorial*.[12] Two changes have occurred since the *Counter-Memorial* was completed. First, Equatorial Guinea and São Tomé e Príncipe on 26 June 1999 finalised a delimitation treaty between them confirming and specifying the existing *de facto* equidistance line as their maritime boundary.[13] Secondly, São Tomé e Príncipe and Nigeria have reached an agreement in principle on the establishment of a Joint Development Zone: this is described in more detail below.[14]

C. Oil Practice in the Gulf of Guinea

10.11 In its *Counter-Memorial*, Nigeria gave a brief account of the history of hydrocarbon development in the region.[15] In its *Reply*, Cameroon gives some brief information of its own activities, but in an essentially descriptive manner and under the mildest of headings ("Section 1. Geographical Matters: § 2. Economic Geography").[16] Little is provided by way of maps, apart from its Map R25, entitled "Concessions pétrolières camerounaises et nigérianes - chevauchements".[17] That map is reproduced as Fig. 10.1. It shows, by a heavy dashed and dotted line, Cameroon's limit of operations ("limite des opérations") in the region. It is accurate to this extent: since 1975 there have been no Cameroon operations of any kind, whether involving the grant of licences or any other hydrocarbon activity under Cameroon auspices, beyond the "limite des operations" shown. It is misleading to this extent: there are no Cameroon installations in the southern area of overlapping licences, shown in blue on that map. This can be seen from Fig. 10.1. Moreover, as far as is known, there have been no other Cameroonian oil activities in this southern area of overlap either. In short, the "limit of operations" is that shown by the red line superimposed on Fig. 10.1.

10.12 The blue shaded areas in Cameroon's Map R25, shown on the preceding page, should be compared with the red shaded areas of overlap shown in Fig. 20.5 of Nigeria's *Counter-Memorial*. Fig. 10.2, shows more clearly the areas of overlap.

10.13 A comparison of Fig. 10.1 and Fig. 10.2 shows some minor discrepancies, but the basic position is clear. The area of overlapping licences is a limited one, and does not extend southwards of approximately 4° N or westwards of approximately 8°16' E. In other words it concerns rather marginal areas around the conventional limit for oil operations to the north-west of Bioko. It should also be noted that in the northern-most of the two areas of overlap, the actual oil installations (i.e. wells drilled, whether or not now in production) are Cameroonian, whereas in the southern-most, they are Nigerian. On this basis any uncertainties arising from the overlapping concessions could, as such, readily be resolved.

10.14 Leaving aside minor discrepancies, there is again the more fundamental point. As Fig. 10.2 shows, Cameroon as a coastal State has never asserted or acted upon the claims to maritime territory which it

now makes as a litigant before the Court.[18]

10.15 Cameroon attempts to explain away Nigeria's oil practice so far as it affects maritime delimitation, arguing that it is recent, limited in scope and inconsistent.[19] For example, its Map R24 shows what it claims to be "recent" Nigerian licences in the northern-most sector (viz. OPL 230 and OPL 98).[20] It is true that many concessions currently in force were granted in the last 10 years, as shown in the table in Nigeria's *Counter-Memorial*.[21] But in most cases (including OPL 98 and the western part of OPL 230) these were re-issues or re-grants after long-established licence areas had been relinquished or exchanged. Evidently the facts of the matter should be recounted.

10.16 The potential for oil exploration and exploitation off the coasts of Nigeria and Southern Cameroons was already clear in the 1950s, and a series of off-shore blocks numbered A through N was designated in 1959. The most easterly of these, Block N, was never granted. The block immediately to the north, OML 10, which had been licensed in 1960, was redrawn as OML 14 with a smaller area and relicensed in June 1961. The position at this time can be seen on Fig. 10.3. The exploration licence over Block M, which included most of what is now OPL 98, was granted to Mobil Exploration Co. on 30 September 1961. Indeed this appears from the Nigerian *note verbale* of 27 March 1962 annexed to Cameroon's *Memorial*.[22] In the light of this document and of the maps annexed to it, it is baffling how Cameroon can describe this area as the subject of "recent" Nigerian concessions. Rather it has been the subject of a process of licensing, relinquishment, relicensing etc. over more than 40 years.[23]

10.17 It is relevant to recall that, by 1961, the continental shelf doctrine was well established in international law, following the adoption of the fourth Geneva Convention of 1958. Coastal States were well aware by this time of their entitlement to continental shelf based on appurtenance, and it was obvious that the initial licensing of off-shore areas was only a first step. In fact the drawing up and licensing of blocks in the period 1959-1961 was the start of an extended process by Nigeria, continuous to the present day. Exactly the same is true of Cameroon, but only with respect to the confined waters indicated by the "limit of operations" shown on Cameroon's Map R25, which is essentially the same area as that indicated in the Nigerian note of 27 March 1962. If, in fact, Cameroon had entertained claims to the extended areas covered by Nigeria's deep water licences, the time to say so was in the 1960s and 1970s, when the groundwork for so much subsequent development was being laid down - and not *en revanche*, on 16 March 1995, the date of Cameroon's *Memorial*. In this context it should be stressed that the licensing process was a public one, and that the existence of the licences and of the extensive oil activity pursuant to them was also open and public. It should also be noted that Nigeria was uninterruptedly a party to the Optional Clause from 3 September 1965, without any relevant reservation.[24] Cameroon could at any time have brought proceedings before the Court by the same device it eventually adopted in 1994, *viz.*, virtually simultaneous acceptance of the Optional Clause and lodging of an Application, had it wished to challenge Nigeria's oil activities. It did not do so.

10.18 For convenience, the development of licensing by Nigeria, Cameroon and Equatorial Guinea over

the period 1962-2000 is shown by a series of maps in the Appendix to this Chapter. The information contained in these maps is based on data commercially available from the scouting services and from the published literature.[25] It corresponds generally with the data and maps produced by the responsible Nigerian authorities. It was at all times well-known in oil industry circles.

10.19 It is not necessary to describe the developments in detail. From a perusal of these illustrative maps, a number of points can be seen.

(1) Nigeria was first into the field with its offshore Block M and inshore Block 14 in the Cross River Estuary, which were licensed in 1961.

(2) Cameroon followed shortly after (in 1963-4), but at no stage did it claim any projection to the south-west beyond the point reached in 1978, which had the approximate co-ordinates 4° 3' N, 8° 17' E.

(3) The slight westwards extension of Cameroon licensing in 1978 overlapped with areas already licensed and drilled pursuant to Nigerian licences, and it remains the case to the present day that in this southern area of overlap, all actual oil activity (drilling, exploitation) has been Nigerian.[26]

(4) From the 1960s onwards there was very substantial oil activity on both sides of the dividing line.

(5) Equatorial Guinea began licensing in 1965, up to the notional tripoint with Cameroon and Nigeria, although until the 1990s the level of its actual offshore activity was very limited and was much less than either Nigeria's or Cameroon's.

(6) The areas currently under licence fluctuated from year to year, as licensees relinquished areas either because this was required by the terms of the licence or for commercial reasons. However, both on the Nigerian and Cameroonian side, relinquishments were followed by relicensing, producing over time the extremely irregular shapes of many licence areas. Despite minor discontinuities, there was a continuous process of licensing, exploration and exploitation, which on the Cameroon side was limited in the way already described but on the Nigerian side was progressive and extending.

(7) The southern boundaries of the initial Nigerian offshore blocks (A-M) more or less followed the 200 metre line of depth.[27] In the late 1970s, however, Nigeria designated a series of further southerly blocks, with depth well beyond 200 metres, and extending below 3° 30' N. These eventually became OPL 221, 222 and 223.[28] Cameroon neither protested nor responded with any similar claims of its own. By contrast as between Equatorial Guinea and Nigeria there were protests on both sides, both prior to and during the protracted negotiations described below.[29]

(8) There is no record of the Nigerian activity in the period 1962-2000 being the subject of protest by Cameroon.[30] Nor (with the exception of the incident on Bakassi described at paragraphs 10.191-10.195

of the *Counter-Memorial*) did Nigeria protest against Cameroon's oil activity in the waters north of Bioko. On the contrary there is a clear and consistent pattern of acquiescence by each in the oil activities and practice of the other in their respective maritime areas.[31]

10.20 Of particular significance was the position in 1994. This was the year of Cameroon's *Applications* in the present case, and the year before it lodged its *Memorial*. A glance at Fig. 10.5 below shows a limited area of overlap between Nigeria and Cameroon in the north, and a more substantial area of overlapping concessions as between Nigeria and Equatorial Guinea in the south. All the wells shown on this map as falling within areas of overlap are Nigerian.

10.21 At about this time, Equatorial Guinea began an active process of development of its Zafiro field, to which Nigeria (but not Cameroon) had a claim. A substantial infrastructure of wells and pipelines developed in relation to that field.

10.22 Overall, the offshore infrastructure of the three States appears from Fig. 10.4. That map shows individual wells drilled (whether dry or not, whether or not now producing), together with other structures, pipelines etc. For the purposes of this illustration, no boundaries or boundary claims are shown. Wells and installations are coloured green for Nigeria, pink for Cameroon and blue for Equatorial Guinea. Except in the area of the Zafiro field where there is an evident difficulty in disentangling a smaller number of Nigerian from a larger number of Equatorial Guinean installations, the situation portrayed on Fig. 10.4 is relatively clear.[32] It is one of parallel development by the three States of substantial and valuable infrastructures, each separate and distinct from the other. It will be for Cameroon and Equatorial Guinea to estimate the value of their own infrastructure shown on Fig. 10.4. From a Nigerian point of view, taking the area eastwards of 8°E, the estimated sunk costs of acquisition of licences, exploration, drilling, installation etc (in current value terms) would exceed several billion US dollars. It involves over 500 wells and nearly 40 fixed platforms with the associated infrastructure of pipelines, processing plants and export facilities.

D. Current Maritime Boundary Agreements

10.23 So far as Nigeria is aware, the position with respect to maritime boundary agreements as between itself, Cameroon, Equatorial Guinea and São Tomé e Príncipe is as follows.

(v) Cameroon

10.24 Nigeria is not aware of any attempt by Cameroon to negotiate or conclude maritime boundary agreements with any of the other States in the Gulf of Guinea. No doubt Cameroon would have told the Court about any such attempts.

10.25 The position as between Cameroon and Nigeria in 1993 can be seen from the Minutes of the Third Session of the Nigeria-Cameroon Joint Meeting of Experts on Boundary Matters, held in Yaounde from

11-13 August 1993.[33] There was extensive discussion at that meeting of the unresolved dispute over the Maroua Declaration;[34] "after a long and inconclusive discussion", the issue was referred to the Heads of Delegation who decided in turn "to refer the matter to their respective Heads of State for determination".[35] The Minutes continue as follows:

> "It was further observed that attempts by Nigeria and Cameroon to explore and exploit separately the resources straddling the maritime border from Point 1 to Point G, in part covered by the Maroua Declaration, have led to avoidable wastage and losses for both countries. In the light of this, the two Heads of Delegation agreed to recommend arrangements for joint ventures in the exploration and exploitation of the resources of the area.
>
> Concerning exploitation of hydro-carbon resources south of Point G, the two delegations confirmed the spirit and the letter of the provisions of the minutes signed in Abuja between the two delegations on 19 December 1991, in particular, the freedom of each country to develop its resources along the border.
>
> In the meantime, the two Heads of Delegation emphasised the need to maintain a regime of peace in the area and to prevail on their respective law enforcement agencies in this regard.
>
> (B) - DETERMINATION OF THE TRI-POINT BETWEEN
>
> CAMEROON, NIGERIA AND EQUATORIAL GUINEA
>
> The Cameroonian Delegation stressed the need to determine the tri-point between Nigeria, Cameroon and Equatorial Guinea in order to enable each of the three countries to exploit its naturel [*sic*] resources in the area in peace. It argued that the absence of Equatorial Guinea at this forum should not prevent Cameroon and Nigeria from exchanging constructive views on the proposal. It further revealed that there had been an exchange of views between Cameroon and Equatorial Guinea on the subject.
>
> The Nigerian side, on its part, expressed its reservations concerning the examination of the proposal in the absence of Equatorial Guinea. The two parties then agreed that a tripartite meeting should be convened to examine the issue of the determination of the tri-point.
>
> IV - TRANSBORDER CO-OPERATION
>
> (A) MUTUAL UTILIZATION OF TRANSBORDER RESOURCES
>
> Regarding the conclusions reflected in the minutes of the Abuja meeting of December,

1991, especially that relating to the need for

either country to inform the other of any initiative to exploit transborder resources, the Cameroonian delegation drew attention to the fact that a special envoy had been despatched in May, 1993 by His Excellency, Paul Biya, President of the Republic of Cameroon, to his Nigerian counterpart, General Ibrahim Badamasi Babangida.

The Cameroonian delegation stated that in spite of the step taken, work on the Betika West structure had been stalled as a result of Nigeria's unco-operative stance. However, it informed the Nigerian delegation that Cameroon would go ahead to resume work on the said structure and explore and exploit the hydro-carbon deposit south of point G. The Nigerian delegation noted this information and undertook to refer this matter to the competent authorities for necessary action which would be conveyed back to the Cameroonian side through the normal diplomatic channels."

10.26 This passage is significant in a number of respects. It shows clearly enough the factual situation with respect to the maritime boundary as at August 1993. This had the following elements:

(1) There was a clear acceptance by the two Parties that there was a *de facto* maritime border in the area covered by the Maroua Declaration, even though there was a dispute over the validity of that Declaration and over the Bakassi Peninsula itself.[36]

(2) Each Party had separately developed its own resources on its own side of that line and (unless agreement could be reached to the contrary) would continue to do so.

(3) This was equally true for hydrocarbon resources to the south of Point "G" which fell on one or other side of "the border", i.e. the existing border created by long established usage and practice, irrespective of the disagreement over the Maroua Declaration itself. It must be stressed that Cameroon made no claim to resources to the west of Point "G". The Betika West structure, referred to in the passage quoted above, is located almost exactly south of Point "G". It was at no stage suggested, in 1993 or at any other time before March 1995, that existing Nigerian installations to the west of Point "G" should be transferred to Cameroon. Yet again the position taken by the competent Cameroon authorities contradicts the position subsequently taken by Cameroon before the Court.

(4) It was hoped that efforts would be made to develop co-operation with respect to hydrocarbon resources straddling the boundary, to avoid wastage. But in any event, whether or not such agreement was reached, both parties would proceed to exploit resources considered as theirs.

(5) Even though (by comparison with Nigeria and Cameroon) Equatorial Guinea's activities in the area were recent, their legitimacy in principle was not doubted.

(6) There was a need "to determine the tripoint between Nigeria, Cameroon and Equatorial Guinea in

order to enable each of the three countries to exploit its natural resources in the area in peace".

In the circumstances, it is a fair inference that, having regard to the existing and projected measures of exploitation of hydrocarbons by the three parties, the precise location of the tripoint was a matter of detail. That there *was* such a tripoint was not in doubt. Nor could its general location have been doubted. It must have fallen within the area of overlapping licences and claims shown on Fig. 10.5 below.

(vi) Equatorial Guinea-São Tomé e Príncipe

10.27 As noted already, the Treaty of 26 June 1999 between Equatorial Guinea and São Tomé e Príncipe confirms the *de facto* median line boundary between the islands of Bioko and Príncipe. This line is shown on Fig. 10.9 below.

10.28 Nigeria is not aware of any protests by Cameroon against the median line boundary established between Equatorial Guinea and São Tomé e Principe, or of any overlapping Cameroon licences in the area of that boundary. Cameroon has mentioned no such protests or licences in its pleadings.

(vii) Nigeria-Equatorial Guinea

10.29 The position between Nigeria and Equatorial Guinea has been the subject of extensive discussion between the two States. As noted above, Nigeria's large Block M was licensed in 1961.[37] The south-eastern corner of Block M was transected in order to avoid possible encroachment on Equatorial Guinea continental shelf to the north-west of Bioko (then Fernando Póo under Spanish colonial rule[38]). In 1965 a Spanish decree marked out ten blocks, initially numbered 1-10, subsequently renamed as Blocks A-J. As can be seen from the 1965 map on page 2 of the Appendix, the north-western block (Block 10, subsequently Block J) was drawn so as to avoid overlap with Nigeria's Block M, with a narrow (approx. 1 n.m.) corridor between Nigeria's Block M and Equatorial Guinea's Block J. By 1970, all of the blocks around Bioko seem to have been relinquished without being regranted. In about 1968, Nigerian Block M was subdivided as part of the process of relinquishment and re-grant, producing by 1972 essentially the configuration of licence blocks apparent at the present day. The south-east facing alignments of Blocks OPL 224 and OML 102 were broadly parallel with the north-westerly limit of the former Equatorial Guinea Block J, but with a slight overlap. Subsequently, in 1979, Nigeria delineated a further row of offshore blocks to the south, with the eastern limit at about 8° 7' E, and a stepped southern limit at around 3° 30' N and below.[39] The south-easterly block was designated OPL 470; it has now become OPL 221, OPL 222 and OPL 223.

10.30 In 1982, Equatorial Guinea redesignated blocks in certain of the areas covered by the Spanish decree of 1965,[40] and between 1992 and 1999 it successively designated much larger areas to the west of Bioko, creating a significant area of overlap with existing or projected Nigerian licence areas.[41] Substantial oil exploration activity occurred, resulting in the major discovery of the Zafiro field which

went on-stream in 1996. The eventual area of overlapping licences can be seen from the map for 1999 at page 7 of the Appendix. It should be stressed that all of the wells drilled in the area of overlapping licences (shaded light green on the map) are Nigerian, although Equatorial Guinea protested the drilling of some of these. This is in sharp contrast with the position of Cameroon. Outside of the pleadings in the present case, it has never made any claim to this area, and it has never protested any Nigerian licensing or oil activity in the area presently under consideration. Nor, to Nigeria's knowledge, has it done so vis-à-vis Equatorial Guinea.

10.31 As between Nigeria and Equatorial Guinea, there was an obvious need for agreement on their respective maritime claims, south of any conceivable tripoint with Cameroon. In particular there was very substantial pressure from oil licensees on both sides of the boundary for the existing uncertainties to be resolved. Of particular concern were the areas of overlapping licences in the vicinity of the Zafiro field, shown in Fig. 10.5. The areas of overlap (Nigeria-Cameroon, Nigeria-Equatorial Guinea) are shown in a lighter colour.

10.32 Initially, Cameroon had agreed with Nigeria that attempts would be made to establish a tripoint with Equatorial Guinea, whether by negotiations in the forum of the Gulf of Guinea Commission or otherwise.[42] These did not materialise and Nigeria went ahead to negotiate with Equatorial Guinea on their respective maritime zones. It did so in response to urgent pleas from both the Government of Equatorial Guinea and the interested oil companies and with a view to reaching a satisfactory outcome which would resolve overlaps and uncertainties. These negotiations were reported in Nigeria's *Counter-Memorial*.[43]

10.33 In particular, the following discussions and negotiating sessions were held between delegations of the two countries in relation to the maritime boundary:

(1) Meeting of Nigerian National Boundary Commission and Equatorial Guinean Borders Commission, Malabo, 27 September 1990;

(2) Nigeria-Equatorial Guinea Transborder Co-operation Workshop, Calabar, 23-27 November 1992;

(3) Nigerian National Boundary Commission-Equatorial Guinea Boundary Commission, Joint Committee of Experts, Malabo, 25-28 August 1993;

(4) Nigeria-Equatorial Guinea Joint Sub-Committee of Experts, First Meeting, Calabar, 16-18 August 1995;

(5) Nigeria-Equatorial Guinea Joint Sub-Committee of Experts, Second Meeting, Malabo, 13-17 December 1995

(6) Nigeria-Equatorial Guinea Joint Sub-Committee of Experts, Third Meeting, Port Harcourt, 8-10 May

1996;

(7) Nigeria-Equatorial Guinea Joint Sub-Committee of Experts, Fourth Meeting, Malabo, 28-31 August 1996;

(8) Nigeria-Equatorial Guinea, Joint Ministerial Committee, Abuja, 30 April-3 May 1997;

(9) Nigeria-Equatorial Guinea, Joint Sub-Committee of Experts/Joint Ministerial Committee, Bata, 23-28 March 1998;

(10) Nigeria-Equatorial Guinea, Joint Ministerial Committee, Abuja, 2-3 June 1998, followed by Heads of State Meeting, Abuja, 3-4 June 1998;

(11) Equatorial Guinea-Nigeria Maritime Boundary Negotiation, London, 4-5 November 1999;

(12) Equatorial Guinea-Nigeria Maritime Boundary Negotiation, London, 2-3 March 2000;

(13) Nigeria-Equatorial Guinea, Special Joint Sub-Committee/Ministerial Meeting, London, 29-31 March 2000;

(14) Equatorial Guinea-Nigeria Maritime Boundary Negotiation, London, 19-20 July 2000;

(15) Nigeria-Equatorial Guinea, Joint Ministerial Committee, Abuja, 29-30 August 2000.

10.34 On 30 August 2000, Nigeria and Equatorial Guinea successfully concluded their negotiations for a partial maritime boundary, i.e. a boundary to the south and west of point (i), with co-ordinates 4° 01' 37.0"N, 8° 16' 33.0"E, chosen in order to avoid touching on areas of overlapping Cameroon blocks. The text of the Treaty was initialled by the respective principal negotiators on 30 August 2000. It was subsequently signed by the Presidents of the two States on 23 September 2000 in a formal ceremony at Malabo. The text of the English version of the Treaty is at Annex NR 174.[44] The Treaty is subject to ratification. In accordance with Article 7.3, the Treaty has been provisionally applied with effect from the date of signature. However, unitization arrangements are envisaged for any straddling fields, and in particular for the field straddling the boundary between the Equatorial Guinea installations in the Zafiro field and the Nigerian installations in the Ekanga field: see Article 6.2, and Fig. 10.6. The provisional application of the Treaty is "subject to review if no arrangements have been agreed within a reasonable time in accordance with Article 6.2" (Article 7.3), and in fact it is understood and agreed between the two parties that such unitization arrangements are to be entered into prior to the ratification and formal entry into force of the Treaty. Discussions with a view to agreeing on unitization arrangements have been commenced.

10.35 It is not necessary for present purposes to deal in detail with the negotiations between Nigeria and

Equatorial Guinea. It is sufficient to note the following points:

(1) The parties took into account existing practice along the "traditional usage" line, having regard both to the history of their licensing and to their existing installations.

(2) They also took into account their respective claims, based on the one hand on equidistance (Equatorial Guinea), and on the other hand on a substantial departure from the equidistance line to reflect Nigeria's much longer coastal frontage.

(3) Agreement was eventually reached on a three sector approach to the boundary. In a sector to the north-west of Bioko (referred to in the negotiations as Sector A), no attempt would be made to reach agreement on a boundary bilaterally, having regard to the pendency of the present case and Cameroon's claims based on its practice of overlapping licences. The limit of Sector A is defined as a point, denominated Point (i), with the co-ordinates 4° 01' 37.0" N, 8° 16' 33.0" E.

(4) The Treaty of 23 September 2000 thus makes it clear that the agreed delimitation is a partial one, and that the Parties' respective claims to the north and east of Point (i) are maintained pending the outcome of the present proceedings. According to Article 3 of the Treaty:

> "Northwards and eastwards from Point (i) identified in Article 2 the maritime boundary shall be established by the Contracting Parties, and recorded in a Protocol to this Treaty, following completion of the maritime aspects of the case before the International Court of Justice between the Federal Republic of Nigeria and the Republic of Cameroon, concerning the land and maritime frontier between them."

(5) A second sector, Sector B, covered that part of the area south-west of Point (i) where Nigeria's and Equatorial Guinea's opposite coasts were in play, and where both parties had (to the exclusion of all other States) substantial and overlapping licences as well as valuable fields, wells and installations. It was accepted that Nigeria's longer coastal frontage, taken into account with other factors including traditional usage, warranted a substantial movement away from the equidistance line. On the other hand Nigeria recognised the predominant economic interest of Equatorial Guinea in the Zafiro field, vital as it is to the economic future of that State. Both Parties accepted that the eventual line would be one which "safeguards the interests of both Parties, those including wells, concessions and installations".[45] In the event a compromise line was agreed in Sector B which divided the area of overlapping concessions, preserving to each Party its existing wells and other installations. That necessitated an indentation in the line to maintain on the Nigerian side the Ekanga 1 well.

(6) The consequence of this delimitation of Sector B was, in Nigeria's view, to "exhaust" the north-western coastal frontage of Bioko. Sector C thus had to turn southwards to reflect Nigeria's longer coastal length and the absence of countervailing activity by Equatorial Guinea in these waters. Inevitably the exact configuration of the agreed line in this Sector was a negotiated matter. Beginning at Point (vi) as defined in Article 2, the line makes a series of turns, keeping on the Nigerian side existing wells such

as Ebwa 1, Anwa 1 and Ukot 1, until it reaches the eventual tripoint with São Tomé e Príncipe.

10.36 Agreement in principle on a maritime boundary in Sectors B and C was reached in London on 31 March 2000. The "provisional working line" shown on the map attached to the Communiqué of that meeting was described as "a possible eventual boundary line".[46] In fact it closely corresponds to the line finally agreed. Remaining issues to be resolved included the extent of the indentation around the Ekanga well, and the principle of unitisation of the Ekanga field. These issues were resolved at subsequent meetings, leading to the initialling of the Treaty on 30 August 2000,[47] and its formal signature by the respective Heads of State in Malabo, Equatorial Guinea, on 23 September 2000.

10.37 The maritime boundary drawn by the Treaty and described in Article 2 is shown on Fig. 10.7. In accordance with Article 4 of the Treaty:

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

10.38 Until the boundary in Sector A is agreed pursuant to Article 3 of the Treaty, Article 4 will only operate in respect of the maritime boundary between Points (i) and (x), as depicted on Fig. 10.7. The rights and claims of the Parties are reserved in respect of the areas in Sector A, pending eventual agreement in that Sector as contemplated in Article 3.[48]

10.39 Fig. 10.8 shows the agreed boundary under the Treaty of 2000 in its general context. Apart from maintaining on each side of the line existing wells and installations, it involves the withdrawal by Equatorial Guinea of claims based on its equidistance line, and the withdrawal of Nigeria's claims to the south and east of the agreed line. It will thus enable each of the parties to the Treaty to proceed in security to develop their own maritime areas. At the same time, Article 6 (1) embodies the principle of co-operation in the exploitation of any future hydrocarbon discoveries which straddle the agreed boundary line.

10.40 As noted already, the northernmost point on the agreed boundary, Point (i), was chosen as a point falling short of the long-established Cameroon licences. The southernmost point, Point (x), is on the agreed equidistance line between Equatorial Guinea and São Tomé e Príncipe. That leaves open the question of negotiations between Nigeria and São Tomé e Príncipe on their respective maritime boundaries in the south.[49]

10.41 The Treaty signed on 23 September 2000 marks a significant step forward in the established friendly relations between Nigeria and Equatorial Guinea. The Treaty took more than 10 years to negotiate. The negotiators had to take into account continuing rapid hydrocarbon developments during

that period. In Nigeria's view, the Treaty is a balanced one, helping to secure stability and development for both Parties.

(viii) Nigeria and São Tomé e Principe

10.42 Negotiations between Nigeria and São Tomé e Príncipe have also taken place with a view to the delimitation of their respective maritime zones. In its Law No. 1/98,[50] São Tomé e Príncipe unilaterally claimed an equidistance line boundary with Nigeria taking as its base-line the north-west facing archipelagic baseline between its two main islands. In response Nigeria noted that in its view, its much longer coastline warranted a substantial adjustment in its favour of the claimed median line. Nigeria took the position that it was not prepared to accept the 100 n.m. archipelagic baseline drawn between the islands of São Tomé and Príncipe as if it were a coastal frontage.[51] São Tomé e Príncipe, although anxious to reach an agreement, has not been prepared to accept Nigerian proposals for a specified boundary based on giving partial effect to its individual islands.

10.43 The geographical situation of the two States can be seen from Fig. 10.9. This shows the Nigerian coastline, the islands of São Tomé and Príncipe with their archipelagic baselines, and the equidistance line claimed by São Tomé e Príncipe in 1998 as its EEZ boundary vis-à-vis both Nigeria and Equatorial Guinea. It also shows the agreed maritime boundaries between Nigeria and Equatorial Guinea and between São Tomé e Príncipe and Equatorial Guinea.

10.44 Following instructions from their respective Heads of State given at a summit meeting on 29-30 November 1999, a series of meetings has been held in an attempt to resolve the maritime boundary issues between Nigeria and São Tomé e Príncipe. So far the following meetings have been held:

(1) São Tomé e Príncipe-Nigeria, Joint Ministerial Meeting/Joint Technical Sub-Committee, São Tomé, 15-17 December 1999;

(2) Nigeria-São Tomé e Príncipe, Joint Ministerial Meeting/Joint Technical Sub-Committee, Enugu, 7-9 February 2000;

(3) São Tomé e Príncipe-Nigeria, Joint Technical Sub-Committee, São Tomé, 26-27 April 2000;

(4) Summit Meeting of the Presidents of São Tomé e Príncipe and Nigeria, São Tomé, 28 August 2000;

(5) Nigeria-São Tomé e Príncipe, Inaugural Meeting of the Joint Technical Committee on the Establishment of a Joint Development Zone, Lagos, 25-27 September 2000;

(6) São Tomé e Príncipe-Nigeria, Second Meeting of the Joint Technical Committee on the Establishment of a Joint Development Zone, São Tomé, 1-2 November 2000;

(7) Nigeria-São Tomé e Príncipe, Joint Ministerial Committee on the Establishment of a Joint Development Zone, London, 16-18 November 2000;

(8) Nigeria-São Tomé e Príncipe, Third Meeting of the Joint Technical Committee on the Establishment of a Joint Development Zone, Lagos, 11-12 December 2000.

10.45 Following earlier discussions, the Presidents of the two States agreed in August 2000 that they should not be seeking to reach agreement on a definitive maritime boundary. Instead, in the interests of co-operation between the two States and having regard to major unresolved differences in their positions, it was desirable to create a joint development zone (JDZ) in the area of overlapping claims.[52] The two Presidents established a Joint Ministerial/Technical Committee to draw up detailed provisions for the JDZ. At the time this Rejoinder was finalised, the Joint Technical Committee had met on a number of occasions, as specified in the preceding paragraph, and was making good progress towards the conclusion of a JDZ Agreement.

10.46 The area of the proposed JDZ is shown on Fig. 10.10. It may be noted that the easternmost point of the proposed JDZ (shown as Point (xi) on Fig. 10.10) is 60 n.m. from the nearest points of Bioko and Príncipe, and 117 n.m. from the nearest point of Cameroon (Cape Debundscha).[53] Point (xi) is the closest to Cameroon of any point within the proposed JDZ.

10.47 It is envisaged that the JDZ will be a long-term arrangement (a minimum of 45 years unless otherwise agreed). This will allow secure investment on the part of the various companies interested in the Zone. Following completion of the term of the JDZ, the two Parties would then seek to agree on a definitive maritime boundary. In the meantime each Party reserves its legal position with respect to its present claims.

10.48 Nigeria provisionally accepts that the areas immediately to the south of the JDZ form part of the EEZ and continental shelf of São Tomé e Príncipe. On that basis, the south-facing boundary of the JDZ would not generate any outer continental shelf of its own. Nigeria's claim to an outer continental shelf, in conformity with Article 76 (4)-(8) of the United Nations Convention on the Law of the Sea, is thus limited to the sector to the west of the proposed JDZ, as shown on Fig. 10.10. Nigeria will in due course formulate that claim in accordance with Annex II of the 1982 Convention.

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1 Although Cameroon's Map R21 (RC, Vol. I, p. 411) draws allocation lines for the Gulf of Guinea as far south as Cape Lopez in Gabon, there is no basis whatever for taking Gabon's coastline into account so far as the determination of Nigeria's maritime zones is concerned. Accordingly nothing needs to be said here about the position of Gabon.

2 For its own part, Cameroon has been extremely reticent on these issues, despite asserting vis-à-vis Nigeria a claim affecting the whole of the Gulf and at least three other States.

3 See below, paras. 10.34-10.41.

4 See NC-M, para. 20.9 and note 302. For Cameroon's Law 74/16 of 5 December 1974 see NC-M Annex 339.

5 RC, paras. 9.02-9.05.

6 It may be noted that France has legislated for a 12 mile territorial sea: see Loi no. 71-1060, du 24 décembre 1971, relative à la délimitation des eaux territoriales françaises, *Journal officiel*, 30 décembre 1971, p.12899. It further legislated for a 200 mile EEZ in Loi no. 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République, *Journal officiel*, 18 July 1976, p.4299. It did the same for its overseas dependencies on 25 February 1977 Decrét no. 77-169 du 25 février 1977; Saint-Pierre-et-Miquelon, *Journal officiel* 1977, p. 1102 and on 3 February 1978 for the remaining territories, Décrets no. 78-142 and no. 78-149 du 3 février 1978, *Journal officiel* 11 février 1978, p. 683-8. See also décret no 99-324, 21 April 1999 defining the straight baselines around Martinique and Guadeloupe, *Journal officiel* 29 avril 1999, p.6392. Surely such legislation would have been necessary in any event, even if France had been or become a party to the Law of the Sea Convention at the same time as it asserted a 12 mile territorial sea.

7 *Re Law on the Voluntary Termination of Pregnancy*, France, Constitutional Council, 15 January 1975, reproduced in English in I.L.R. 74, p. 525.

8 Nigeria understands that the United States (not a party to the 1982 Convention) has pressed Cameroon to repeal its declaration of a 50 mile territorial sea, but so far without effect. None of the other States in the region have seen fit to rely on the self-executing effect of the 1982 Convention in terms of their maritime claims: see e.g. São Tomé e Príncipe's Law No. 1/98 on the delimitation of the territorial sea and the exclusive economic zone (1998), NC-M Annex 340, enacted after the 1982 Convention came into force for that State.

9 See RC, paras. 9.08-9.18.

10 For the status of Equatorial Guinea in the present proceedings see below, paras. 11.6-11.10.

11 See below, paras. 10.32-10.37. In the meantime the Treaty is being provisionally applied, in accordance with Article 7 (3).

12 See NC-M, para. 20.11, note 303.

13 See Annex NR 172 for the text of this Agreement.

14 See below, paras. 10.40-10.46.

15 See NC-M, paras. 20.13-20.17.

16 See RC, paras. 5.11-5.16.

17 RC, p. 437, Map R25.

18 As noted in para. 3.349 above, citing Sir Gerald Fitzmaurice, greater value is "attributable to a State's acts and conduct than to its professions". This is particularly so when the professions take the form of pleadings.

19 See e.g. RC, para. 9.19.

20 RC, p. 433, Map R24.

21 See NC-M, para. 20.14.

22 Annex MC 229, with attached map.

23 It is true that a small wedge-shaped area of former Block N remained mostly unlicensed until 1970. This was the area referred to in Nigeria's *note verbale* of 27 March 1962 (Annex MC 229): there is no record of Cameroon replying to that note. The small area in question was licensed by Nigeria in 1970, as can be seen from the 1970 map in the Appendix to this Chapter.

24 See United Nations, *Treaty Series*, Vol. 544, p. 113.

25 See in particular the *Bulletin of the Association of American Petroleum Geologists* for the relevant years. Copies of the relevant entries have been deposited with the Court.

26 See Fig. 10.1, above.

27 *cf.* Geneva Convention on the Continental Shelf, 1958, Article 1, with its basic criterion of a 200 metre depth limit subject to extension outwards "to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas". In extending its licensing seawards in the late 1970s, Nigeria was acting in accordance both with Article 1 of the 1958 Convention (to which it acceded in 1971) and also in accordance with new developments in the law of the sea associated with UNCLOS III. Cameroon's failure to act at this time is equally clear.

28 See Appendix, p. 8.

29 See below, para. 10.33.

30 This is confirmed by Cameroon itself: RC, para. 5.234.

31 There was one minor discrepancy. In 1972, a Cameroon licensee drilled a well (Kita M-1) slightly to the west of the "limit of operations". The well was a failure and the area is not now claimed by Cameroon. It is the isolated Cameroon well shown (in purple) on Fig. 10.4, to the west of the Nigerian pipeline which is in green. Its co-ordinates are approximately 4° 25' N, 8° 23' E.

32 For greater detail on the juxtaposition of Nigerian and Equatorial Guinean wells in the Zafiro area, see Fig. 10.8 below.

33 Annex NR 173.

34 See also above, Chapter 3, para 3.35 and Annex NPO 55.

35 *ibid*., p. 5.

36 Earlier in the same document, the Heads of Delegation are reported as having observed that:

> "the grounds of disagreement between Nigeria and Cameroon over the Maroua Declaration of 1975 are more political than technical. In order not to hinder the furthering of the existing excellent relations between the two nations, they resolved to refer the matter to their respective Heads of State for determination."

In effect, the Heads of Delegation in 1993 confirmed that questions of exploitation of maritime resources by the two States would proceed as technical questions, irrespective of the "political" disagreement over the Maroua Declaration.

37 See above, para. 10.16 and Fig. 10.3.

38 The Spanish territory of Río Muni and Fernando Póo became independent as Equatorial Guinea in 1968.

39 See Appendix, p. 4, 1979 Map.

40 See Appendix p. 5, 1982 Map.

41 See Appendix pp. 6, 7: 1992-1999 Maps.

42 See above, para. 10.25.

43 NC-M, para. 20.12.

44 The negotiations and eventual conclusion of the Agreement were freely reported in the press. See e.g. "Nigeria settles offshore oilfield dispute", *Financial Times*, 26 September 2000: Annex NR 175. Copies of the Treaty were deposited with the Legal Office of the Treaty Section at the UN and with the Registrar of the Court.

45 Equatorial Guinea-Nigeria Maritime Boundary Negotiations, London, 2-3 March 2000, Joint Communiqué:, Annex NR 176.

46 See Equatorial Guinea-Nigeria Maritime Boundary Negotiations, London, 29-31 March 2000, Joint Communiqué, para. 6: Annex NR 177, and the attached map.

47 See Nigeria-Equatorial Guinea Maritime Boundary Negotiations, Abuja, 29-30 August 2000, Joint Communiqué, para. 3: Annex NR 178.

48 For the text of Article 3 see above, para. 10.35(4).

49 See below, paras.10.42-10.48.

50 Annex NC-M 340.

51 For an analysis of the archipelagic claims of São Tomé e Príncipe under its Decree Law No. 14/78 of 16 June 1978 see United States Department of State, Office of the Geographer, *Archipelagic Straight Baselines: Sao Tome and Principe* (Limits in the Seas, No. 98, Washington, 1983). The islands themselves have a north-west-facing coastal frontage of 27.8 n.m.

52 São Tomé e Príncipe and Nigeria, Joint Communiqué, São Tomé, 28 August 2000: Annex NR 179.

53 Point (xi) is 122 n.m. from the Bakassi Peninsula and 133 n.m. from Campo (the location of Debundscha and Campo is shown on Fig. 12.1 below).

PART IV

THE MARITIME BOUNDARY

CHAPTER 10

APPENDIX

Licensing History Maps

This Appendix contains a series of maps showing the licensing history in the Nigeria-Cameroon-Equatorial Guinea area.

The maps are based on published data contained in the American Association of Petroleum Geologists (AAPG) annual yearbooks until the late 1970s, historical maps supplied by the Nigerian Department of Petroleum Resources (DPR), and on data supplied by HIS Energy (formerly Petroconsultants).

Best efforts have been applied to ensure the accuracy and completeness of the licence data. Lack of access to original data inevitably means that there may be some uncertainties, errors and inaccuracies.

Wells are shown in the year in which they were drilled.

Each map represents the licensing position at the end of the calendar year.

Contents

Licensing History For the Years

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1962	1982
1963	1983
1964	1984
1965	1985
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1972	1992
1973	1993
1974	1994
1975	1995
1976	1996
1977	1997
1978	1998
1979	1999
1980	2000

PART IV

THE MARITIME BOUNDARY

CHAPTER 11

EXTENT OF THE COURT'S JURISDICTION

IN THE PRESENT PROCEEDINGS

A. Introduction

11.1 In Chapter 22 of its *Counter-Memorial*, Nigeria dealt with a range of questions under the rubric "The Issues for the Court at this Stage of the Proceedings". Since that time, there have been a number of relevant developments. Equatorial Guinea has sought and been granted permission to intervene. The (as yet unratified) Treaty of 23 September 2000 between Nigeria and Equatorial Guinea has brought some additional certainty to the situation - contingently, of course, upon that Treaty being ratified by both Parties. In its *Counter-Memorial*, Nigeria had also envisaged the possibility that Cameroon might specify and clarify its global claim in such a way as to make it admissible.[1] This has not happened: although Cameroon's maps are more precise,[2] its claim is even *less* clear than it was.[3] But Cameroon has made extensive and unusual remarks about the position of third States,[4] and these too require some comment.

B. The Extent of the Court's Jurisdiction over the Case

11.2 It will be recalled that, in joining Nigeria's *Eighth Preliminary Objection* to the merits, the Court said:

> "The Court notes that the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and São Tomé and Príncipe, demonstrates that it is evident that the prolongation of the maritime boundary between the Parties seawards beyond point G will eventually run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. It thus appears that rights and interests of third States will become involved if the Court accedes to Cameroon's request. The Court recalls that it has affirmed, 'that one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction' (*East Timor (Portugal v. Australia)*), Judgment, I.C.J. Reports 1995, p. 101, para. 26). However, it stated in the same case that, 'it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case' (*ibid*., p. 104,

> para. 34)...
>
> In order to determine where a prolonged maritime boundary beyond point G would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon's request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. Whether such third States would choose to exercise their right to intervene in these proceedings pursuant to the Statute remains to be seen."[5]

11.3 In its *Reply*, Cameroon argues that, although Equatorial Guinea may not be a party to the case as such, its intervention allows the Court to deal with Cameroon's claim to its full extent.[6] In effect, it argues, the Court will simply be concluding a treaty in lieu of the parties doing so: "the consequent delimitation will not be less than if it had been conventionally fixed".[7] This misrepresents the role of the Court in relation both to the parties and the non-parties, and is wholly out of line with the Court's own approach.

11.4 The view that in maritime delimitation cases the Court simply substitutes its judgment for the treaty that might have been agreed on a bilateral basis between the two States (the "mandate" theory of adjudication) has been expressly rejected. As a Chamber of the Court said in the *Burkina Faso/Mali* case:

> "in continental shelf delimitations, an agreement between the parties which is perfectly valid and binding on the treaty level may, when the relations between the parties and a third State are taken into consideration, prove to be contrary to the rules of international law governing the continental shelf (see *North Sea Continental Shelf*, I.C.J. Reports 1969, p. 20, para. 14; pp. 27-28, paras. 35-36). It follows that a court dealing with a request for the delimitation of a continental shelf must decline, even if so authorized by the disputant parties, to rule upon rights relating to areas in which third States have such claims as may contradict the legal considerations - especially in regard to equitable principles - which would have formed the basis of its decision."[8]

11.5 Cameroon's arguments on the point raise three issues: (a) the status of Equatorial Guinea in the present proceedings; (b) the extent of the Court's powers in maritime delimitation cases to affect areas claimed by third parties, and (c) the application of these rules to the present case.

(i) The status of Equatorial Guinea in the present proceedings

11.6 It is clear from the terms of Equatorial Guinea's intervention that it does not seek to become a party

to the substantive proceedings. Rather it sought to intervene to protect its rights and to inform the Court (from its point of view) as to the extent of those rights. The Court for its part accepted this position when, in its Order of 21 October 1999, it allowed Equatorial Guinea's application to intervene "to the extent, in the manner and for the purposes set out".[9]

11.7 The position is accordingly clear, but Cameroon seeks to confuse it. Arguing *a contrario* from the *Libya/Malta* case, it asserts that:

> "where the Parties do not oppose the intervention and where the latter is admitted, as in the present case, the opposite solution should prevail and the Court may (and should, in accordance with the mission incumbent upon it definitively to settle the disputes referred to it) proceed to a complete delimitation, whether or not the latter is legally binding on the intervening party, a point on which it does not appear to be essential for Cameroon to pronounce."[10]

Fortunately, perhaps, it is not necessary for Cameroon to "pronounce" on these matters because the Court has already done so, and in the contrary sense.

11.8 First, the Court in *Libya/Malta* neither said nor implied that, if Italy had been permitted to intervene, the Court could have decided on areas claimed by Italy. What the Court said was as follows:

> "It is true that the Parties have in effect invited the Court... not to limit its judgment to the area in which theirs are the sole competing claims; but the Court does not regard itself as free to do so, in view of the interest of Italy in the proceedings... A decision limited in this way... signifies simply that the Court has not been endowed with jurisdiction to determine what principles and rules govern delimitations with third States, or whether the claims of the Parties outside that area prevail over the claims of those third States in the region."[11]

It should be stressed that the Court treated this as a matter going to its jurisdiction, not as a merely prudential question. Precisely the same considerations apply here.

11.9 Secondly, Cameroon seeks to avoid this result by implying that the Court has acquired further and additional jurisdiction by reason of Equatorial Guinea's intervention. But this is not so. The Court's jurisdiction remains one between the original parties, unless the intervenor is accepted as a party properly so-called, which is not the case here. A non-party intervenor is not bound by the substantive decision of the Court in the case in question: this follows expressly from the terms of Article 59, and from the proposition that an intervenor is not one of the "parties" in the sense of Article 59. As the Chamber held in the *Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/ Honduras)*:

> "a State permitted to intervene under Article 62 of the Statute, but which does not acquire

> the status of party to the case, is not bound by the Judgment given in the proceedings in which it has intervened".[12]

11.10 Two further points need to be briefly mentioned.

(1) First, Cameroon argues that "the Court would consider that if Equatorial Guinea and São Tomé-e-Principe intervened, this objection would have to be rejected".[13] The relevant passage is set out in paragraph 11.2 above. The Court said nothing of the kind. After acknowledging the possibility "that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's *Eighth Preliminary Objection* would have to be upheld at least in part", the Court went on to mention the possibility of intervention. It did so, quite properly, in completely neutral terms. It did not know at that stage whether there would be an intervention, for what purpose, and what the reaction of the Parties to that intervention would be. To read into this passage the anticipatory rejection of the *Eighth Preliminary Objection* 8 is quite unfounded.

(2) Secondly, Cameroon argues that São Tomé e Príncipe's non-intervention in the proceedings places it in a different position:[14] apparently the Court has more power over areas claimed by the intervener, Equatorial Guinea, than over the non-intervener, São Tomé e Príncipe. Again this flies in the face of what the Court has actually said, for example in the cases cited above. It is a perfectly legitimate use of Article 62 for a State to intervene as a third party exclusively to inform the Court as to its legal position or claims.[15] Any other conclusion would be a powerful disincentive to intervention.[16]

(ii) The extent of the Court's powers with respect to maritime zones claimed by third States: in general

11.11 Nigeria summarised the extensive case-law on this question in its earlier pleadings,[17] and has little to add to this discussion. To complete the picture, it is necessary only to mention the recent decision of the Arbitral Tribunal in the *Yemen-Eritrea case (Second Phase)*. The question there was the extent to which the maritime boundary between the parties should be extended up to the notional tripoint with Saudi Arabia. The Tribunal noted the possibility that "it might prejudice other boundary disputes with neighbouring countries". In particular, it noted that:

> "The Kingdom of Saudi Arabia indeed had written to the Registrar of the Tribunal on 31 August 1997 pointing out that its boundaries with Yemen were disputed, reserving its position, and suggesting that the Tribunal should restrict its decisions to areas `that do not extend north of the latitude of the most northern point on Jabal al-Tayr island'. Yemen for its part wished the determination to extend to the latitude of 16° N, which is the limit of its so-called northern sector. Eritrea on the other hand stated that it had 'no objection' to the Saudi Arabian proposal.
>
> ...

> At the southern end of the line, as it approaches the Bab-al-Mandab, there is the complication of the possible effect upon the course of the boundary line of the Island of Perim. This question might clearly involve the views of Djibouti. It follows that the Tribunal's line should stop short of the place where any influence upon it of Perim Island would begin to take effect."[18]

In its final award on the maritime boundary, the Tribunal adopted a conservative approach. It said:

> "Reference has been made above to the need not to extend the boundary to areas that might involve third parties. The points where the decision of the Tribunal halts the progress of the boundary line are, for the northern end, turning point 1 and, for the southern end, point 29. The effect can, of course, also be seen on the illustrative Charts 3 and 4 in the map section of the Award. The Tribunal believes that these terminal points are well short of where the boundary line might be disputed by any third State."[19]

The effect of its determination can be seen from the map annexed to the award.[20] The Court stopped its definitive delimitation "well short of where the boundary line might be disputed by any third State." Its beginning and end-points are securely within the control of base-points on the territory of the two States parties. The same cannot be said of the great majority (over 80%) of the points along the Cameroon claim line.

C. The extent of the Court's jurisdiction in the present case

11.12 In accordance with the decisions referred to in the previous section, and with basic principle, the Court has no jurisdiction in the present case over the Cameroon claim to the extent that it touches on or affects areas actually claimed by third States. Moreover that jurisdiction is not affected by whether the third State in question has intervened or not, unless it has intervened with a view to becoming a party to the proceedings and its intervention has been accepted on that basis, which is not the case here. The Court may be better informed as to the extent of the claims of the third party, but it has no additional substantive jurisdiction over the third party by reason of such an intervention.

11.13 Turning to the facts of the present case, the position can be seen from Fig. 11.1. This shows the two versions of the Cameroon claim line (the more extreme textual claim and the claim shown in its graphics). It also shows the Equatorial Guinea equidistance line and the boundary provisionally established by the Treaty of 23 September 2000. It will be seen that both versions of the claim line enter territory presently claimed by Equatorial Guinea under its equidistance claim just south of 4° N, and that thereafter all the graphical claim line, and most of the textual claim line, runs through Equatorial Guinea waters.

11.14 If and when the Treaty of 2000 is ratified, the position will change to a degree. Cameroon's more

extreme textual claim enters Equatorial Guinea waters at approximately 3° 49' N 7° 58' E and runs through those waters for approximately 20 kilometres (11 n.m.) before emerging back into Nigerian waters around the location of the Nigerian Ebwa well. By contrast the claim as depicted on Cameroon's maps, striking Equatorial Guinea maritime zones slightly further to the north-east, thereafter runs entirely through Equatorial Guinea waters (except for a short "escape" around 3°N) before entering the area of the projected São Tomé e Príncipe-Nigeria joint development zone.

11.15 It should be noted again that Cameroon's claim should not be treated as if it were a mere line. No State has a "line" as a maritime zone. Cameroon's failure to tell the Court the extent of its claim cannot be allowed to obscure the issue, and a claimant State in litigation cannot be allowed to benefit from its own non-disclosure to obtain what would amount to ulterior advantages, whether against the other party or third States. In this regard, it should be stressed that, since Cameroon's method of sharing out Gulf waters takes no account of the coastal frontages of Bioko or São Tomé e Príncipe,[21] it is impossible to use its method to calculate implied maritime zones for those island States. The Court is left completely in the dark as to Cameroon's intentions. Cameroon assures us they are "modest":[22] they are certainly well covered up.

11.16 Let us assume for the sake of argument, however, that Cameroon claims a "modest" frontage of 12 nautical miles of EEZ and continental shelf to the east of its claim line. On that basis, its more extreme textual claim line entails a claim to 10 n.m.^{2} (34 km^2) of Equatorial Guinea waters, strategically located between the Zafiro and Berilo fields. The less extreme graphical claim line implies a claim to a huge swathe of Equatorial Guinea waters: about 990 km^2 (290nm^2).

11.17 It is obvious that, however expressed, Cameroon's claim is inadmissible to the extent that it touches on waters claimed by a third State. The Court has no jurisdiction beyond that point. There cannot possibly be a dispute over areas of maritime territory which Nigeria does not claim, and the Court cannot decide as between Nigeria and Cameroon that certain areas appertaining to or claimed by Equatorial Guinea belong to Cameroon. Moreover it is not enough to say, as Cameroon does, that such a decision is not binding on Equatorial Guinea or São Tomé e Príncipe.[23] Cameroon will face those States asserting a claim backed with the authority of the Court.

11.18 In consequence, as things stand (the Treaty of 23 September 2000 not having been ratified), Cameroon's claim is beyond the jurisdiction of the Court, and/or inadmissible, south of the point where its claim line meets the proclaimed Equatorial Guinea median line. If (as Nigeria hopes and intends) the Treaty is ratified prior to the Court's decision in the present case, the point at which Cameroon's claim becomes inadmissible will change to the new line of the Nigeria-Equatorial Guinea boundary around the area of the Zafiro-Ekanga field. To the north of that line, Cameroon's claim will not be inadmissible by reason of its direct impact on a third State, Equatorial Guinea. Nigeria explains in the following two Chapters why, in its view, that claim is nonetheless substantively inadmissible and unjustified under international law.

11.19 Furthermore once the Court has lost jurisdiction by reason of the fact that Cameroon's claim lies against a third State, that jurisdiction is not recovered merely because (in its more extreme form) the claim line emerges narrowly back into Nigerian waters further south. A decision of the Court attributing to Cameroon the Nigerian licence areas south of the Ebwa and Ukot wells[24] would imply, necessarily and unequivocally, that there is also as a matter of international law a continuous band of Cameroon maritime zone running through waters claimed by Equatorial Guinea, from the point of entry into those waters until the point of exit. The situation would be essentially the same as that in the *Case concerning Monetary Gold removed from Rome*.[25] In that case, the Court could only have awarded the gold to Italy as against the three respondent States on the basis of a prior decision that Albania (a non-party) owed equivalent sums to Italy. In the present case the Court could only award these southern areas to Cameroon as against Nigeria on the prior basis that they were a continuation of areas immediately to the north which, though claimed by Equatorial Guinea, in law belonged to Cameroon. After all, Cameroon's entitlement to maritime territory could have come to an end somewhere between the point of entry into and exit from Equatorial Guinea waters. If it had come to an end, Cameroon could have no claim to areas further south. Cameroon obviously could not assert an "enclave" of Cameroon maritime territory to the south: maritime territory, to the extent that it exists, is continuous from the relevant coastal frontage. Thus a decision by the Court attributing these areas to Cameroon against Nigeria would carry with it, as a necessary and inescapable prerequisite, the determination that areas claimed by Equatorial Guinea were allocated to Cameroon.[26] The Court would be deciding, unavoidably, on the entitlement of Cameroon against Equatorial Guinea.

11.20 For all these reasons, it is respectfully submitted that the Court has no jurisdiction over the Cameroon maritime claim from the point at which Cameroon's claim line enters waters claimed by, or recognised by Nigeria as belonging to, Equatorial Guinea.

D. The Absence of Negotiations on Cameroon's Global Claim

11.21 In its *Seventh Preliminary Objection*, Nigeria noted that the primary (and certainly the initial) obligation of parties to a maritime boundary dispute was to seek to resolve that dispute by negotiation, and it noted that (except as to the inshore boundary) there had been no attempt whatever by Cameroon to offer to negotiate on its claim. The Court has, nonetheless, upheld its jurisdiction in relation to the maritime boundary under the Optional Clause.[27] Nigeria of course accepts that decision. But the Court's jurisdiction is a separate question from the substantive law applicable to the dispute, and that law is still to be found in articles 74 and 83 of the 1982 Convention on the Law of the Sea.

11.22 Articles 74 (1) and 83 (1) of that Convention require that the parties to a dispute over maritime delimitation (whether of EEZ or continental shelf) should first attempt to resolve their dispute by negotiation. One of the reasons for these rules, which are substantive rules in the body of the Convention rather than in Part XV, is that in a matter as delicate and uncertain as maritime delimitation, agreement is the best method of resolving disputes. It enables each party to engage in a dialogue with the other, and to explore the extent and intensity of the claims of the other party with a view to reaching a settlement.

In many maritime boundary negotiations this process involves dozens of meetings of commissions and expert groups and takes a considerable number of years.[28] Two rounds of written pleadings in a case brought without notice or attempt at negotiation is no substitute for such a process.

11.23 Nigeria accepts that, to the extent that the dispute over the maritime boundary pertains to areas around Point G and indeed to the areas of overlapping licences,[29] the requirements of Articles 74 (1) and 83 (1) have been satisfied. But the Cameroon ambit claim to waters to the south of 4° N and 3° N and even 2° N has *never* been the subject of the slightest attempt at negotiation, with Nigeria or (as far as Nigeria is aware) with any other affected State. The further south the claim line proceeds the more obvious its failure becomes. Cameroon refuses in advance to have any negotiations,[30] but especially in relation to these southerly areas, that refusal itself is a clear failure to comply with the requirements of Articles 74 (1) and 83 (1). Cameroon cannot be allowed to benefit from its refusal to negotiate by calling on the Court to deal with these areas. For these reasons, Nigeria maintains the submission that Cameroon's claim, beyond the area of overlapping licences or, in any event, to the extent that it concerns areas to the west and south-west of Bioko, is inadmissible.

E. The Order of Issues in the Proceedings

11.24 Nigeria has on several occasions made the point that it would be a more orderly procedure to deal first with the dispute over the Bakassi Peninsula, without which it is difficult if not impossible to resolve the maritime dispute concerning the waters south of Bakassi. In its Judgment on the *Preliminary Objections*, the Court accepted the latter proposition,[31] but noted that it was "for the Court to arrange the order in which it addresses the issues in such a way that it can deal substantively with each of them".[32] Nigeria leaves it for the Court to decide on this procedural matter in due course.

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1 NC-M, paras. 23.4, 23.23.

2 Compare NC-M, Fig. 20.2 with RC, Map R21.

3 See above, paras. 9.3-9.9.

4 RC, paras. 9.118-9.153.

5 I.C.J. Reports 1998, p. 324 (para. 116).

6 RC, para. 9.147.

7 RC, para. 9.135.

8 *Frontier Dispute* I.C.J. Reports 1986 p. 578 (para. 47).

9 Order of 21 October 1999, para. 18.1.

10 RC, para. 9.147.

11 I.C.J. Reports 1985, pp. 25-26 (para. 21).

12 I.C.J. Reports 1992, p. 609 (para. 423).

13 RC, para. 9.148.

14 RC, para. 9.150.

15 Thus in the *Continental Shelf* case between Tunisia and Libya, there was no jurisdictional link between the parties and Malta, which sought to intervene not in order to become a party but to inform the Court. The Court held that this "direct yet limited form of participation in the subject-matter of the proceedings... could properly be admitted as falling within the terms of... intervention" under Article 62: I.C.J. Reports, 1981, p. 19 (para. 34).

16 It would not be surprising if São Tomé e Príncipe had been deterred from intervening by these, wholly unwarranted, assertions by Cameroon. As for Equatorial Guinea, if the Court were to take Cameroon's line, it will wish it had not intervened.

17 See NPO, ch. 8; NC-M, paras. 22.7-22.10.

18 Award of 17 December 1999, paras. 44, 46.

19 *ibid.*, para. 164.

20 Annex NR 180.

21 As shown below, para. 12.17.

22 MC, para. 5.126.

23 RC, para. 9.129.

24 These wells are shown on Fig. 11.1.

25 I.C.J. Reports 1954, p. 19. This decision was approved by the Court in the *Certain Phosphate Lands in Nauru* case, I.C.J. Reports 1992, p. 240 and applied by it in the *East Timor* case I.C.J. Reports 1995, p. 90.

26 As the Court explained in the *Phosphate Lands* case, the *Monetary Gold* principle applies wherever a decision

by the Court on the rights of a third party is a necessary prerequisite for a decision as between the parties to the case: I.C.J. Reports 1992, p. 261 (para. 55).

27 I.C.J. Reports 1998, pp. 321-322 (para. 109). The Court went on to hold that in the circumstances the dispute was "precise enough for it to be brought before the Court": *ibid*., p. 322 (para. 110).

28 As it has done with Equatorial Guinea: see above, para. 10.33.

29 As shown in Fig. 10.2.

30 RC, para. 9.39.

31 I.C.J. Reports 1998, p. 320 para. 106 ("The Court accepts that it will be difficult if not impossible to determine the delimitation of the maritime boundary between the Parties as long as the title over the Peninsula of Bakassi has not been determined").

32 *ibid*.

PART IV

THE MARITIME BOUNDARY

CHAPTER 12

CAMEROON'S CLAIM TO THE GLOBAL APPORTIONMENT OF THE GULF OF GUINEA

A. Introduction

12.1 In this Chapter, Nigeria will analyse and refute Cameroon's claim to an extended EEZ and continental shelf, 200 miles and more out into the Gulf of Guinea, having regard to the general geographical and political situation in the Gulf, and to the fact that neither Equatorial Guinea nor São Tomé e Príncipe are parties to the present case. This analysis will show:

(1) that Cameroon's claim to a "global" apportionment of maritime zones in the Gulf of Guinea is inadmissible in these proceedings;

(2) that, in any event, that claim is unsustainable as a matter of international law;

(3) that, even if (*quod non*) the Court were to grant to Cameroon a line projecting across Nigeria's coastal frontage out to 200 n.m., Cameroon has no claim to an outer continental shelf in terms of Article 76 of the 1982 Convention.

12.2 A preliminary point, of which Cameroon makes much in its pleadings, concerns the identification and relevance of the so-called "critical date", i.e. the date at which the dispute can be said to have crystallised. It needs to be stressed that in the present case that concept has even more than its usual, relative, significance. In the absence of express agreement to that effect, a State is not obliged to refrain from carrying on existing activities in relation to an area under dispute, and the very continuity of its administration before and after the dispute arose may be legally relevant. Moreover, a claimant State cannot take advantage of some minor or incidental disagreement at an earlier date to "freeze" the general legal situation as between the parties, and thus to cover up its own failure to protest or reserve its position in response to that situation.[1]

12.3 These observations are of particular relevance here. As was shown in Chapter 10, the area of overlapping licences to the north of Bioko arose in 1978, not long after the disagreement over the Maroua Declaration.[2] There was clearly from that time a dispute between the two States over this area of overlap, and generally over their maritime boundary northwards from the limit of overlapping licences

(at approximately 4° 3' N, 8°17' E). There was also an awareness that the two States had still to conclude a maritime boundary delimitation treaty in the waters south of Bakassi, and that this could not be done until the dispute over Bakassi was resolved. That was how things stood throughout the 1980s and up until Cameroon lodged its first *Application* on 29 March 1994. Moreover the situation was not changed by the Cameroon *Application*, which was entirely unspecific as to the maritime boundary. During the entire period from 1978 to 1994, there was no protest by Cameroon at any developments associated with waters beyond the areas of overlapping licences, and no formulation of a claim bearing any resemblance whatever to any version of the claim line now variously asserted by Cameroon. This is clear, for example, from the discussions between the parties on maritime issues in 1993, already described.[3] Those discussions would have been very different if Cameroon had made a claim to a westerly and southerly projection out to 200 n.m. and beyond, involving the transfer of existing wells and installations and long-standing Nigerian licence areas.

12.4 Accordingly, and to the extent that the concept has any value in the present proceedings, the "critical date" for Cameroon's extended maritime claim can be given very precisely. It was 16 March 1995, the date at which Cameroon's new claim to an extended maritime zone beyond the area of overlapping licenses was first made public in its *Memorial*. Actually, even if 1979 were the "critical date", as Cameroon alleges,[4] the position would hardly alter. By that date, as already shown in Chapter 10 and in further detail in Chapter 13, Nigeria's oil activity in the disputed area was already well-established, public, peaceful and unopposed by Cameroon. It is true that Nigeria continued to develop and extend its oil operations west and south-west of Bioko throughout the 1980s and 1990s.[5] But to seek to dismiss that activity, as Cameroon does, by reference to assertions of a "critical date" in the late 1970s is to confuse a specific dispute which arose publicly at that time with a quite different and much less credible ambit claim first made in 1995.[6] That ambit claim is the focus of this Chapter; the more specific dispute is discussed in Chapter 13.

B. Cameroon's Approach of "Global Reapportionment"

12.5 Cameroon protests that its approach, as sketched for the first time in its *Memorial* and now mapped in its *Reply*, does not involve the "reapportionment" of maritime areas or "refashioning geography".[7] But it protests too much,[8] and the position is clear. Relevant passages from Cameroon's *Memorial* have already been cited.[9] The position has not changed in Cameroon's *Reply*, as will now be shown.

12.6 Cameroon's argument is global and redistributive in three different ways: first, in the geographical setting Cameroon selects as "relevant" for the purposes of its dispute with Nigeria; secondly, in terms of the "problem" which Cameroon envisages for the Court to solve, and thirdly in terms of the "solution" it proposes. Each of these need to be briefly mentioned. For this purpose alone reference will be made to the general map of West Africa (Fig. 12.1), although - as Nigeria will demonstrate - these macro-geographic considerations are in truth irrelevant to the actual dispute.

(i) Cameroon's View of the Geographical Setting

12.7 In relation to this geographical situation, Cameroon complains that its maritime territory is cut off, *inter alia*...

> "by the mainland part of Equatorial Guinea (the Rio Muni), whose orientation towards the mouth of the Ntem, which acts as the boundary between the two countries, disrupts, to say the least, the frontal projection of Cameroonian territory towards the open sea."[10]

But it does so in relation to a delimitation to be effected to the north and west of Bioko. Any effect of Río Muni on Cameroon's maritime zones to the *south* of Bioko has nothing to do with Nigeria. There could no doubt be a question about the delimitation of Cameroon's maritime zones vis-à-vis Río Muni; the two are adjacent States on a west-facing coastline, and it might be argued that the small promontory of Cape Campo (Río Muni) would have a disproportionate inshore effect on their respective territorial seas and other zones. But, to repeat, this has absolutely nothing to do with Nigeria.

12.8 On the other side, Cameroon argues that most of Nigeria lies to the west, beyond Akasso, and that Nigeria's south-facing coastline from Akasso to West Point (a distance of approximately 250 km) should be effectively discounted. For Cameroon, "the general direction of Nigeria's coastline [lies] towards the West".[11] This is to view things on entirely the wrong scale. In fact most of Nigeria's western coastline is beyond 200 n.m. from Bakassi (and still further from Cameroon) and has nothing whatever to do with Cameroon's maritime zones. It is only in the spirit of general geographical redistribution that Cameroon can assert the relevance of such factors as the shape of Nigeria's coastline hundreds of kilometres to the west.

12.9 Globally, Cameroon asserts that the "relevant area" is bounded as follows...

> "an area between the real line of the coast starting from Akasso/Brass in Nigeria and passing through Bonny, West Point, Tom Shot Point (Nigeria); then from Tom Shot Point to Sandy Point (Cameroon), East Point, Cap de Bunja (or Debundsha), Cap Nachtigal, Malimba Point, Campo (Cameroon); then from Campo to Gabo [*sic*] San Juan at the extreme southern end of the Rio Muni (Equatorial Guinea); then from Gabo [*sic*] San Juan to Cap Estera in Gabon, Ngombé and Cap Lopez (Gabon). And from Cap Lopez, the zone is closed by a straight line from this point to Akasso in Nigeria".[12]

This area covers a distance of nearly 1000 kms. of coastline, from Cap Lopez in Gabon all along the coast to Akasso. Clearly, Cameroon includes in this all its own coastline, including the whole of its coast-line from Campo northwards. The dispute is not envisaged as one concerning the waters around Bakassi; it is concerned with a vast area of the West African coastline (though apparently island States are to be excluded, since the coastal frontages of Bioko and São Tomé e Príncipe are not mentioned). It is a curious description of the dispute to say that it concerns Río Muni and Gabon but not Bioko and São

Tomé e Príncipe.

(ii) Cameroon's View of the "Problem" to be Resolved

12.10 Secondly, there is Cameroon's global formulation of the task confronting the Court, which is, in its view, that "of determining how to share out equitably between all the States in question the problems arising from the geography".[13] But this begs the question entirely. First, which are "all the States in question", and how does the Court come to have jurisdiction over them? Secondly, why do those five, six or seven States all have "problems arising from the geography"? It is one thing to take into account the general geographical situation of the region in which two disputing States are located, and quite another to treat all the States in that region as subject to a form of collective redistribution of advantages and disadvantages. Some may be "advantaged", some "disadvantaged" by their place in the world. On what legal basis are the disadvantages of some to be "shared out equitably" among them all?

12.11 Similar remarks apply to Cameroon's formulation of the task for the Court: *viz*. to determine "the *share* of the continental shelf to which it [*sc*. Cameroon] is naturally entitled".[14] First of all, the Court's function in maritime delimitation is not to "share" out among a group of States an *a priori* undivided whole.[15] But even if it were, how can sharing a broad area of shelf between six or seven States be converted to a bilateral formula? Cameroon's "natural" entitlement to continental shelf is not something that can be divorced from its geopolitical situation. The fact is that Cameroon has a limited south/south-west-facing coastal frontage, west of Cape Debundscha, in which Nigeria is an adjacent State and Bioko (part of Equatorial Guinea), in terms of its northerly and easterly frontages, an opposite State. Then Cameroon has a much longer west-facing frontage in which the east coast of Bioko and then the easterly frontage of São Tomé e Príncipe come into play opposite, and Río Muni (part of Equatorial Guinea) is an adjacent State to the south. That is its "natural" situation. It is not the function of Nigeria in the north-western sector to compensate Cameroon for disadvantages it may (possibly) suffer in the sectors to the east and to the south of Bioko.

(iii) Cameroon's Proposed "Solution" to the "Problem"

12.12 Then in constructing its claim line, its "solution" to the question of "sharing", Cameroon equally acts in a global way. This can be seen from its manner of constructing points "I", "J", "K" and "L" of its claim-line.[16] To avoid tedious repetition, it will be sufficient to focus on Point "I". If the manner of drawing the line at Point "I" is invalid, then the same will apply *a fortiori* to the points further seaward. Indeed the further away from Cameroon the line goes, the further it deviates to the north west, exaggerating the errors inherent in the process of selecting Point "I".

12.13 As to Point "I", Cameroon's argumentation is as follows:

> "Point I...corresponds to proportionality between, firstly, the portion of the Nigerian coast from Bonny to the point at which the line of the land boundary ends, in the middle of the

> mouth of the Akwayafé, as defined by the Agreements of 1913 and, secondly, the Cameroonian coast from this median point at the mouth of the Akwayafé to Campo. The choice of Bonny is explained by the fact that it is the point at which the Nigerian coasts curve to form, with the Cameroonian coasts, the corner of the Gulf of Guinea. The ratio of proportionality between the respective relevant portions of the Cameroonian coast and the Nigerian coast is in the region of 1 to 2.3.
>
> From the point of view of strict geographical logic, the support line for Point I reflecting proportionality should have started, on the Nigerian side, from Akasso, which is the point at which the change in the general direction of the Nigerian coasts takes place, and not from Bonny. But the choice of Akasso would have pushed the line even further to the West, creating a closing effect on Nigeria's coasts and consequently leading to an inequitable outcome."[17]

12.14 Leaving aside points of detail,[18] there is obviously something fundamentally wrong in this reasoning. The point can be illustrated as follows. Cameroon takes as the relevant Nigerian coastline the coast from Bonny to the Akpa Yafe. It takes as the relevant Cameroon coastline the whole of its coastline down to Campo. It then draws a line between Bonny and Campo (which line - incidentally - cuts Bioko in half) and selects a point on the line which has the same ratio as the respective coastlines have. Since the ratio (according to Cameroon) is 1:2.3 in Cameroon's favour, Point "I" is drawn slightly less than a third of the way along, leaving 1 part of the line to Nigeria and 2.3 parts to Cameroon.

12.15 Now Cameroon further says that the reason it did not select Akasso as the starting point of the line across to Campo was that this would be unfavourable *to Nigeria*. Akasso, Cameroon admits, would be the right place to start that line "from the point of view of strict geographical logic".[19] But it would work too much to *Nigeria's* disadvantage, because it would move Point "I" further west and cut off Nigeria's coastal frontage. But on Cameroon's calculation, based directly on the proportionality of coastal frontages, Nigeria has a *longer* coastal frontage than it has if Bonny is used. Therefore the position ought to be *more* favourable to Nigeria. A longer Nigerian coastal frontage must be better for Nigeria in proportionality terms. After all, the length of Cameroon's coastal frontage has not changed, and proportionality of coastal lengths is the sole criterion, for Cameroon. But, Cameroon tells us, the situation becomes worse, not better. More Nigerian coastal frontage results in a worse result for Nigeria. Cameroon provides no explanation for this anomaly.[20]

12.16 Several further features of Cameroon's method may be noted. First, there is the problem that the "lines of construction" cut across the land territory, internal waters and territorial sea of the two island States in the Gulf. But if Point "I" is generated for the purposes of drawing maritime boundaries, why should that part of the line of construction which cuts through the land territory of Equatorial Guinea be counted? The 40 km. transection of Bioko, and perhaps also its territorial sea (which is for most purposes equated to its land territory) should surely be ignored.[21] Hence Point "I" should be considerably further north-west - a possibility already rejected by Cameroon because it would unduly

affect Nigeria.[22]

12.17 Then there is the drawing of lines joining arbitrarily selected points on the mainland, ignoring coastal frontages of the island States in the Gulf. For example one might ask if the area bounded by the line between Points "H" and "I" is to include any maritime zones for Equatorial Guinea? If so, why is the coastal frontage of Equatorial Guinea not included in the calculations? If not, on what basis are the coastal frontages of island territories to be ignored?[23] Cameroon's system is indefensible *in its own terms*.

12.18 The arbitrariness and lack of any coherent principle in all of this is obvious enough. It is a pseudo-global as well as a pseudo-logical approach, one which takes some coastlines into account and not others, which operates now from one point (Bonny) now from another (Akasso), and all because it suits Cameroon.

C. Cameroon's Approach is Inadmissible and Unjustified under International Law

12.19 Cameroon's "global" approach to delimitation of the waters of the Gulf is inadmissible and unsupported by international law. It is inadmissible because - if the Court were to engage in a global approach on any (as yet unarticulated) basis of principle - it would have to assert jurisdiction over, i.e. to decide legal questions concerning the rights of, third States. But it is obvious that it cannot do this in these proceedings. Cameroon's approach is substantively untenable for a range of reasons (quite apart from the fact, demonstrated in Chapter 10 above and in further detail in Chapter 13, that it is inconsistent with the oil practice of the parties and the legitimate expectations both of existing licensees and of the States concerned). These reasons include the following: (a) Cameroon takes no account of the criteria of appurtenance and distance, despite paying lip-service to the latter; (b) Cameroon takes into account coastal frontages it should not take into account, and *vice versa*; (c) Cameroon uses "proportionality" in a wholly spurious way to generate maritime entitlements, and fails to use it in the appropriate way as a checking device in relation to areas delimited by other means.

(iv) Cameroon's approach is inadmissible

12.20 Enough has already been said to show that Cameroon's approach is inadmissible *in limine*, because it cannot be applied without first deciding on the legal rights of third States, which the Court cannot do.[24]

12.21 The point can be seen by looking at Cameroon's view of the "relevant" coastline, which includes Nigeria's coastline to Bonny (alternatively Akasso) and Cameroon's down to Campo.[25] But it is only possible to decide to take into account, for example, the coastline from Malimba Point to Campo if either (a) one decides to ignore the existence of Bioko, or (b) one decides that the maritime zones generated by this coastline in the adjacent waters and to the south of Bioko are "inadequate". Even if there were criteria for deciding on "inadequacy" for this purpose (which there are not), to do so would

first require a decision on the legal position of Bioko (Equatorial Guinea). No doubt Equatorial Guinea would not be "bound" by that decision. But the Court has not treated Article 59 of its Statute as a sufficient protection to third States whose rights are at stake in a case.[26] The same point could be made with respect to the effect of Príncipe as an opposite State on Cameroon's entitlement with respect to its coastline north of Campo.

(v) Cameroon's approach is substantively unjustified in international law

12.22 In any event, Cameroon's "method" of delimitation is substantively unjustified, and contrary to international law. Nigeria demonstrated this in its *Counter-Memorial*, with substantial reference to the authoritative statements of the Court.[27] The defects can be, non-exhaustively, summarized as follows:

(a) Ignoring criteria of appurtenance and distance

12.23 Cameroon rejects any reliance on any of appurtenance, equidistance and natural prolongation in favour of geometric methods based on a spurious form of arithmetical "logic".[28] Both its methods and its (pre-ordained) result fail to reflect modern methods of delimitation. Thus international tribunals - while rejecting a rule of equidistance as a matter of general international law - generally start from a median or equidistance line which is then adjusted to take into account other relevant circumstances.[29] It is true that the case for a median or equidistance line as a starting point is stronger for opposite than for adjacent coasts, but this does not mean that considerations of relative distance are irrelevant, or that appurtenance does not matter, in the case of adjacent States.[30] The fact is that from very close inshore, the Cameroon claim line is closer to two or more other States than it is to Cameroon, and the discrepancy in distance becomes more and more acute as the line proceeds south-westwards. Indeed, as it proceeds on from Point "K" towards Point "L" and beyond, the claim line veers still further westwards, as if the fact of dropping below the latitude of Campo were to produce an extra determination to make more space for Cameroon.[31] The following table of distances from Point L/L' is illustrative:[32]

Location	Distance of Point L	Distance of Point L'
Akasso (Nigeria)	218 km (118 n.m.)	180 km (97 n.m.)
Bioko (Equatorial Guinea)	285 km (154 n.m.)	290 km (156 n.m.)

Príncipe	160 km (86 n.m.)	195 km (105 n.m.)
East Point (Bakassi)	365 km (197 n.m.)	350 km (189 n.m.)
Campo (Cameroon)	420 km (227 n.m.)	435 km (235 n.m.)

Cameroon's claim to Point "L" and beyond, at more than twice the distance than from two other States, departs from any accepted basis of principle and is wholly unjustified.

(b) Arbitrary consideration of coastal frontages

12.24 The point has already been made that Cameroon's selection of the points to be taken into account in drawing its "lines" is arbitrary. Moreover its method takes no account of the shape of the coast between the points chosen, or of the angles subtended, each of which will affect the location of a point selected on the "line" artificially joining the points.

12.25 It is a fundamental principle of maritime delimitation that the entitlement to maritime areas depends on the claimant State possessing a coastline which fronts on the area to be delimited. The Court has said this in very clear terms, for example, in the *Libya/Malta* case:

> "The juridical link between the State's territorial sovereignty and its rights to certain adjacent maritime expanses is established by means of its coast. The concept of adjacency measured by distance is based entirely on that of the coastline, and not on that of the landmass."[33]

The Chamber in the *Gulf of Maine* case said much the same thing when it observed that:

> "The involvement of coasts other than those directly surrounding the Gulf does not and may not have the effect of extending the delimitation area to maritime areas which have in fact nothing to do with it. It is ultimately only the concept of the delimitation area which is a legal concept, albeit one developed against the background of physical and political geography."[34]

It is accordingly necessary to determine what are the "pertinent" or "relevant" coastlines for the purposes of delimiting a given area.[35] But Cameroon never seeks to justify the choice of its entire coastline as "relevant" to a delimitation of waters north-west of Bioko. It thus assumes, in a question-begging way,

precisely what has to be shown.

12.26 One can test Cameroon's method by asking what result it would produce if, for example, the Southern Cameroons had become independent in 1961 rather than joining the Republic of Cameroon. The eastern boundary of Southern Cameroon province was just east of Victoria.[36] The coastal frontage would have been much shorter, and correspondingly the ratio of coastal frontages would have been very different (*viz.*, 1:1.2 in Nigeria's favour, taking Bonny as the relevant point on the Nigerian side).[37] In that case, either Point "I" would have been considerably further east, or it would have been unchanged because the line Campo-Bonny would still have been drawn.[38] In other words, either "Southern Cameroons" would have had a disproportionate maritime zone because of the configuration of a third State, or it would not. If not, why should the same coastal segment attract a larger maritime zone when it is not independent? Why should the maritime boundary attributable to the coastal segment from East Point to Victoria be different because the same State extends down to Campo, as compared with a different State? "Southern Cameroons" would have had a relevant coastline west of Victoria, looking on to the Bight of Bonny. "Cameroon", further south, would have had no such coastline. Why does the irrelevant coastline of Cameroon, between say Campo and Cap Nachtigal, become "relevant" because there is a coastline to the north-west which does generate a maritime entitlement in the area in dispute? No rational answer can be given to these questions. And certainly Cameroon gives none.

(c) Incorrect use of proportionality

12.27 Thirdly, Cameroon uses the ratio of what it deems to be the "relevant" coastal distances to generate a scheme for dividing the whole area of the Gulf. It then uses precisely the same considerations to "check" the result arrived at. In short it uses the very same criterion as the method of delimitation[39] and as the method of confirming the delimitation so produced.[40] This is a remarkably circular form of "checking" or "confirmation" - the repetition of the procedure used to achieve the result in the first place.

12.28 No doubt it is understandable why Cameroon adopts such a circular approach. The fact is that it is unwilling to make any substantive maritime claim for itself, but only a negative claim against Nigeria. It refuses to disclose to the Court what precise (or even approximate) area of maritime zone it is claiming. Yet this information is necessary in order to be able to confirm the equitable character of the outcome its method is said to produce.[41] Again there is a contradiction - although, since Cameroon no doubt has an *opinion* about its maritime entitlements, the contradiction here may only be apparent. It is not what Cameroon does not know: it simply refuses to say.

12.29 In both respects, Cameroon's method is out of line with the appropriate methods of maritime delimitation laid down by the Court in successive cases, as Nigeria showed in its *Counter-Memorial*. In this respect the approach of this Court has not altered, in its essentials, since the *North Sea Continental Shelf* cases, as the following brief passages from successive judgments show. Thus in 1969 the Court said:

> "... even in such a situation as that of the North Sea, the notion of apportioning an as yet undelimited area, considered as a whole (which underlies the doctrine of the just and equitable share), is quite foreign to, and inconsistent with the basic concept of continental shelf entitlement..."[42]

> And in 1985 the Court said:

> "That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples: the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature... the principle that there can be no question of distributive justice."[43]

> And in 1993 it said:

> "... the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of the coastal fronts and the areas generated by them."[44]

12.30 The point was again affirmed in economical terms by the Tribunal in the *Yemen-Eritrea Arbitration (Phase II)*. After referring with approval to the Court's approach in the *North Sea Continental Shelf* cases, the Tribunal said:

> "The principle of proportionality... is not an independent mode or principle of delimitation, but rather a test of the equitableness of a delimitation arrived at by some other means. So, as the Award stated in the *Anglo-French Channel* case, 'it is disproportion rather than any general principle of proportionality which is the relevant criterion or factor'."[45]

12.31 By contrast Cameroon uses relative coastal lengths as a means of generating, quasi-automatically, its "fair share" of a maritime zone conceived as an undivided whole. But if "the law does not require a delimitation based upon an endeavour to share out an area of overlap on the basis of comparative figures for the length of the coastal fronts and the areas generated by them",[46] Cameroon cannot ask the Court to require such a delimitation of the other States in the Gulf - and still less of Nigeria alone.

D. The Question of the Outer Continental Shelf

12.32 For the sake of completeness, brief mention needs to be made of the implicit claim by Cameroon to an "outer continental shelf", i.e. an area of continental shelf lying beyond Point "L" and beyond 200 n. m. from the Cameroon coast. As noted in paragraph 12.23 above, Cameroon's Point "L" is approximately 200 n.m. away from Bakassi, and still further from Cameroon proper. Yet it is apparently

not the end of Cameroon's claim line.[47] At the same time, Point "L" in either of its versions is well within 200 n.m. of the Nigerian coast.

12.33 The question might thus arise whether Cameroon can claim an outer continental shelf, pursuant to the provisions of the Law of the Sea Convention, in particular Article 76 (4)-(8). It will already be clear that in Nigeria's view this issue is a purely notional one, since Cameroon has no basis for claiming anything remotely like a 200 n.m. projection cutting across the front of Nigeria's continental shelf. For the reasons already given, Cameroon's claim is inadmissible and unfounded.

12.34 However, Nigeria takes this opportunity to express its firm view that a claim can only be made under Article 76 to a continental shelf beyond 200 n.m. where the area concerned does not form part of the EEZ of another State. Otherwise there would be an irresolvable conflict between the EEZ rights of the coastal State within 200 n.m. of its coast (which include rights over the seabed and the sub-soil) and the outer continental shelf rights of another State. Even if this conflict were resolved in favour of the outer continental shelf State (a solution for which there is no legal justification) there would then be the serious practical problem of one State having exclusive jurisdiction over the water body and another having "sovereign rights" over the seabed in precisely the same area.[48] Accordingly, even if (*quod non*) Cameroon was held to have a right to maritime zones out to 200 n.m. from its coastline, its rights would end there.

E. Conclusions

12.35 For these reasons, Cameroon's global division of the Gulf of Guinea cannot be accepted. It is an extreme claim, and, moreover, one which Cameroon still has not managed to formulate accurately. It is an incoherent claim: in substance it is a multilateral claim as against all the Gulf of Guinea States, but in form it is made against Nigeria alone, and seeks to exclude it from having any maritime boundaries except with Cameroon. It is a claim with no foundation in law, since it depends on the generating capacity of a coastline which is irrelevant to the area to be delimited. Cameroon's claim should be rejected as inadmissible and unsustainable in law and fact.

12.36 For the reasons stated in Nigeria's *Counter-Memorial*, this is as far as the Court needs to go in the present case.[49] There has never been any negotiation on Cameroon's global claim, nor even any proposal for negotiations. Cameroon brought the present proceedings unilaterally and without notice. It bears the burden of proof in relation to its claim. The only basis on which it supports its claim to maritime zones (excluding the area immediately off-shore Bakassi[50]) is on the basis of a global apportionment of the waters of the region. To repeat, it sees the question as being one "of determining how to share out equitably between all the States in question the problems arising from the geography".[51] It should be noted again that for Cameroon, "all the States in question" are: Nigeria, Cameroon, Equatorial Guinea (both Bioko and Río Muni), São Tomé e Príncipe and Gabon. The Court is called on to conduct an *a priori* "cutting up of the cake" as between these five States, at the unannounced demand of one of them, in order to avoid that State having to negotiate with the others on their respective maritime zones, as it is

required to do by international law.

12.37 But quite apart from considerations of the burden of proof, Nigeria has established that this claim by Cameroon is completely without foundation. If it were not hopelessly inadmissible, it would be totally unjustified under international law.

12.38 There remains the specific dispute between Nigeria and Cameroon as to their immediate maritime zones offshore Bakassi, to the extent that it does not impinge on the legal position or claims of Equatorial Guinea in respect of Bioko. To that specific dispute Nigeria now turns.

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1 On the "critical date" for the purposes of different sectors of the land boundary, and the limited function of the concept, see NC-M, paras. 10.16-10.20, and see also above, para. 3.16.

2 See above, paras. 10.12, 10.18 and Fig. 10.2.

3 See above, para. 10.24.

4 RC, para. 9.108.

5 See above, Chapter 10 and the maps in the Appendix to Chapter 10. Cameroon complains (RC, para. 9.108) that Nigeria has not tabled all its licence agreements, specifying OML 67. Not wanting to burden the Court, Nigeria tabled only a selection of licences (NC-M, Annex 341). The Mobil licence for OML 67 is attached as Annex NR 181. The relevant information is contained in accessible form in the maps set out in this Reply. Nigeria is happy to provide further clarifications to the Court on request.

6 *cf.* Case concerning the Land, Island and Maritime Frontier Dispute, I.C.J. Reports 1992 p. 351 at p. 405-406 (paras. 72-73).

7 e.g. RC, para. 9.62, where it says that Nigeria's concerns are a mere "pretext". *cf.* also RC, paras. 9.68, 9.70.

8 *cf.* W. Shakespeare, *Hamlet* (1601) Act 3, Scene 2 ("The lady doth protest too much, methinks.").

9 NC-M, paras. 23.6-23.10.

10 RC, para. 9.57.

11 RC, para. 9.58.

12 RC, para. 9.83.

13 RC, para. 9.62.

14 RC, para. 9.75 (emphasis added).

15 See NC-M, paras. 21.10-21.23 and see further below, paras. 12.26-12.30.

16 Point "G" concerns the in-shore boundary; so does Point "H". Neither of these points - whatever their merits or demerits -affects third States and neither is a manifestation of a "global" claim. They are accordingly dealt with in the following chapter. Points "G" to "L" are shown in Fig. 9.1 (referred to in para. 9.5 above).

17 RC, paras. 9.88-9.89.

18 For example, there is no significant change in the direction of the Nigerian coast at the Bonny River. From Akasso in Nigeria right up to Bamusso in Cameroon, the general direction of the south-facing coastline is more or less a straight line, and there are no features along this part of the coast which would call for any particular correction from an equidistance line. Cameroon's choice of Bonny is purely arbitrary, a point chosen to produce a predetermined result.

19 RC, para. 9.89.

20 Actually, Nigeria has been unable to replicate Cameroon's result, using Akasso as the relevant locale for calculating Point "I". But this is of limited significance. No doubt Cameroon is able to apply its own method, even if it does not provide the details.

21 See RC, p. 423, Map R23 ("La Ligne Equitable (lignes de construction)").

22 RC, para. 9.89.

23 In calculating Point "J", Cameroon does take the Equatorial Guinea coast into account, but it is only the coast "from Cabo San Juan to Campo", i.e. the mainland coast of Río Muni. To treat Río Muni as relevant to Nigeria's maritime zones and Bioko as irrelevant is a remarkable inversion of the situation.

24 See above, para. 11.11

25 Above, para. 12.10.

26 See above, paras. 11.8, 11.11.

27 See NC-M, chs. 21, 23.

28 See e.g. RC, paras. 9.55, 9.67, 9.69, 9.75, 9.79.

29 For recent manifestations of this general approach see e.g. *Jan Mayen*, I.C.J. Reports 1993, pp. 60-61 (paras.

50-51); *Yemen-Eritrea (Phase II)*, Judgment of 17 December 1999, para. 131.

30 In fact Cameroon treats the whole of its coastline as relevant, yet for the most part that coastline is "opposite" rather than "adjacent" to Nigeria.

31 See Fig. 9.1, above (referred to in para. 9.5). It may be noted that Cameroon nowhere makes an effort to justify the direction or extent of its claim-line beyond Point "K": indeed it expressly disavows such an effort: RC, para. 9.93. Its line out to Point "L" is thus pure assertion.

32 For Cameroon's failure to specify its claim to Point "L" see above, para. 9.3.

33 I.C.J. Reports 1985 p. 13 at p. 41 (para. 49)

34 I.C.J. Reports 1984 p. 246 at p. 272 (para. 41).

35 Both terms ("pertinent coast" and "relevant coast") are used, e.g. by Judges Ruda, Bedjaoui and Jiménez de Aréchaga in their joint separate opinion in *Libya/Malta*, I.C.J. Reports 1985 p. 13 at p. 82 (para. 20).

36 See NC-M, Atlas, vol. II, Map 55.

37 The actual distances are as follows: Southern Cameroon (Victoria-Cross River Estuary) 122km; Nigeria (Bonny-Cross River Estuary) 145km

38 It does not matter to Cameroon whether the lines join points in Cameroon or in third States. The other two lines which give rise to Points "J" and "K" are drawn from points in Equatorial Guinea and Gabon.

39 *cf.* RC para. 9.91 ("to achieve proportionality").

40 *cf.* RC, para. 9.93 revels in this circularity: "The proportionality test, carried out segment by segment over the whole line, fully confirms the equitable outcome that this line [drawn on the basis of proportionality] achieves."

41 Cameroon recognises this in the following passage (RC, para. 9.94):

"Beyond the line itself, it is the overall outcome that should be considered. It is not a matter of indifference in this respect that the Court usually insists on an 'equitable solution' and not only on an 'equitable line'. Map R 21... showing the proposed line, confirms the equitable nature of the solution advocated, which has no unreasonable consequence." But Map R21 does nothing of the sort: it shows only a line, not a solution, and there is no basis in Map R21 or elsewhere in Cameroon's pleadings for the Court to compare or assess the outcome for Nigeria and that for Cameroon. All Cameroon provides is a line and an assertion of equity.

42 I.C.J. Reports 1969 p. 6 at p. 23, para. 20; the full passage is set out in NC-M, para. 21.10.

43 *Libya/Malta*, I.C.J. Reports 1985, pp. 39-40, para. 46; the full passage is set out in NC-M, para. 21.12. To the

same effect are the remarks of the Chamber in the *Gulf of Maine* case:

"to take into account the extent of the respective coasts of the Parties concerned does not in itself constitute either a criterion serving as a direct basis for a delimitation, or a method that can be used to implement such a delimitation... [A] maritime delimitation can certainly not be established by a direct division of the area in dispute proportional to the respective lengths of the coasts belonging to the parties in the relevant area, but it is equally certain that a substantial disproportion to the lengths of those coasts that resulted from a delimitation effected on a different basis would constitute a circumstance calling for an appropriate correction."

I.C.J. Reports 1984 p. 246 at p. 323 (para. 185); see also *ibid*., p. 335 (para. 218).

44 *Jan Mayen*, I.C.J. Reports 1993, p. 67, para. 64; the full passage is set out in NC-M, para. 21.13.

45 Award of 17 December 1999, para. 165, citing the decision of the Arbitral Tribunal in the *Anglo-French Continental Shelf* case, (1977) I.L.R. Vol. 54, p. 67, para. 101.

46 I.C.J. Reports 1993 p. 38 at pp. 66-67, para. 64.

47 RC, para. 9.93.

48 There is also no indication in the 1982 Convention that the Commission on the Limits of the Continental Shelf, established by Annex II, is intended to have jurisdiction over areas falling within the EEZ of any State.

49 See NC-M, paras. 23.4, 23.11-23.12, 23.23.

50 Nigeria expressly accepted in its *Preliminary Objections*, and has always proceeded on the basis that, there is a dispute between the Parties (a) as to the Maroua Declaration and its possible consequences for maritime territory out to Point G; and (b) as to the area of overlapping licences beyond Point G.

51 RC, para. 9.62.

PART IV

THE MARITIME BOUNDARY

CHAPTER 13

THE MARITIME BOUNDARY BETWEEN

NIGERIA AND CAMEROON

A. The Real Area in Dispute

13.1 Nigeria accordingly turns to the actual dispute between the Parties to the present case. For the reasons given in the preceding Chapter, this dispute is not one which concerns the Gulf of Guinea as a whole. It is not to be resolved by drawing lines which touch on such third States as São Tomé e Príncipe or Gabon.[1] It is a dispute arising between Nigeria and Cameroon in the narrower waters of the Bight of Bonny. In the inshore area it involves the waters of the Rio del Rey or (according to Cameroon) the Cross River Estuary. In these waters, only Nigeria and Cameroon are concerned. But offshore, the dispute also directly concerns a third State, Equatorial Guinea, which has unresolved claims in the area to the north of point (i) by reason of its sovereignty over the island of Bioko. It should be stressed that Nigeria provisionally accepts the maritime jurisdiction of Equatorial Guinea to the south and east of the maritime boundary drawn by the Treaty of 2000 (and subject to the ratification of that Treaty).[2]

13.2 The point has already been made that the entitlement to maritime space depends on a State's possession of a "relevant" or "pertinent" coastal frontage, i.e. one which pertains to the area in dispute and which is capable of affecting the maritime spaces of other States in that area.[3] It is accordingly necessary to analyse in more detail Cameroon's relevant coastal frontages, and the relevant coastlines of the two other States involved, Nigeria and Equatorial Guinea (in respect of Bioko).

(i) Cameroon's coastal frontage on the Gulf of Guinea: in general

13.3 Cameroon's coastal frontage on the Gulf of Guinea cannot be considered as if the island of Bioko, seat of the capital of Equatorial Guinea, did not exist. The Court has to base itself on the actual political and geographical situation, as it has frequently pointed out.[4] The fact is that Bioko does exist, and it is not part of Cameroon. Moreover the north-east facing coast-line of Bioko is on average less than 24 n.m. from the coastline of Cameroon. The distance between Debundscha Point (Cameroon) and Punta Europa (Equatorial Guinea) is almost exactly 24 n.m. For the purposes of maritime delimitation in the Gulf of Guinea, it is necessary to consider Cameroon's coastline as divided into three Sectors. These are shown on Fig. 13.1. They are as follows:

Sector 1: This is the coastal frontage northwestwards from Debundscha Point to the mid-point of the Rio del Rey. Alternatively, according to Cameroon it extends further, to East Point on the Bakassi Peninsula. However far it extends, it is along this frontage that Cameroon looks out into the Gulf of Guinea as an adjacent coastal State of Nigeria.

Sector 2: This is the Sector from Debundscha Point southeastwards down to about 3º N, where Cameroon and Bioko (Equatorial Guinea) are directly opposite each other. Within this Sector there is a stretch of about 20 n.m. where the territorial seas of Cameroon and Bioko abut (i.e. where the distance between their respective baselines is 24 n.m. or less), together with a larger area in the Doaula Basin, eastwards of Bioko, where the maritime area between the two States broadens out to a maximum of about 75 n.m. In this Sector the northern and eastern coastal frontages of Bioko (totalling together approximately 50 n.m.) are opposed to the south-west facing coastal frontages of Cameroon (totalling together approximately 90 n. m.).

Sector 3: Finally, there is a Cameroon coastal frontage of approximately 40 n.m., running southwards from 3º N down to the land boundary with Equatorial Guinea (Río Muni). This coastal frontage looks into the "gap" between Bioko and Príncipe, the northernmost island of São Tomé e Príncipe.

13.4 Something has to be said about the issues of maritime delimitation in relation to each of these three Sectors, beginning with Sector 3.

(ii) Cameroon's coastal frontage in Sector 3

13.5 As to Sector 3 (see Fig. 13.2), it is obvious that the primary issue of maritime delimitation arises as between three States, two of which are not parties to the present case. They are Cameroon, Equatorial Guinea (which is both an adjacent and opposite State to Cameroon in respect of Bioko and Río Muni respectively) and São Tomé e Príncipe (an offshore archipelagic State with a clear legal interest in the delimitation of the maritime zones lying to its north and east). The gap between Bioko and Príncipe is approximately 115 n.m., and the two States claim the totality of the maritime zones between them. Whether and what maritime zones Cameroon may be able to claim in Sector 3 is obviously a matter on which the Court in the present proceedings cannot decide, because it is a matter which arises between those three States. But if the Court cannot decide the question, nor can it act as if it had done so. Nigeria would come into the picture, in relation to any possible projection of Cameroon's coastal frontage in Sector 3, if and only if, it was decided that areas in the gap between Bioko and Príncipe and beyond appertain to Cameroon rather than either of those two States. The Court cannot decide that question in these proceedings.

13.6 Nigeria is not informed as to the practice of Cameroon vis-à-vis the other two States in relation to Sector 3. As noted already, there is an agreed equidistance line as between Equatorial Guinea and São Tomé e Príncipe.[5] That line is shown on Fig. 13.2. Nigeria makes no claim to any maritime area in Sector 3 to the east of the areas affected by its agreements with those two States, which areas are also shown on Fig. 13.2. The easternmost limit of Nigeria's claims in Sector 3 is a tripoint which has the following co-

ordinates: latitude 2° 42' N, longitude 7° 38' E. As noted already, that point is much closer to both Equatorial Guinea (60 n.m.) and São Tomé e Príncipe (60 n.m.) than it is to the west-facing coastline of Cameroon in Sector 3 (133 n.m.). Again, it is clear that no question as to the possible appurtenance of this area to Cameroon can be decided in the present case.

(iii) Cameroon's coastal frontage in Sector 2

13.7 As to Sector 2, this lies exclusively between Cameroon and Bioko. The area affected by Sector 2 can be seen from Fig. 13.3. The delimitation of this area (territorial sea and other applicable maritime zones) is a matter entirely between Cameroon and Equatorial Guinea. It does not arise in the present proceedings. It will be for Equatorial Guinea to inform the Court as to the line which has been observed in practice between Cameroon and Equatorial Guinea in Sector 2. All that needs to be said here is that these areas can have no implications for the delimitation of areas of maritime territory or jurisdiction further west. At Debundscha Point, the Cameroon coastline swings north-westwards towards the Rio del Rey. Eastwards of Debundscha Point, Cameroon's coast looks directly across at Bioko, at a distance always less than 24 n. m. In other words, the strait between Cameroon and the north-facing coast of Bioko is subject to the regime of territorial sea. That continues to be the case for some 42 km (20 n.m.), until a point south of Victoria, at around latitude 3° 46' N, longitude 9° 8' E. It is only south-east of this point that issues of delimitation of EEZ and continental shelf again arise, and they arise exclusively between Cameroon and Equatorial Guinea.

13.8 It is well established that the territorial sea has a distinct character, with its own regime and its own rules of delimitation.[6] The entitlement of a coastal State to a territorial sea is distinct from any entitlement to EEZ or continental shelf, and issues of delimitation of EEZ or continental shelf can only arise beyond the outer limit of the territorial sea. As the Court has noted, "the continental shelf begins, for purposes of delimitation, from the outer limit of the territorial sea".[7] Within the strait between Bioko and Cameroon, there is no "outer limit of the territorial sea" but rather a territorial sea boundary with a third State.

13.9 In the *Gulf of Maine* case, a Chamber of the Court excluded from consideration as coastal frontages those areas which were exclusively subject to the regime of territorial seas. The Chamber noted that at a certain point within the Bay of Fundy, "the Bay contains only maritime areas lying no further than 12 miles from the low water mark".[8] It went on to calculate, as the relevant Canadian coastline, "the coastal fronts from the terminal point of the international boundary to the point on the New Brunswick coast off which there cease to be any waters in the bay more distant than 12 miles from a low-water line".[9] No doubt the situation of the Bay of Fundy relative to the Gulf of Maine as a whole is different from that of the Bight of Bonny relative to the Gulf of Guinea. In particular the Bay of Fundy is a bay, not a strait, and its waters do not open out to the north-east, as Cameroon waters do open out to the south-east of Victoria. But this means only that the coastal frontages to the east of Debundscha Point are capable of generating their own separate maritime entitlement in the waters which they front. Thus there is every reason to apply the same approach to areas within the strait between Bioko and Cameroon as the Chamber applied to the Bay of Fundy in *Gulf of Maine*. As with the Bay of Fundy, the coastal frontages within the strait between Bioko and Cameroon, which are not "more distant than 12 miles from a low-water line", should

not be counted as coastal frontages for the purposes of the delimitation of EEZ and continental shelf areas lying outside the strait and well to the south-west. As to the areas to the east of the strait, their maritime frontage lies southwards, and to the east of Bioko.

13.10 To summarize the situation as to Sector 2, Nigeria has no interest in issues of maritime delimitation there, whether they concern territorial sea or, further eastwards, EEZ and continental shelf. It is only westwards of Debundscha Point that Cameroon's remaining coastline looks out into waters of the Bight of Bonny which pertain to Nigeria, including the area of overlapping licences.

(iv) The Parties' coastal frontages in Sector 1

13.11 The position in Sector 1 is evidently different, as can be seen from Fig. 13.4. In Sector 3, the three States primarily concerned are Cameroon, Equatorial Guinea (both as an adjacent and opposite State) and São Tomé e Príncipe. Nigeria is concerned only contingently, i.e. on the hypothesis that Cameroon were to be held entitled to a projection out into and beyond the "gap" between Equatorial Guinea and Príncipe. In Sector 2 there are only two States concerned, Cameroon and Equatorial Guinea (as opposite States). By contrast, in Sector 1 there are three States concerned, and Nigeria is one of them. The Court has held (and Nigeria accepts) that there is a dispute as to the maritime boundary in this Sector. A more detailed analysis of coastal frontages in Sector 1 is thus required.

13.12 The first point to note, of course, is that the exact coastal frontages of Cameroon and Nigeria in Sector 1 depend on the prior determination as to sovereignty over the Bakassi Peninsula. This issue could be largely ignored for the purposes of assessing Cameroon's "global" claim to the apportionment of the Gulf of Guinea as a whole. As has been shown, Cameroon's claim is inadmissible and unsustainable in law, irrespective of the outcome of the dispute over the Bakassi peninsula. However the position is different with respect to the actual dispute between Nigeria and Cameroon in Sector 1. Without prejudice to the reservation made in paragraph 11.24 above, Nigeria will hereafter present its submissions on the maritime boundary on the basis that it has sovereignty over the Bakassi Peninsula, in accordance with the arguments presented in this and earlier pleadings of Nigeria and as demonstrated by its long-standing control and administration of a substantial Nigerian population. At the same time Nigeria will take the opportunity to comment on the internal logic of Cameroon's maritime boundary claims, explaining how and why, even if Cameroon had been justified in claiming the Bakassi Peninsula, those maritime boundary claims would be excessive and unjustified as a matter of international law.

13.13 The second point to note, however, is that even if Cameroon's claim to Bakassi were to be upheld, so that the coastal frontage of Cameroon were to be extended to East Point on Bakassi, there would still be a very material disproportion in Nigeria's favour between their respective coastal frontages. This disproportion is obvious from a glance at the map, but it can be seen more exactly from the following table. Of course Nigeria's total coastline is approximately 575 km, and not all of this coastal frontage is relevant. For the purposes of calculating its Point "I", Cameroon adopted Bonny as the western end of the Nigerian coastal frontage. Its reasons for doing so have already been criticised. But assuming for the sake of argument that the relevant coastal

frontage were to start at Bonny, the frontages of the Parties in Sector 1 would be approximately as follows:[10]

	Nigerian coastal frontage	Cameroon coastal frontage
(a) On the basis of Nigeria's claim[11]	95 n.m.	30 n.m.
(b) On the basis of Cameroon's claim[12]	70 n.m.	55 n.m.

Thus, even taking Bonny, which is little more than half way along Nigeria's south-facing coastline towards Akasso, the relevant Nigerian coastal frontage is longer than Cameroon's in Sector 1, by a factor which is somewhere between 1:1.3 and 1:3.2.

B. The Resolution of the Maritime Boundary as between Nigeria and Cameroon: Refuting Cameroon's Claim

13.14 For the reasons given in Chapter 11, it is respectfully submitted that the Court lacks jurisdiction over the Cameroon claim beyond the point at which it crosses into waters which are claimed by Equatorial Guinea under the Treaty of 2000. It is true that Cameroon has failed to make its claim at all clear: there are two different versions of its claim line, with equal status, in its *Reply*.[13] But whichever it may be, it is clear that the claim line crosses into waters claimed by Equatorial Guinea. The Court cannot allocate those waters to Cameroon in the present proceedings, nor can it act on the premise that areas legitimately claimed by Equatorial Guinea belong instead to Cameroon. It should be noted in this context that all the areas concerned are closer to Equatorial Guinea than they are to Cameroon. They were never (before Cameroon's *Memorial*) claimed by Cameroon. They have been the subject of Equatorial Guinea licences and, more recently, of substantial exploitation under Equatorial Guinea auspices, which exploitation has never (so far as Nigeria is aware) been protested or opposed by Cameroon.

13.15 It follows that the areas over which the Court has jurisdiction in the present case are limited to those to the north and west of the prospective boundary between Nigeria and Equatorial Guinea under the Treaty of 2000.[14] Those areas are shown on Fig. 13.5. Features of the Cameroon claim line(s) are as follows:

(1) Cameroon's claim lines diverge materially from the equidistance lines between the three coasts concerned, and go way beyond any conceivable tripoint.

(2) From Point G westwards until they intersect with Equatorial Guinea's claimed maritime zones, they cut uninterruptedly through areas which have been the subject of unopposed Nigerian licences for up to 40 years. Specifically, these are as follows:

(3) As can be seen from Fig. 13.5, the claim lines would each attribute to Cameroon valuable fields, wells and infrastructure, to none of which (before 1995) Cameroon had made any claim.

Current licence area bisected by Cameroon claim lines	Date of initial Nigerian licence	Remarks
OPL 98	12/6/1973	Western part licensed earlier as part of Block M (awarded 1961)
OML 67	1/12/1968	Western part licensed earlier as part of Block M (awarded 1961)
OPL 224	21/9/1990	Formerly licensed as southern part of OPL 98 (awarded 1973); recently converted to OML 115
OML 102	1/7/1991	Converted from OPL 97 (awarded 1972) and part of the former Block M (awarded 1961)
OPL 223	23/4/1993	Area designated part of Block 470 in 1980 but not then licensed.

(4) Both lines imply a substantial claim to maritime territory vis-à-vis Equatorial Guinea, including the whole or a substantial part of the Zafiro Field. For the Court to award such areas to Cameroon would defeat the expectations of all concerned - States, licensees and investors, not to mention the peoples of the States affected - based on many years of practice.

13.16 Cameroon seeks to refute this argument by asserting that the practice of the parties is recent, subsequent to the critical date, and should be ignored for present purposes.[15] It argues that the practice is equivocal, given the existence of overlapping licences.[16] In its view, the Court is free to transfer wells and other installations from one State to another, without regard to any principle of vested rights or legitimate expectations.[17] These arguments are without substance, for the following reasons.

(v) The oil practice is long established and substantial

13.17 Cameroon's claim that the oil practice is recent and of short duration (subsequent to the critical date) is simply untrue, and Cameroon must know that it is untrue.[18] So far as licensing is concerned, the point has already been established.[19] So far as actual wells are concerned, it can be seen from Fig. 13.6, which shows wells drilled by the three States concerned in the relevant area, in each case showing the year in which the well was drilled. It would be hard to imagine a more powerful demonstration of consistent practice.

13.18 It is true that some of these wells were non-productive, and that others are not now being exploited. But this is irrelevant to the point made by Fig. 13.6. Each well shown was drilled pursuant to licences

granted by the State concerned and under its fiscal and regulatory authority. Except in the immediate vicinity of Bakassi, all the wells were openly drilled as of right and without protest.[20] In short, each State has in parallel proceeded to the exploration and exploitation of the natural resources of the continental shelf considered as appertaining to it.

(vi) The value of the oil practice is not affected by the existence of overlapping licence areas

13.19 Cameroon argues[21] that the existence of certain areas of overlapping licences is sufficient to eradicate the influence of the oil practice. This is obviously not true with respect to the areas, now claimed by Cameroon, which fall outside the area of overlap. Cameroon claims a swathe of maritime territory to the west and south-west of Point G which falls entirely outside any licence area ever granted by it, and entirely within areas licensed by Nigeria.[22] The existence of a dispute as to certain limited areas of overlap cannot affect the significance of substantial uncontested oil practice in other areas. Indeed, it highlights the fact.

13.20 It is also significant that, despite the existence of an area of overlapping licences from 1978, Cameroon has (so far as Nigeria is aware) carried out no oil activities in the southern area of overlap, whereas Nigeria has done so.[23]

(vii) The "critical date" of this dispute does not exclude reliance on the oil practice

13.21 Then Cameroon argues that all Nigerian activity occurred after the "critical date" of the late 1970s.[24] As already explained, this is not true even in relation to the area of overlap, licences for which were issued by Nigeria well before 1979 and which was already being developed at that time.[25] Moreover the assertion of a "critical date" in relation to a maritime dispute does not exclude reference to subsequent developments, especially where (as here) these are essentially an intensification and continuation of claims asserted long before.

(viii) The Court has never asserted or exercised the power to transfer existing installations to another State

13.22 Cameroon asserts that "no international court has ever paid attention" to the existence of long-standing concessions and installations.[26] It would be remarkable if this were true, since the "equitable considerations" which are relevant to maritime delimitation derive not from some general or abstract equity but from the particular situation of the parties, and their conduct specifically in relation to the areas affected, to the extent that it is clear and unopposed, must be relevant. But once again Cameroon's assertions are not true. The position is as set out in Nigeria's *Counter-Memorial*, which referred in turn, and extensively, to the relevant decisions and statements of the Court.[27] The following remarks are supplementary.

13.23 In its *Counter-Memorial*, Nigeria analysed in some detail the most nearly comparable case to the

present, the *Tunisia/Libya* case.[28] As to this decision, Cameroon asserts that...

> "it was in no way the limits of the oil concessions as such that the Court took into consideration in the case concerning the *Continental shelf (Tunisia/Libyan Arab Jamahiriya)*, but a very old *de facto* line that both Parties, and the States which they succeeded, had always respected in their relations *inter se*".[29]

A reading of the relevant passages of the two judgments shows, however, that it was precisely by their practice in granting oil concessions that Tunisia and Libya adopted the pre-independence *de facto* line. The Court repeatedly emphasised this, and moreover it paid careful attention to the actual installations in its final delimitation.[30]

13.24 Nigeria has little to add to the treatment of the *Gulf of Maine* case contained in its *Counter-Memorial*.[31] The oil practice in that case arose only in 1965, in relation to a dispute which had matured by 1969. Not merely was that practice limited in time; it was also limited in extent: it concerned "seismic exploration of minor importance, which involved neither drilling nor the extraction of petroleum".[32] Moreover, as the Chamber several times noted, the dispute was about fisheries not oil: the equivocal oil practice within the Gulf of Maine had nothing to do with fishing for cod on the Grand Banks. Nonetheless the Chamber spent a considerable time dealing with the various arguments based on acquiescence: it certainly did not treat them as *a priori* irrelevant, even if in the end it rejected them.

13.25 Cameroon cites a different passage from the Chamber's judgment in *Gulf of Maine*,[33] in support of its thesis of the irrelevance of the practice of the parties in maritime delimitation. But the passage is taken out of context. The Chamber there was concerned with the argument that historically the United States and/or Canada had enjoyed on the Grand Banks a *de facto* predominance in fishing which the Court should take into account in delimitation. The Chamber pointed out that the earlier practice had occurred not under the modern EEZ regime but under the regime of the high seas.[34] Any *de facto* predominance the parties may have enjoyed over fisheries under the old law could not, in its view, be translated into a relevant consideration in the bilateral context of maritime delimitation between two coastal States. Thus there was "no reason to consider *de jure* that the delimitation which the Chamber has now to carry out within the areas of overlapping apparent as between the respective exclusive fishery zones must result in each Party's enjoying an access to the regional fishing resources which will be equal to the access it previously enjoyed *de facto"*.[35] It was for this reason that the Chamber concluded (in the passage relied on by Cameroon) that "the respective scale of activities connected with fishing - or navigation, defence or, for that matter petroleum exploration and exploitation - cannot be taken into account as a relevant circumstance".[36] As to fisheries (the real issue at stake in the case) that conclusion was obvious. The previous "scale" of activities under a different legal regime was irrelevant to delimitation under the new system of exclusive fisheries zones. Of course there had never existed on the Grand Banks an exclusive territorial right to fish, granted by one State and not objected to by the other. But that is precisely what has existed in the disputed area in the present case for many years in respect of hydrocarbon activity. Moreover the Chamber reached the conclusion cited above only after it had, at length, considered and

rejected on their merits various arguments related to the oil practice. To repeat, these arguments were treated as relevant in principle, even if in the particular case they failed to persuade the Chamber.

13.26 The decision of the Arbitral Tribunal in the *Yemen/Eritrea* case on maritime delimitation[37] was given since the filing of the *Counter-Memorial*, and justifies a brief mention here. An initial point about the decision is the care which the Tribunal took to avoid its line trenching on the possible rights of a third State, Saudi Arabia: this has already been discussed.[38] As to the oil practice of the parties, Cameroon asserts that the Tribunal "refused to base itself" on the oil practice (by comparison with its decision on sovereignty over the islands).[39] What the Tribunal actually said was as follows:

> "132. The Tribunal has decided... that the international boundary shall be a single all-purpose boundary which is a median line and that it should, as far as practicable, be a median line between the opposite mainland coastlines. This solution is not only in accord with practice and precedent in the like situations but is also one that is already familiar to both Parties. As the Tribunal had occasion to observe in its Award on Sovereignty (paragraph 438), the offshore petroleum contracts entered into by Yemen, and by Ethiopia and by Eritrea, 'lend a measure of support to a median line between the opposite coasts of Eritrea and Yemen, drawn without regard to the islands, dividing the respective jurisdiction of the Parties'. In the present stage the Tribunal has to determine a boundary not merely for the purposes of petroleum concessions and agreements, but a single international boundary for all purposes. For such a boundary the presence of islands requires careful consideration of their possible effect upon the boundary line; and this is done in the explanation which follows. Even so it will be found that the final solution is that the international maritime boundary line remains for the greater part a median line between the mainland coasts of the Parties."[40]

It should be noted that the oil practice relied on by Yemen and (to a lesser extent) Eritrea was, by comparison with the present case, desultory and unspecific. Most of the activity involved seismic and other surveys. Only a few wells had been drilled, and none had proved productive. Nonetheless the Tribunal regarded the references to the median line in some of the oil documentation as relevant and supportive of a median line boundary. In the context of a single purpose boundary in an area where fisheries rather than oil activity were significant (both historically and in present day terms), the Tribunal was careful not to leap to a conclusion based only on the oil practice. But it is misleading for Cameroon to say that the Tribunal "did not base itself" on the oil practice, when this was explicitly taken into account as a relevant factor.

13.27 The distinction between the relevance of offshore activity in terms of maritime delimitation and its relevance or otherwise to issues of sovereignty over land areas was also recognised by the Court of Arbitration in the *Yemen-Eritrea* case.[41] It applies equally here. These issues have already been dealt with in Chapter 3.[42]

13.28 To summarize, despite Cameroon's assertions, it remains true that no court or tribunal in the modern period has delimited maritime boundaries in such a way as to transfer existing wells or other installations from one party to another, let alone whole fields which have been the subject of substantial unprotested investment over time.[43] Cameroon fails to face up to the implications of its own case when it says that it is entirely conceivable "that the Parties will have, following the Court's judgment, to *review* the oil rights and concessions that they have granted in the maritime zone in dispute".[44] But it will not be a question of "reviewing" anything. If the Court were to uphold Cameroon's claim, there would be no question of negotiating, or of "the Parties" doing anything. Nigeria would be excluded. The former Nigerian licensees of blocks awarded to Cameroon would have to go cap in hand to Cameroon to secure (at what price, and for whose benefit?) the recognition of rights they had every reason to believe were secure, in respect of substantial areas to which (before 1995) Cameroon had never made the slightest claim. Companies which lost the subsequent Cameroon "bidding round" in relation to former Nigerian blocks could well seek to bring claims against Nigeria in relation to the loss of their substantial investments in those areas. To assert that such considerations are irrelevant, as Cameroon does, is untenable.

(ix) Putative effect of the Cameroon claim to the Bakassi Peninsula

13.29 Nigeria turns to consider the potential impact of Cameroon's territorial claim to the Bakassi Peninsula. It will be shown that, even on the assumption that Cameroon's on-shore territorial claim were to be upheld, the maritime boundary between the Parties would fall within the area of overlapping licences, out to a tripoint with Equatorial Guinea.

13.30 In presenting its claim line, Cameroon proceeds from the assumption (*quod non*) that the Court will uphold Cameroon's claim to Bakassi itself. In this respect Nigeria respectfully refers the Court to Fig. 13.7. This shows offshore installations and wells, as well as the Nigeria-Equatorial Guinea maritime boundary (which is being provisionally applied pending ratification of the Treaty of 23 September 2000), and Equatorial Guinea's equidistance claim. It should be noted that Equatorial Guinea's equidistance claim still applies north and east of Point (i).[45] It also applies in the event that the Treaty of 23 September 2000 is not ratified.

13.31 Cameroon presents this aspect of its claimed maritime boundary as falling into two components: (1) out to Point G, and (2) beyond Point G to the tripoint with areas claimed by Equatorial Guinea.

13.32 As to the sector out to Point G, this depends, however, on considerations relating to the Maroua Declaration. Nigeria has already given its reasons for rejecting the validity of that Declaration.[46] Consistently with that long-standing position, Nigeria does not rely on that Declaration as establishing a maritime boundary in the Cross River Estuary.

13.33 It may be noted that, despite its heavy reliance on the Maroua Declaration, Cameroon tends to undercut that reliance by suggesting that the Declaration was somehow unduly favourable to Nigeria.[47] It is true that the Maroua line runs slightly to the east of the equidistance line that would have resulted from

a land boundary up the Akwayafe. Cameroon fails, however, to take account of the vital Nigerian interest in unimpeded navigation to the major naval and commercial port of Calabar. Moreover it should be noted that, even on Cameroon's own case, approximately three quarters of the coastline of the Cross River Estuary appertains to Nigeria. Cameroon's territorial claim is confined to the shorter eastern side of the Estuary.

13.34 However this may be, it is clear that there is a strong and confirmed practice of the parties, especially as to the offshore area, in licensing and developing oil installations and other activities. The resulting oil practice line carries right down to the area of the geographical tripoint with Equatorial Guinea. For these reasons, in Nigeria's submission, even on the basis (*quod non*) of Cameroon's territorial claim to Bakassi, Cameroon's claim to a maritime boundary should have been presented in such a way as to take account of, and not to disturb, the wells and other installations on each side of the line. In other words, it should have followed a line drawn between the territories of the two Parties, separating the areas covered by existing unopposed licences granted by the Parties and maintaining on each side of the boundary the locations of any wells or other installations or facilities drilled or erected without protest by the other Party. Such a line would have been a simple matter to draw, as a glance at Fig. 13.8 will show.

13.35 In this context it must be stressed again that Nigeria's and Cameroon's wells near the oil practice line were mostly drilled before the present dispute arose, under licences issued long before. There could be no basis for disregarding the long-standing practice of both States. It is for this reason, *inter alia*, that Cameroon's proposal for an immediate westerly leap from Point "G" to Point "H" could never have been regarded as acceptable. Such a sharp change in the direction of the line would on any view be without justification. It does not reflect the practice of the Parties, or indeed general practice in maritime delimitation for adjacent coasts. It would involve the severing of Nigerian pipelines and the transfer to Cameroon of currently producing Nigerian wells linked up by those pipelines. It is arguable that the equidistance line should be followed: however this would only be appropriate to the extent that it would not involve transferring installations or wells from one Party to another. Moreover it is desirable in any case for a zone of 500 metres to be left around any existing installations, to maintain their security and to allow for servicing and navigation in their immediate vicinity.

13.36 For these reasons, on the basis of its claim to the Bakassi Peninsula - which of course Nigeria entirely rejects - the maximum claim that Cameroon could properly have advanced would have provided for the maritime boundary between the parties to proceed southwards then south-westwards to the equidistance line as between East Point (Nigeria) and West Point (Bakassi), and then along the equidistance line until it reached the maritime boundary with Equatorial Guinea in respect of Bioko, at the approximate position latitude 4° 4' N, longitude 8° 19' E, but subject to leaving a zone of 500 metres around existing fixed installations of any party. Even on this basis, given the character of these confined, crowded and much-used waters, it would have been appropriate for the Court to leave the parties, in the first instance, to seek to reach agreement on a precise line, reserving to itself the right to determine the line itself in the absence of agreement. However, for illustrative purposes a line meeting these criteria is shown on Fig. 13.8.

(x) Conclusion

13.37 For these reasons, the Court should reject Cameroon's claim to maritime territory beyond the area of overlapping licences, as shown in Fig. 10.2.[48] Apart from other considerations, that claim is made far too late and is contradicted by the practice of the parties over a substantial period of time.

C. The Resolution of the Maritime Boundary as between Nigeria and Cameroon: Establishing Nigeria's Claim

13.38 Nigeria turns then to the question of ascertaining the maritime boundary in the waters to the north and east of Point (i). In Part I of this *Rejoinder*, Nigeria demonstrated its sovereignty over the Bakassi Peninsula: that demonstration need not be repeated here. Nigeria's sovereignty over the Bakassi Peninsula has the following consequences for the dispute over the maritime boundary.

(i) Nigeria's maritime boundary in and beyond the Rio del Rey

13.39 Within the Rio del Rey itself, the maritime boundary will run down the median line towards the open sea. The waters of the Rio del Rey are at all points less than 24 n.m. wide, and there is no basis for adopting anything other than a median line boundary for these territorial waters, as contemplated in Article 15 of the United Nations Convention on the Law of the Sea. Even beyond 12 miles from the Peninsula, the boundary then, *prima facie*, follows the equidistance line out in the direction of Bioko, until it meets the Equatorial Guinea-Bakassi equidistance line. A relevant factor here is a substantial sand island, not shown on earlier charts, which can be seen from satellite photography to the east of the mouth of the Rio del Rey and which is within 12 miles of the coast. The equidistance line is affected by that island, so that, as seen on Fig. 13.9, it turns south-westwards within a relatively short distance from the mouth of the Rio del Rey. That island lies in front of the south-west facing Cameroon coastline and within 12 n.m. of its coast. In the circumstances, there is no reason to think that an equidistance line in this area is inequitable to either Party. This is especially so if one takes into account the substantial disproportion of coastal lengths in favour of Nigeria, which has a ratio of the order of 1:3.[49]

13.40 For these reasons, Nigeria submits that the maritime boundary between the Parties follows the median line down the Rio del Rey, and then follows the equidistance line south-westwards until it meets the tripoint with Equatorial Guinea, at approximately latitude 4° 6' N, longitude 8° 30' E.

(ii) Confirming the equity of the result

13.41 As noted already, international jurisprudence supports reference to the proportionality of coastal frontages as a way of checking the equity of an outcome reached by reference to other considerations.[50] This is not done by employing any rigid arithmetical or geometrical formula, but as a general matter of impression, taking into account other relevant circumstances including the position of third States. As to the boundary shown in Fig. 13.9, the following comments may be made:

(1) The ratio of relevant coastal frontages is decidedly in Nigeria's favour, as shown in paragraph 13.13

above. Indeed, even on the basis of Cameroon's claim (*quod non*) that Bakassi is Cameroonian territory, the ratio is still 1:1.3 in favour of Nigeria.

(2) In the immediate vicinity of the Cross River Estuary, the coastlines of the two parties follow what is effectively a straight line, assuming that a closing line is drawn for this purpose across the Estuary itself. All the waters of the Estuary are territorial waters.

(3) Taking, for the sake of argument, a line from West Point at the western entrance to the Cross River Estuary down to the south-western tip of Bioko, more than 50% of the waters eastwards of that line and up to the closing line between Debundscha Point and Punta Europa are territorial waters, not EEZ or continental shelf.[51] Of the area falling outside territorial waters here, half is claimed by Equatorial Guinea in respect of Bioko, and the areas left to the Parties in the present proceedings are correspondingly limited.

(4) There is no reason, in equity or otherwise, why Nigeria should be required to compensate Cameroon for the adverse effect on its potential maritime zones produced by a third State, Equatorial Guinea. Nigeria for its own part is also markedly affected by Bioko, including in areas well to the south-west.

(5) The practice of the Parties has for a long time supported something close to an equidistance line in this area, including in relation to Equatorial Guinea (Bioko).

(6) Such a delimitation would leave to each Party the areas lying directly in front of its coasts.

13.42 Thus the result depicted in Fig. 13.9 would not depart from any limits indicated by the notion of proportionality. In particular the result of the delimitation would not have been so disproportionate to Cameroon, taking into account these various factors, as to call for any adjustment in favour of Cameroon at Nigeria's expense. It should be stressed that the legal criterion does not involve exact proportionality: rather it is whether the disproportionality of the result is such as to warrant some adjustment in favour of one or other of the States concerned.[52] The result illustrated in Fig. 13.9 would involve no such disproportionality. It follows that there is no case on the basis of disproportionality for Cameroon's actual claim lines. But even if there were, the fact remains that Cameroon has acquiesced in and accepted a delimitation based on the oil practice line for a period which is effectively as long as Cameroon's own independence. The legitimate interests underlying four decades of practice are sufficient in themselves to rebut any claim that might be made on grounds of some abstract "equity".

13.43 Similar considerations would apply to the putative maritime boundary depicted in Fig. 13.8 referred to at paragraph 13.36 above. Such a boundary would not produce an inequitable or disproportionate result so far as Cameroon is concerned, given what is still a limited coastal frontage in Sector 1.[53] In particular there is no basis for assuming that Cameroon's coastal frontage in Sector 1 could have generated maritime zones exclusively at Nigeria's expense.

D. Conclusions

13.44 For all these reasons, Nigeria submits that the Court should:

(1) reject Cameroon's claim to a maritime boundary to the west and south of Point "G", going beyond the area of overlapping licences as shown on Fig. 10.2;[54]

(2) having upheld Nigerian sovereignty over the Bakassi Peninsula:

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

(b) delimit the respective maritime zones of the parties in accordance with the principle of equidistance, to the point where the line so drawn meets the median line boundary with Equatorial Guinea at approximately latitude 4° 6' N, longitude 8° 30' E.

13.45 But even on the basis of Cameroon's unjustified claim to the Bakassi Peninsula, the maximum claim line that Cameroon could advance would involve delimiting the respective maritime zones of the Parties beyond the Cross River Estuary in the manner shown in Fig. 13.8. The effect is to maintain, on each side of the line so drawn, all wells and installations which were drilled or constructed under licences or permits granted by either party without protest from the other at any time prior to 29 March 1994, and to leave a safety zone around such installations of not less than 500 metres. Otherwise such a line would proceed in accordance with the principle of equidistance to the point where the line so drawn meets the median line boundary with Equatorial Guinea at approximately latitude 4° 4' N, longitude 8° 19' E.

13.46 In any event, there will remain the question of connecting the final point on the boundary so drawn with Point (i) of the Nigeria-Equatorial Guinea maritime boundary as drawn by the Treaty of 23 September 2000. This is a matter which directly concerns Equatorial Guinea. In Nigeria's respectful submission, it can and should be left to be carried out by negotiations between the Parties to that Treaty as envisaged in its Article 3.[55]

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1 *cf.,* however, Cameroon's Map R23, "La Solution Equitable".

2 See above, Fig. 10.7, (referred to in para. 10.37); Fig. 10.8 (referred to in para. 10.39).

3 See above, para. 12.25 and the authorities cited.

4 e.g. in the *Gulf of Maine Area* case, I.C.J. Reports 1984, p. 271, para. 37.

5 See above, para. 10.10.

6 As the Court stressed, for example, in the *North Seas Continental Shelf Cases*, I.C.J. Reports 1969 p. 37, para.

59.

7 See *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, I.C.J. Reports 1982, p. 83, para. 116, cited again by the Court in *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the Continental Shelf Tunisia/Libyan Arab Jamahiriya),* I.C.J. Reports 1985, pp. 208-209, para. 32.

8 I.C.J. Reports 1984, p. 270, para. 31.

9 *ibid.,* p. 336, para. 221.

10 Since the coastline has a substantial number of large estuaries and indentations, it is reasonable to estimate coastal frontages by the use of straight lines following the general direction of the coast, especially since in every case the land lying behind those lines belongs to the coastal State. The purpose of doing so, of course, is not to generate an arithmetical formula for the purposes of allocating maritime zones but to provide one measure by which the overall result of relevant considerations can be assessed as "equitable". See above, paras. 12.26-12.29.

11 Nigeria's claim encompasses a Nigerian coastal frontage up to the Rio del Rey (including Bakassi).

12 Cameroon's claim would involve a Cameroon coastal frontage up to East Point on the Bakassi peninsula.

13 See above, paras. 9.3-9.9.

14 This is not because Nigeria has unconditionally conceded to Equatorial Guinea sovereign rights over the areas to the east and south of that line: it will do so if and when the Treaty of 2000 has been ratified by the two States and has entered into force. However, at least until either party to that Treaty announces that it has decided not to ratify it, Equatorial Guinea has a legitimate legal interest in the areas concerned. In the event that the Treaty of 2000 does not enter into force, presumably Equatorial Guinea's equidistance claim will revive.

15 RC, paras. 9.106-9.117.

16 RC, paras. 9.109-9.110 and Map R25 at p. 437.

17 RC, paras. 9.99-9.105.

18 It is a feature of Cameroon's pleadings that they make no attempt to present to the Court information which is, and has long been, in the public domain. See RC, paras. 9.106-9.109, and *cf.* also RC, paras. 5.11-5.16 (which takes the matter no further). Yet it is Cameroon which is the Applicant and which has the onus of proof in this case. It has made no attempt to be open with the Court in relation to the factual situation in the maritime domain, or its own practice.

19 See above, paras. 10.16-10.22 with accompanying maps and graphics.

20 Cameroon concedes that it was silent in the face of Nigerian activity: RC, paras. 9.114, 9.115.

21 RC, paras. 9.110-9.112.

22 See above, paras. 13.15(2) and (3) and Fig. 13.5.

23 Compare the asserted and actual operations of Cameroon on its graphic, "Limite des opérations", shown as Fig. 10.1. See also para. 10.11 above.

24 RC, para. 9.108.

25 See above, para. 12.4.

26 RC, para. 9.105.

27 NC-M, paras. 21.24-21.31.

28 I.C.J. Reports 1982 p. 18; see also the *Application for Revision and Interpretation*, I.C.J. Reports 1985 p. 192. For Nigeria's account of these decisions see NC-M, paras. 21.25-21.26.

29 RC, para. 9.100.

30 The relevant passages from the two decisions are set out in full in NC-M, paras. 21.25-21.26.

31 NC-M, para. 21.27.

32 I.C.J. Reports 1984, p. 307, para. 136, where the Chamber refers to remarks of the United States.

33 RC, para. 9.103.

34 I.C.J. Reports 1984, p. 341, para. 235.

35 *ibid.,* p. 342, para. 236.

36 *ibid.,* p. 342, para. 237.

37 On which Cameroon also relies: RC, para. 9.103.

38 See above, para. 11.11.

39 RC, para. 9.103.

40 Award of 17 December 1999, para. 132.

41 In fact the Tribunal concluded that the oil concession activity had little or no significance in terms of its

decisions on sovereignty over the islands: see the Award of 9 October 1998, I.L.R. Vol. 114, p. 114, para. 437.

42 See above, paras. 3.286-3.288

43 Cameroon seeks to justify its "silence with regard to Nigerian concessions" by saying that "Cameroon... is not aware of official protests by Nigeria with respect to Cameroonian concessions" (RC, para. 9.114). That is, however, precisely the point. Except as to Bakassi itself and, to a lesser extent, the area of overlapping licences off-shore, *both* States were silent.

44 RC, para. 9.105 (emphasis added).

45 See above, para. 10.35.

46 See above, paras. 3.18-3.40.

47 RC, paras. 8.84-8.85.

Referred to at para. 10.12 above.

49 See above, para. 13.13.

50 See the cases cited in paras. 12.29-12.30 above.

See the sketch map of Sector 2, Fig. 13.3 referred to in para. 13.7, above.

52 See the award of the Arbitral Tribunal in the *Yemen-Eritrea case (Phase II)*, cited (with references to earlier jurisprudence) in para. 12.29 above.

53 See above, para. 13.31.

54 Referred to at para. 10.12, above.

55 See above, para. 10.35 (4).

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 14

THE DEVELOPMENT OF THE PLEADINGS

A. General

14.1 In its *Reply* Cameroon criticises Nigeria for its "high degree of discretion" with respect to the previous stages in the present case.[1] Cameroon then purports to summarise the limited extent to which Nigeria dealt with those previous stages in its *Counter-Memorial*, and regards Nigeria's position in that respect as "semi-caricatural" and "unnuanced."[2]

14.2 Nigeria rejects this criticism. It referred to the previous stages only briefly because that was all that was necessary for the purpose of the argument developed in its *Counter-Memorial*: the Court has judicial notice of its previous Judgments, and there is no need for Parties to remind the Court of them unless there is some particular point to be made in relation to that Party's argument. Moreover, the Court's Judgment of 10 February 1996 was for *provisional measures* in the context of incidents occurring after the institution of the proceedings, the Judgment of 11 June 1998 was concerned with *jurisdiction*, and the Judgment of 25 March 1999 was related to the earlier Judgment on *jurisdiction*: none of these Judgments, therefore, bore directly on the issues on the *merits* which was the subject of Nigeria's *Counter-Memorial*. Nigeria referred as appropriate to all those Judgments in its *Counter-Memorial*, but no extended treatment of them was called for at that stage.

14.3 Moreover, Nigeria's brief mention of the course of the previous proceedings was accurate, within the limits necessarily involved in being brief. The same cannot be said of Cameroon's treatment of the Court's Judgments: at paragraph 6.5(5) above Nigeria gives a clear example of a gross distortion by Cameroon of what the Court said in its Judgment of 11 June 1998, implying the Court's approval for a Cameroonian position when in fact the Court's words were in exactly the contrary sense.

14.4 Now that Nigeria has seen Cameroon's *Reply*, and in order to deal fully with the various points which arise on it, it is necessary for Nigeria to deal more fully with the various stages in the development of this case. Nigeria will accordingly do so, although only in so far as is necessary to deal with the allegations of international responsibility raised against it by Cameroon.

14.5 Since Cameroon has chosen to take the opportunity in Chapter 11 of its *Reply* to refer once again to the delay occasioned by Nigeria in presenting *Preliminary Objections*, and then its *Request for Interpretation*, Nigeria must equally take this present opportunity to state that

(1) Cameroon knew of the possibility that Nigeria would raise *Preliminary Objections*, in accordance with its clear right to do so under the Statute: such *Objections* are indeed a normal part of the procedure in cases before the Court, particularly where the Court's jurisdiction is based on Declarations under Article 36.2 of the Statute;

(2) Nigeria's *Request for Interpretation* gave rise to a separate proceeding before the Court: it thus had no direct effect on the timetable for the substantive proceedings on the merits. Although in the event Nigeria was, in the exercise of the Court's discretion, given an extension of two months for the presentation of its *Counter-Memorial* in order to enable it to take account of the Court's Judgment of 25 March 1999, this was because of delays which were not of Nigeria's making and were in no way a necessary consequence of Nigeria having presented its *Request for Interpretation*.

B. Cameroon's *Application* of 29 March 1994

14.6 In paragraph 20 of its original *Application* Cameroon asked the Court to make a number of findings against Nigeria, namely (in brief) that

(a) sovereignty over Bakassi vested in Cameroon,

(b) Nigeria was violating the fundamental principle of respect for frontiers inherited from colonisation,

(c) Nigeria's use of force against Cameroon violated international law,

(d) Nigeria's military occupation of Bakassi violated international law, and

(e) Nigeria was under a duty to end that military occupation and must withdraw its troops from Bakassi.

Cameroon then requested the Court to adjudge and declare

"(e') that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involve the responsibility of the Federal Republic of Nigeria;"

and went on (paragraph (e")) to request reparation in an amount to be determined by the Court.

C. Cameroon's *Additional Application* of 6 June 1994

14.7 Cameroon's *Additional Application* followed the same pattern, in paragraph 17 requesting from the Court a number of findings against Nigeria, namely (in brief) that

(a) sovereignty over the disputed parcel in the area of Lake Chad vested in Cameroon,

(b) Nigeria was violating the fundamental principle of respect for frontiers inherited from colonisation and its recent commitments concerning the demarcation of frontiers in Lake Chad,

(c) Nigeria's occupation of the said parcel in the area of Lake Chad violated international law, and

(d) Nigeria was under a duty to withdraw its troops from the Lake Chad area.

Cameroon then requested the Court to adjudge and declare

"(e) that the internationally unlawful acts referred to under (a), (b), (c), and (d) above involve the responsibility of the Federal Republic of Nigeria;"[3]

and went on (paragraph (e')) to request reparation in an amount to be determined by the Court.

14.8 By its Order of 16 June 1994[4] the Court agreed that the *Additional Application* could be treated as an amendment to the initial *Application*, so that the Court could deal with both in a single case.

D. Cameroon's *Request for the Indication of Provisional Measures* dated 10 February 1996

14.9 According to Cameroon's version of events "the Nigerian military authorities launched a series of violent attacks against the Cameroonian forces in the Bakassi Peninsula on 3 February 1996, which led Cameroon to make an application to the Court on 10 February 1996, for provisional measures."[5]

14.10 For its part Nigeria denied that any such attack by Nigerian forces had occurred, and stated that instead it had been Cameroonian forces which had attacked Nigerian civilian settlements and military positions in Bakassi and that Nigerian forces had responded in exercise of their right of self-defence. Moreover, Nigeria added that in any event, since Bakassi belonged to Nigeria, Nigerian civilian institutions and armed forces were fully entitled to be in Bakassi and to deploy there in whatever way seemed to the Nigerian authorities appropriate.

14.11 In its Order of 15 March 1996 the Court indicated certain provisional measures, and held:

"(1) Unanimously,

Both Parties should ensure that no action of any kind, and particularly no action by their armed forces, is taken which might prejudice the rights of the other in respect of whatever

judgment the Court may render in the case, or which might aggravate or extend the dispute before it;

(2) By 16 votes to 1,

Both Parties should observe the agreement reached between the Ministers for Foreign Affairs in Kara, Togo, on 17 February 1996, for the cessation of all hostilities in the Bakassi Peninsula;

(3) By 12 votes to 5,

Both Parties should ensure that the presence of any armed forces in the Bakassi peninsula does not extend beyond the positions in which they were situated prior to 3 February 1996;

(4) By 16 votes to 1,

Both Parties should take all necessary steps to conserve evidence relevant to the present case within the disputed area;

(5) By 16 votes to 1,

Both Parties should lend every assistance to the fact-finding mission which the Secretary-General of the United Nations has proposed to send to the Bakassi Peninsula." [6]

14.12 It is to be noted that the Court did not find that the Cameroonian allegations were well-founded, and that the Court addressed its five specific provisional measures to the two parties equally. Moreover, during the course of its reasoning, the Court made the following observations which are relevant to the merits of the case in the context of State responsibility:

(1) The Court concluded that the differing versions of events given by the Parties "have not enabled the Court, at this stage, to form any clear and precise idea of those events", although it was clear from the submissions of both Parties that there had been military incidents in the Bakassi Peninsula and that they had caused suffering (including loss of life) to individuals as well as material damage (Order, paragraph 38).

(2) The Court held that, in the context of proceedings concerning the indication of provisional measures, it "cannot make definitive findings of fact or of imputability, and the right of each Party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments, if appropriate, in respect of the merits, must remain unaffected by the Court's decision" (Order, paragraph 43).

14.13 Nigeria also recalls that in response to a question put to the Parties by Vice-President Schwebel, the Co-Agent of Nigeria stated:

> "It should be borne in mind that the Bakassi Peninsula has been part of Nigeria and from time immemorial has been administered as such. In this context, the armed forces of Nigeria as and when required maintain units stationed at various points within the region, and have likewise patrolled the region."[7]

14.14 Finally, Nigeria takes strong exception to the allegations by Cameroon[8] that Nigeria has been in serious violation of the Court's Order of 15 March 1996. For the reasons set out below (paragraph 15.53), Nigeria rejects these Cameroonian allegations as unfounded.

E. Cameroon's *Memorial*

14.15 Cameroon's *Memorial*, dated 16 March 1995, alleged that Nigeria bore international responsibility for

(1) various incidents said to have occurred;

(2) non-compliance by Nigeria with its treaty obligations relating to

- the prohibition against the use of force,

- Cameroon's territorial sovereignty, and

- the principle of non-intervention;

(3) non-compliance with the principle of *uti possidetis juris*.

F. Nigeria's *Preliminary Objections*, particularly the Sixth Preliminary Objection

14.16 In the light of Cameroon's *Memorial*, Nigeria raised a number of *Preliminary Objections*. So far as concerned questions of State responsibility, Nigeria submitted, in its *Sixth Preliminary Objection*, that the issues of State responsibility raised by Cameroon should be declared inadmissible. The grounds for this submission were that Cameroon's *Application, Additional Application* and *Memorial* were inadequate as to the facts on which they were based, including the dates, circumstances and precise locations of the alleged incidents involving Nigerian State organs, and that that made it impossible for Nigeria to have the knowledge to which it was entitled of the circumstances said by Cameroon to give rise to Nigeria's international responsibility and also made it impossible for the Court to carry out a fair and effective judicial examination of, or make a judicial determination on, the issues of State responsibility raised by Cameroon.

14.17 The Court in its Judgment of 11 June 1998[9] rejected Nigeria's *Sixth Preliminary Objection* by fifteen votes to two. So far as concerns questions of State responsibility the Court made a number of observations which are relevant to the subsequent proceedings in the case, namely -

(1) the Statute of the Court does not preclude an Applicant from making later additions to the statement in its Application of the facts and grounds on which a claim is based (paragraph 98);

(2) in doing so the Applicant is not restricted strictly to an elaboration of the case presented in its Application, so long as the result is not to transform the dispute brought before the Court by the original Application into another dispute which is different in character (paragraph 99);

(3) while Cameroon's statement in its *Application* of the facts and grounds on which it relies is sufficient to fulfil the conditions laid down in the Statute, "this does not, however, prejudge the question whether, taking account of the information submitted to the Court, the facts alleged by the Applicant are established or not, and whether the grounds it relies upon are founded or not. Those questions belong to the merits ..." (paragraph 100); and

(4) while the alleged factual inadequacy of Cameroon's *Application* does not make it impossible for Nigeria to respond effectively to Cameroon's allegations or for the Court ultimately to make a fair and effective determination in the light of the arguments and evidence then before it, it "is the applicant which must bear the consequences of an application that gives an inadequate rendering of the facts and grounds on which the claim is based" (paragraph 101).

14.18 Cameroon, in its *Reply*, castigates Nigeria for "interpreting the Decision of 11 June 1998 as not posing any limit on Cameroon's right to present new facts".[10] Cameroon cites in this respect NC-M paragraph 24.9. Not only is that paragraph expressly concerned with the Court's Judgment of 25 March 1999 and *not* that of 11 June 1998, but *nowhere* in that paragraph did Nigeria say or imply anything about the Court not having posed any limit on Cameroon's right to present new facts.

14.19 The paragraph cited by Cameroon, as is clear from both its terms and its context, was concerned solely with the problem posed for Nigeria by the times at which Cameroon was bringing forward allegations of various incidents which were said to have occurred, and the varying dates (e.g. pre-*Application*, post-*Application* but pre-*Memorial*, or in the unspecified future) at which those incidents were or might be said to have taken place. Nigeria was making the point that in view of the Court's Judgment of 25 March 1999, Nigeria would in its *Counter-Memorial* deal with all alleged incidents mentioned by Cameroon up to then, irrespective of when they were said to have occurred or when Cameroon brought them forward.

14.20 As to incidents which might be put forward in future (the possibility of which the Court had not excluded), Nigeria went on to state that it reserved the right to seek the fullest further opportunity to respond properly to them. Nigeria said nothing about other limits which might apply to the bringing

forward by Cameroon of yet further incidents in the future, since it was evidently not the purpose of that paragraph to consider all the other elements which would need to be considered when dealing with the merits (if any) of particular incidents, existing or future.[11]

G. Nigeria's *Request for Interpretation*

14.21 Nigeria found part of the Court's Judgment on its *Preliminary Objections* unclear. The Court had found that Cameroon was entitled to add to its initial statement of the facts and grounds on which its claim of international responsibility was based, and that in doing so it was not restricted strictly to an elaboration of the case presented in its *Application* (see paragraph 14.17(2) above), i.e. Cameroon could add new facts about incidents already raised in its *Application*, and could even apparently add completely new incidents. Nothing the Court had said indicated how far this freedom extended, and in particular, as had been noted by Nigeria in the proceedings on its *Sixth Preliminary Objection*, whether Cameroon was only entitled to adduce new facts about incidents already raised in its *Application* (the term used by the Court) or whether this extended also to other incidents mentioned for the first time in Cameroon's *Memorial* (and thus after the date on which the proceedings had commenced), or whether it extended even to incidents *still to be raised* by Cameroon for the first time at some later stage in the future (e.g. in Cameroon's *Reply*, or even at the hearings themselves). Without clarification as to what the Court's Judgment on Nigeria's *Sixth Preliminary Objection* meant in this respect, Nigeria could not know to which, if any, 'new' facts and incidents it was called upon to respond.

14.22 Nigeria contended in effect that consideration of Nigeria's international responsibility should be limited to alleged incidents specified in Cameroon's *Application* and *Additional Application* and that other incidents should be excluded. In its Judgment of 25 March 1999[12] the Court, by thirteen votes to three, declared Nigeria's request for interpretation inadmissible. It held that the interpretation of the Court's earlier Judgment for which Nigeria contended would remove from the Court's consideration matters of fact and law which the Court had already authorised Cameroon to submit. Although therefore the Court confirmed that Cameroon could introduce into the proceedings facts and incidents other than those specified in its *Applications* (so long as the dispute before the Court was not transformed into another dispute of a different character), the Court added that "there is no need for the Court to stress that it has and will *strictly apply* the principle of *audi alteram partem*".[13]

H. Nigeria's *Counter-Memorial*

14.23 In its *Counter-Memorial* Nigeria -

(1) responded to, and rejected, Cameroon's allegations that Nigeria bore international responsibility for the violation of its treaty obligations;[14]

(2) responded to, and rejected, Cameroon's allegations that Nigeria bore international responsibility for non-compliance with the principle of *uti possidetis;*[15]

(3) responded to, and rejected, Cameroon's allegations that Nigeria bore international responsibility arising out of various alleged incidents; [16] and

(4) presented certain counter-claims against Cameroon. [17]

14.24 In responding to Cameroon's allegations of various incidents said to give rise to international responsibility on the part of Nigeria, Nigeria's *Counter-Memorial*, in addition to considering in detail (so far as the facts given by Cameroon allowed) the various alleged incidents, [18] addressed certain general issues. These were:

(1) the need for Cameroon adequately to establish the facts necessary to found its allegations of international responsibility on the part of Nigeria; [19]

(2) the need for Cameroon, as the Applicant, to discharge the burden of proof resting upon it to prove the facts on which it relies in asserting that Nigeria bears international responsibility arising out of those facts,[20] and to establish its case against Nigeria beyond reasonable doubt; [21]

(3) the role of reasonable mistake and honest belief in countering imputations of international responsibility must be taken into account; [22]

(4) action by Nigerian armed forces in response to incursions into Nigerian territory by Cameroonian forces is justified as an exercise of the right of self-defence; [23]

(5) topographical difficulties (such as the lack of a demarcated boundary or even a precisely delimited boundary, and the difficult terrain through which the boundary runs) have a part to play in understanding the realities of incidents alleged to have occurred along the land boundary;[24]

(6) the context in which boundary incidents are cited is very relevant, and in particular when incidents are invoked in the context of international responsibility, that responsibility has to be established separately for each incident;[25]

(7) claims may be barred because of the lapse of time in putting them forward;[26]

(8) it is essential, if a State is to be held responsible for some incident, that it be established that the conduct from which responsibility is said to flow is attributable to that State under international law: whether or not this is the case is a matter to be determined in the light of the circumstances of each case, and it is apparent that many of the alleged incidents advanced by Cameroon as a basis for Nigeria's international responsibility involved conduct by persons for whose behaviour Nigeria was in no way

responsible;[27]

(9) Cameroon's treatment of the incidents said to give rise to Nigeria's international responsibility is confused and inconsistent, leading to great difficulty in identifying precisely what are the charges being levelled against Nigeria.[28]

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1 RC, para. 11.04: "une grande discrétion".

2 RC, para. 11.05: "presque caricaturale": "sans nuances."

3 It is to be noted that this provision did not include within the claim of Nigeria's international responsibility those alleged incidents which were said by Cameroon to have occurred along the land boundary between Lake Chad and Bakassi, since those incidents were referred to in para. 17(f). This is now admitted by Cameroon: see below, para. 15.4 and paras. 16.26-16.27.

4 I.C.J. Reports 1994, p. 105.

5 RC, para. 1.23: "... les autorités militaires nigérianes ont lancé une série d'attaques violentes contre les forces camerounaises dans la presqu'île de Bakassi, le 3 février 1996, ce qui a conduit le Cameroun à saisir la Cour, le 10 février 1996, d'une demande en indication de mesures conservatoires."

6 I.C.J. Reports 1996, pp. 24-25, para. 49.

7 CR, 96/4, p. 109.

8 RC, paras. 1.25-1.29 and 11.162-11.163.

9 I.C.J. Reports 1998, p. 275, at pp. 317-319, paras. 95-102; p.326, para. 118.

10 RC, para. 11.04, third *tiret:* "... interpréter celui du 11 juin 1998 comme ne posant aucune limite à la faculté pour le Cameroun de présenter des faits nouveaux. "

11 Where reference to other elements was relevant, Nigeria duly referred to the Court's treatment of them. See e. g. NC-M para. 24.56, where Nigeria referred to a statement by the Court relating to the question of attributability of acts to the State. This was not, as Cameroon says, a matter of Nigeria somewhat contradicting itself (RC, para. 11.04), but of Nigeria dealing with issues only where they are relevant and not otherwise.

12 I.C.J. Reports 1999, p.31.

13 *ibid*., p.38 at para. 15: emphasis added.

14 NC-M paras. 24.29-24.35.

15 NC-M paras. 24.36-24.40.

16 NC-M paras. 24.41-24.566.

17 NC-M paras. 25.1-25.79.

18 NC-M paras. 24.60-24.566.

19 NC-M paras. 24.42-24.44.

20 NC-M paras. 24.45-24.46.

21 NC-M para. 24.47.

22 NC-M paras. 24.34 and 24.48.

23 NC-M para. 24.49.

24 NC-M para. 24.50.

25 NC-M para. 24.51.

26 NC-M paras. 24.52-24.54.

27 NC-M paras. 24.55-24.58.

28 NC-M para. 24.59.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 15

GENERAL ISSUES

REGARDING STATE RESPONSIBILITY

A. General Observations

15.1 Before commenting in detail on Cameroon's treatment of the question of Nigeria's alleged international responsibility, certain general observations need to be made to place this part of the case in perspective.

15.2 This case is not essentially about State responsibility: it is about title to territory. The State responsibility aspect is basically unfounded, unproved and a distraction from the main case. Cameroon acknowledges the essentially secondary character of its State responsibility claims by itself characterising them as involving "accessory"[1] matters and not part of the essentials of the case. Consistently with this view, Cameroon in effect now limits its State responsibility claims to what it regards as Nigeria's violation of certain fundamental principles and rules, and withdraws its claims in respect of the various specific incidents which it has cited (see below, paragraph 16.11 *et seq.*).

15.3 When this case began, Cameroon was concerned primarily with the question of title to the Bakassi peninsula. For completeness, Cameroon included in its *Application* various assertions as to Nigeria's international responsibility for Bakassi-related events and incidents. Then, because of what it saw as Nigeria's challenge to Cameroon's position in relation to certain locations in the Lake Chad area, Cameroon lodged its *Additional Application* in June 1994, similarly adding assertions as to Nigeria's responsibility in relation to those events and incidents.

15.4 At the same time, Cameroon purported to see in Nigeria's conduct, and in particular by reason of certain incidents alleged to have occurred "all along the frontier between the two countries", a challenge by Nigeria to the whole length of the boundary between Lake Chad and the sea: but it is noteworthy (as Cameroon now admits)[2] that Cameroon's *Additional Application* did not include those incidents within the scope of the sub-paragraph in which it alleged Nigeria's international responsibility.

15.5 Thus from the outset the alleged incidents said to involve Nigeria's State responsibility, i.e. those said to have occurred in the Lake Chad and Bakassi areas, have been inextricably bound up with the underlying substantive question of title to the areas in question.

B. General issues of principle

15.6 Cameroon asserts as the applicable general principle the proposition that an internationally illegal act entails the responsibility of its originator.[3] Nigeria does not question that general principle. But, for reasons which will be explained, Nigeria *does* question whether it applies in the circumstances of the present proceedings so as to attribute international responsibility to Nigeria.

15.7 Cameroon recognises that for a State's international responsibility to be established, each of two conditions must be established, namely that the behaviour in question is attributable to the State, and that this behaviour constitutes a violation of an international obligation of the State (RC paragraph 10.06). Nigeria acknowledges that those two conditions must each be established. Nigeria will return to a consideration of those two conditions below (see paragraph 15.8 *et seq.,* and paragraph 15.13 *et seq.*). For the moment Nigeria will note that in addition to the two conditions noted by Cameroon, certain other requirements must be satisfied if allegations about a State's international responsibility are to succeed in litigation. These include

(1) the necessity for the acts which are the basis for the claim that a State's international responsibility has been engaged to be sufficiently clearly established: the burden of proof is on Cameroon to give an adequate rendering of the facts of the matters on which it relies, as well as of the relevant law,

(2) the claim based on conduct said to incur international responsibility must not be time-barred,

(3) the conduct must not have been acquiesced in, e.g. by failing to protest within a reasonable time or by agreeing to treat an incident as closed, and

(4) the conduct must not fall within accepted justifications or defences, whether these are specific to the particular rule invoked or of a general character.

C. The need for incidents to be attributable to Nigeria

15.8 Nigeria agrees that a State's exercise of a civil administration in a given territory, supported where necessary by military units, and its claims to sovereignty over that territory, are, by definition, acts attributable to that State. This is as true for Cameroon as it is for Nigeria. It means, however, no more than that the burden of proof as to the attributability of the conduct to the State is satisfied: in particular it does *not* mean that those acts are thereby shown or admitted to have been unlawful.

15.9 The legal analysis of the situation is not enhanced by Cameroon's resort to emotive assertions about Nigeria's alleged intentions to annex the Bakassi Peninsula and the area of Lake Chad.[4] The lawfulness of a State's civil and military presence, particularly in relation to the behaviour of *both* parties in Lake Chad and Bakassi, depends upon the merits of their underlying claims and the particular circumstances of individual events (which will be considered later). For the moment Nigeria will limit itself to pointing

out that since in its view it has sovereignty over the disputed Lake Chad areas and over Bakassi, its military and civilian presence there is lawful; it is Cameroon, which has equally openly admitted that, for example, it has military units stationed in Bakassi,[5] which has admitted and provided proof of the attribution to Cameroon of the violation of Nigerian territorial sovereignty by Cameroon military forces.

15.10 Similarly, Cameroon's argument[6] that Nigeria has admitted its violation of Cameroonian sovereignty in Bakassi and Lake Chad is unfounded, and is rejected by Nigeria. Nigeria's acknowledgement that Nigerian civil and military units have been in those areas, while sufficient to satisfy any 'burden of proof' as to that fact, is *not* an admission of the quite separate proposition that those locations were under Cameroonian sovereignty or that the Nigerian official presence there was unlawful.

15.11 The same is true of Cameroon's argument[7] that

> "some amongst the more serious of the facts it cited to demonstrate Nigeria's international liability are acknowledged as proven by the Respondent. In particular, there is agreement between the Parties on the invasion, then the continued presence of the Nigerian military forces in the Bakassi Peninsula since 1994. Consequently, Nigeria's liability can be in no doubt with respect to them."

There is no such acknowledgement of responsibility on the part of Nigeria, nor any such agreement by Nigeria that it engaged in an "invasion" of Bakassi. In fact, the situation is precisely the opposite to that asserted by Cameroon, since Nigeria's officials were present in those locations because they were under Nigerian sovereignty. Nigeria's presence was both an exercise of Nigerian sovereignty, and evidence of it.

15.12 Nigeria notes Cameroon's acknowledgement[8] that Nigeria does not incur international responsibility for the acts of *private* individuals, and that a State is directly responsible only for acts committed by its own organs and not for the activities of its citizens as such. Although in certain circumstances a State may, as Cameroon notes,[9] incur international responsibility for not exercising due diligence to control private persons' conduct within its territory or for approving their conduct where that conduct is detrimental to the rights of another State, it depends on the circumstances of each particular incident whether such responsibility has been incurred. As Nigeria has shown in its examination of the relevant incidents in its *Counter-Memorial*, no such Nigerian responsibility in fact arises in respect of the incidents raised by Cameroon. Moreover, while omissions by a State's authorities may give rise to that State's international responsibility just as much as its positive acts,[10] those omissions must equally occur where some specific obligation to act exists, and both the particular obligation in issue and the facts said to involve its breach much be properly established by, respectively, argument and evidence. In both respects Cameroon has failed to discharge this burden resting upon it.

D. The need for the conduct complained of to be in breach of an international obligation resting upon Nigeria

15.13 Cameroon observes[11] that Nigeria argues that it has infringed no binding rules but that there is only a disagreement about the application of a legal principle which, in Nigeria's view, is not capable of engaging its international responsibility; Cameroon implies that that is Nigeria's position across the board. That implication is not correct. Cameroon misunderstands the point being made by Nigeria (with which Cameroon itself elsewhere agrees).

15.14 Nigeria's argument was that in three specific contexts (namely the application of principles of international law about title to territory,[12] the application of legal principles relating to the course to be taken by frontiers,[13] and the application of the principle *uti possidetis juris*[14]) Nigeria had infringed no binding rules, and that what was in issue *in those contexts* was only a disagreement about the application of legal principles; and Nigeria added that a State does not incur international responsibility merely by propounding a legal argument which differs from that of the other State concerned. Cameroon's criticism of Nigeria's position in this matter is the more surprising in that just two paragraphs later Cameroon itself accepts the proposition advanced by Nigeria ("One can admit that the fact that a State defends a specific legal argument does not engage its responsibility ...").[15]

15.15 Cameroon injects into its discussion of this point, almost as an aside, the proposition that the distinction between principles and rules is a "purely academic distinction",[16] thereby suggesting that principles are as legally binding as rules. Nigeria rejects that view of the matter. What is in issue in the context of a State's international responsibility is its alleged breach of some specific international legal obligation applicable in detail to the situation under consideration.

15.16 Rules of international law are legally binding, and give rise to legal obligations: they are couched in specific terms capable of being applied in particular circumstances. Principles, on the other hand, are expressed with a greater degree of generality: thus they often do not contain all the elements necessary for the identification of specific legal obligations deriving from them (e.g. precisely who owes what to whom), which in turn means that they cannot be applied directly unless completed by more specific rules providing the necessary clarity and certainty. Moreover, even where applicable, a principle can only be violated by action taken in particular circumstances. The need for particularity cannot be avoided when seeking to establish international responsibility.

15.17 The legal weight attributable to principles depends on the particular circumstances. Although principles may have a tendency to evolve into legally binding rules, whether a particular principle has done so is a matter for enquiry.

15.18 The argument is by no means a purely academic matter. It has practical consequences in differentiating propositions which give rise to specific legal obligations from those which do not because they need further qualification and elaboration before they can be applied in particular cases. For

immediate purposes Nigeria submits that there are principles which have not yet attained the status and precision appropriate for binding rules of law, that those principles give rise to neither an absolute nor a precise legal obligation and at best require some elaboration and qualification before they can do so, and that, for example,[17] one of those principles is the principle of *uti possidetis juris* - which, in any event - as Nigeria fully explains later[18] - is not an automatic and absolute rule but rather a presumption.

E. The actual reality of the dispute

15.19 Nigeria agrees with Cameroon (RC paragraph 10.14) that the differences between the Parties have a practical dimension.

15.20 However, Cameroon confuses two separate matters, and in so doing distorts Nigeria's position. In its *Counter-Memorial* Nigeria in certain places made the point that a State does not incur international responsibility merely by adhering to a legal argument which differs from that of the other State concerned.[19] Cameroon accepts that proposition ("One can admit that the fact that a State defends a specific legal argument does not engage its responsibility ...").[20]

15.21 But Cameroon introduces a quite separate issue when it adds "provided that, by peaceful means, it attempts to convince the other Party of the validity of its argument".[21] Whether a State resorts to force in pursuit of its arguments may or may not be lawful, depending on the circumstances, but it is an entirely distinct matter from the initial proposition that a State does not act unlawfully merely because it advances legal arguments opposed to those of the other party. The possible unlawfulness of the means used in support of a State's legal argument does not make the advancing of that legal argument itself unlawful.

15.22 In the same paragraph of its *Reply* Cameroon asserts that "Nigeria has shown no desire to discuss with Cameroon certain difficulties regarding the common boundary which have arisen in practice".[22] This is not true.

15.23 Several of the incidents raised by Cameroon, and discussed below in the Appendix to Chapter 16, involved even on Cameroon's own account of the matter discussions between Nigerian and Cameroonian authorities. In addition, for example, in General Gowon's letter of 23 August 1974 to President Ahidjo (Annex NR 12), he recalled "that the important question of demarcating the borders between our two countries was discussed at length during our meeting in Garoua", and he referred to "the joint commission of experts established to delineate the international boundary between our two countries". On 20 July 1981 President Shagari, in a letter to President Ahidjo, proposed the establishment of an Arbitration Panel to "look into our different positions concerning the boundaries" (see the Appendix to Chapter 16, paragraph 38). Cameroon did not see fit to respond to that proposal.

15.24 Nigeria has thus clearly been ready to enter into discussion over these boundary matters:

Cameroon has not cited any examples of such discussions having been requested by Cameroon and rejected by Nigeria. Nigeria would also note that it is rather Cameroon has been reluctant to discuss such matters with Nigeria: Nigeria cannot recall any occasion in, say, the last decade in which Cameroon has requested such discussions with Nigeria.

15.25 Moreover, Nigeria would observe that whatever may have been the position as regards Government-to-Government discussions, for the most part differences arising out of boundary transgressions have been dealt with at a local level. It would not be overstating the matter to say that the story of the land boundary between Lake Chad and Bakassi is the story of three-quarters of a century of local 'management' of differences in such a way as to reflect local tribal affinities and social and agricultural realities on the ground, and without the involvement of central State authority. At the local level there have been frequent - and often successful - meetings to resolve local problems. In its *Counter-Memorial*, and in this *Rejoinder*, Nigeria has given examples of such local resolution of local differences.[23]

15.26 Cameroon seeks, further, to imply that in addition to being unwilling to discuss boundary problems, Nigeria has instead "acted unilaterally, and in many areas, with the most extreme intensity, that is to say by military force".[24] The implication is that this applies to the land boundary as a whole: this is simply untrue.

15.27 Cameroon then goes on to mention the fact that "armed combats have taken place in the Bakassi Peninsula". That is true. But it is not true for Cameroon to go on say that "Nigeria ... attacked the limited Cameroonian forces which were stationed there".[25] As Nigeria has several times stated, it was Cameroon which attacked Nigerian settlements in Bakassi. Those settlements, and the Nigerian forces which defended them, were already there in lawful exercise of Nigeria's sovereignty over the Bakassi Peninsula. Moreover, the peaceful civil administration of border areas, in situations where sovereignty is or may be unclear or disputed, is not as such a basis for international responsibility.

15.28 Finally on this point, Nigeria would observe that at the end of RC paragraph 10.14, Cameroon suggests that Nigeria is claiming that the dispute is not very real, and that this is "to challenge the ruling, which is totally devoid of ambiguity, made by the Court in its Judgment of 11th June 1998 on the Preliminary Objections"[26] (with a footnote reference to paragraph 87 of that Judgment). Nigeria must state (a) that it has never claimed that the dispute is not real, and (b) that the paragraph of the Judgment relied upon by Cameroon has no relevance to the present matter.[27]

F. The prohibition on the use of force

15.29 Cameroon asserts that Nigeria has violated the prohibition of recourse to force, embodied in Article 2(4) of the UN Charter and also rooted in customary international law.[28] Leaving all other allegations for later consideration, Cameroon then singles out what Cameroon describes as Nigeria's military operations against the Bakassi Peninsula as the paradigm case of military action on a scale

which fulfils all the conditions necessary to qualify it as aggression.

15.30 Cameroon's presentation of its case asserts or implies that in the Lake Chad and Bakassi areas the situation was one in which Cameroon was in complete and peaceful occupation of those areas until Nigerian military action seized them from Cameroon. But as Nigeria has shown,[29] in both areas there has been a long-standing Nigerian presence and authority in exercise of Nigerian sovereignty. The situation is essentially one of an original Nigerian peaceful possession of the area, which was later disturbed by Cameroon. It is Cameroon which, in order to extend its territory, has encroached upon Nigerian territory and taken military action against Nigeria and the local Nigerian inhabitants, seeking to impose upon Nigeria Cameroon's view as to the course of the boundary between the two States.

15.31 In this context it is worth recalling that, while both sides suffered military casualties in the skirmishing on the Bakassi Peninsula, the civilian casualties suffered - e.g. in the attack on the market place at West Atabong in February 1996 - seem to have been exclusively Nigerian. Acts of aggression were aimed at the population of another State, yet in this case it was Nigerian forces which were defending a Nigerian population from harassment and attack. Examples of some of these incidents are set out in NC-M Chapter 25 and the Appendix to Chapter 18 below.

15.32 Cameroon's singling out of what it describes as Nigeria's military operations is, once again, not accompanied by a date for the military action being referred to, although from the cross-reference to MC paragraphs 6.162-6.163 it may be inferred that the incident in question is that which is said to have taken place on 3, 4 and 5 January 1994. To characterise this incident as amounting to "*agression*" by Nigeria is incorrect. Nigeria's comments on this alleged incident were given in NC-M paragraphs 24.82-24.85. As noted below (Appendix to Chapter 16, paragraph 89) Cameroon has offered no response to Nigeria's comments.

15.33 Cameroon subsequently notes that the prohibition of recourse to force applies above all in relation to territorial disputes.[30] But again Cameroon treats the Nigeria-Cameroon boundary (including by implication the boundary in the Lake Chad and Bakassi areas) as an "established boundary"[31] which has to be respected. However, as Nigeria has frequently explained, the boundaries in those two areas in particular are not "established", at least not in the locations asserted by Cameroon.

15.34 Nigeria has not resorted to force to settle territorial disputes. In all the instances cited by Cameroon in which Nigerian forces are presented as having acted in order to change the territorial *status quo* (as distinct from instances where what is alleged to have been involved is more in the nature of an ephemeral frontier trespass) the facts, as Nigeria has shown in its *Counter-Memorial* and as it will show further in this Rejoinder, are that Nigerian military action was in all cases taken in response to prior incursions by Cameroon. Nigeria was in all those instances defending its existing territorial positions and was acting to maintain a *status quo* which was being undermined by Cameroonian harassment.[32]

15.35 One of the earlier incidents raised by Cameroon vividly illustrates the typically true situation. This

involved the incident on 16 May 1981. Despite being used by Cameroon as a basis for alleging Nigeria's international responsibility,[33] it transpires that it was settled on the basis that *Cameroon* offered a full apology, and *Cameroon* paid Nigeria compensation for the incident, for which *Cameroon* accepted responsibility. The matter is more fully examined in paragraphs 16.35-16.46 below and in paragraphs 29-45 of the Appendix to Chapter 16, where it is demonstrated beyond any shadow of doubt that Cameroon acknowledged its responsibility for this serious incident, of which it was the initiator in pursuit of its aggressive interests in the Bakassi area.

G. Violation of Cameroon's territorial integrity

15.36 Cameroon asserts that the infringements of Cameroon's rights can be analysed as being violations of its territorial sovereignty.[34] Nigeria, it is said, is obliged to respect the boundary as it existed when the two countries obtained their independence, and is, additionally, required to abstain from any act of intervention, military or otherwise, involving infringing the territorial sovereignty of Cameroon.

15.37 Both aspects of this assertion are wrong, in so far as they apply to the territorial situation between Nigeria and Cameroon.

(1) First, the attainment of independence does not cure an earlier boundary of its legal imperfections. The 'respect' due in principle to a pre-Independence boundary can only reflect whatever legal status it had at the time of Independence, and its imperfections at that time continue thereafter. The principle of *uti possidetis juris* does not make legally perfect and binding a boundary which did not have those qualities previously (see generally below, paragraph 15.47).

(2) Second, any obligation to respect Cameroon's territorial sovereignty begs the question whether any particular location is within Cameroon's territory. Both in the Bakassi and Lake Chad areas, and along the land boundary between them, Nigeria denies that it has taken action *within Cameroonian territory*: the territory where actions complained of by Cameroon have occurred are all in *Nigerian* territory. It is thus Cameroon, not Nigeria, which has violated the other's territorial sovereignty, at least where its conduct has involved a direct military challenge to the peaceful exercise of civilian authority by Nigeria.

H. Clarity of the boundary delimitation

15.38 Cameroon makes a strong point of asserting that the boundary delimitation is perfectly clear, it being noted that Cameroon is here apparently speaking only of the Bakassi Peninsula and the region of Darak.[35] Cameroon makes this point in order to refute an alleged Nigerian "argument that, even if the areas disputed between the two States [i.e. in context, the Bakassi and Darak areas] belong to Cameroon, Nigeria has not committed any illegal act, given the lack of clarity concerning the boundary".[36]

15.39 *First*, Nigeria must observe that the argument attributed to Nigeria is not an argument which Nigeria has in fact advanced: Cameroon does not give any reference for this supposed Nigerian

argument. Cameroon has simply stated, in greatly exaggerated terms, its own version of what it pretends is a Nigerian argument, in order to try to undermine it.

15.40 Nigeria did refer, in a short passage in its *Counter-Memorial* (just two sentences, taking seven lines), to "Topographical difficulties"[37]: that passage did not refer solely to Bakassi or Darak, but rather, without excluding them, referred "especially [to incidents] said to have occurred along the land boundary *between*[38] Lake Chad and Bakassi". In order to show the misleading nature of Cameroon's argument, Nigeria must repeat what it said in its *Counter-Memorial*. The principal thrust of the passage was:

> "It is highly relevant to many of the alleged "incidents" ..... that in many areas the land boundary is undemarcated on the ground, is not even precisely delimited in the relevant instruments, and runs through difficult terrain. .....[S]uch uncertainties have a part to play in understanding the realities of some of the so-called boundary incidents."

Nigeria stands by that statement: in relation "especially" to the 1,800 kilometres[39] land boundary, the facts mentioned *are* "highly relevant", and the uncertainties referred to *do* "have a part to play" in understanding the realities of the situation.

15.41 The Court has acknowledged the correctness of Nigeria's proposition that the boundary is in significant measure lacking in clarity. Referring to certain of the incidents referred to by Cameroon, the Court said in its Judgment of 11 June 1998 that they

> "took place in areas which are difficult to reach and where the boundary demarcation may have been absent or imprecise".[40]

15.42 Moreover, Cameroon, referring to that same passage, has stated that it "is not contesting" the point.[41] Cameroon goes on to acknowledge: "that, in some border sectors, the demarcation is unclear and has led to misunderstandings or uncertainties in the absence of a precise line marked on the terrain."[42]

15.43 Cameroon, however, seeks to minimise the impact of this admission by referring only to "some border areas",[43] and by going on to say that "these sectors are rare because the land boundary between Cameroon and Nigeria is not only completely delimited, but is also, probably, one of the most extensively demarcated in Africa".[44] This statement is surprising and misleading - and wrong.

> (1) While the land boundary between Lake Chad and Bakassi is in principle completely delimited, that delimitation is in a number of places defective, as Nigeria has demonstrated in considerable detail in its *Counter-Memorial*[45] and in Chapter 7 of this

Rejoinder. The IGN 1:50,000 maps of Cameroon produced in the period 1965-1969 contain many boundaries delineated by broken lines or crosses, showing doubt as to the delimitation (and even if, as Cameroon asserts,[46] IGN maps are not directly Cameroon maps, the Cameroon Government is not dissociated from their production: they are, in the absence of any other official indication of Cameroon's views, the best available evidence of Cameroon's official position as to the course of the boundary on the ground).[47] The uncertainty as to the delimitation in this region was noted by Professor Brownlie, in observing that "There is no doubt that the process of demarcation in [most of the land boundary] will involve clarification of the delimitation in various places".[48] It is precisely because there are defects in the delimitation of the boundary that there is uncertainty as to where the boundary runs, and this uncertainty has to be borne in mind in understanding the realities of the situation on the ground.

(2) Those uncertainties would matter less if the boundary had indeed been extensively demarcated, as Cameroon states. The fact, however, is that while some parts of the current boundary between Nigeria and Cameroon have been demarcated, those parts involve principally the sector from Boundary Pillar 64 to the Boundary Pillar on the River Akpakorum. By far the greater part of the land boundary - some 75% - has never been demarcated. Moreover, only 4 of the 82 incidents alleged by Cameroon related to the relatively small sector of the boundary which has been demarcated. All the rest concerned undemarcated sectors, in which the uncertainties referred to by Nigeria played their full part.

(3) In acknowledging that "in some border areas, the demarcation is unclear and has led to misunderstandings or uncertainties in the absence of a precise line marked on the terrain",[49] Cameroon is confusing demarcation and delimitation - a conclusion borne out by Cameroon's immediately following statement that these sectors are rare because the boundary has been "extensively demarcated"[50] (as to the incorrectness of this proposition, see sub-paragraph (2) above).

15.44 Nigeria's circumspect remarks are far removed from the argument attributed to Nigeria by Cameroon and which Cameroon has invented. Cameroon does not - indeed, cannot - challenge the facts noted by Nigeria, namely that in many areas the boundary is undemarcated and is not even precisely delimited in the relevant instruments, and that the boundary runs through difficult terrain.

15.45 The *second* point to be made in response to Cameroon's assertion that the boundary delimitation is perfectly clear, is that it is wholly without substance. Cameroon says of its version of Nigeria's alleged argument that "This alleged lack of clarity is pure invention. There can be no serious doubt that the two areas laid claim to by Nigeria belong to Cameroon."[51] This calls for a number of comments.

(1) Nigeria has not said that there was a lack of clarity in relation to the boundary in the

Bakassi and Darak areas (the 'deux zones' referred to by Cameroon). Indeed, Nigeria's position with respect to Bakassi is not that the boundary lacks clarity but rather the very opposite: the boundary *is* clear, and follows the course set out at NC-M, Chapter 11. This, naturally, is a different course from that proposed by Cameroon, but that simply reflects the existence of a dispute about sovereignty over the Bakassi Peninsula, not a Nigerian assertion that the boundary is unclear. Nigeria's position with respect to the boundary in the Darak area is set out above, in Chapters 4 and 5.

(2) Cameroon advances arguments based on the underlying proposition that its position as regards Bakassi and Darak is correct. But that is the very issue before the Court. To Cameroon's bold assertion that "There can be no serious doubt that the two areas laid claim to by Nigeria belong to Cameroon" Nigeria can only answer that "There can be no serious doubt that those two areas belong to Nigeria". Cameroon's assertion of its case as if it were a settled fact does not make it a fact: it remains merely the conclusion which Cameroon draws from its own arguments. Cameroon no doubt believes its arguments to be sound and Nigeria's to be wrong; Nigeria similarly believes that *its* arguments are sound and that it is Cameroon's which are wrong.

(3) It is absurd for Cameroon to pretend that Nigeria, in order to prove the existence of 'doubts and defects' which characterise the existing boundary, has had to go back as far as the ninth century. This is yet another complete distortion by Cameroon of Nigeria's position. Cameroon is understandably aggrieved that Nigeria has drawn the attention of the Court to the historical background to the matters now in dispute between the parties: Cameroon itself omitted to do so, no doubt because those historical circumstances served to demonstrate the weakness of Cameroon's case. But for Cameroon to seize on the earliest date mentioned by Nigeria in a general, and brief, resumé of the historical background, and then to present that date as the foundation for certain very specific, and relatively modern, 'doubts and defects' to which Nigeria has drawn attention is fanciful. As Nigeria made very clear in its *Counter-Memorial*,[52] and further explains in this *Rejoinder*,[53] the doubts and defects to which Nigeria has drawn attention derive from events within the last 90-odd years: it is the Anglo-German Treaty of March 1913 which is in part ineffective, and it is the terms of the Thomson-Marchand Declaration of 1929-1931 and of the Nigeria (Protectorate and Cameroons) Order in Council 1946 which are in certain respects defective as a delimitation of parts of the boundary.

I. *Uti possidetis juris*

15.46 Cameroon moreover invokes in this context the application of the principle of *uti possidetis juris*. This merits fuller, and separate, consideration.

15.47 Nigeria has elsewhere considered and rejected Cameroon's argument that the *uti possidetis* principle in some way prevents the boundary as at Independence from being modified as a consequence

of the subsequent conduct of the parties.[54] In addition to the points made there, Nigeria makes the following further points as to the limited application of the *uti possidetis* principle in respect of boundaries which are in some way unclear or defective.

(1) Cameroon's invocation of the principle of *uti possidetis juris* as the clear foundation of Cameroon's rights regarding the clearly defined[55] line of the boundary[56] is misplaced. Nigeria agrees with Cameroon that the principle applies in Africa. But that principle is not an automatic and absolute rule. In particular it does not convert into a legally binding boundary line a boundary which was previously open to question: *uti possidetis juris* is not a remedy which cures legal defects in previous boundaries.

(2) Moreover, in its primary sense the principle is not just that of *uti possidetis* but includes the additional word "*juris*". The reference is thus not just to the limits in fact of the previous territorial sovereign's authority, but to the *lawful* limits of that authority. The principle, in its pure form, calls for an enquiry into, and eventual proof of, the facts as to the lawful territorial limits of the previous sovereign's authority; there is nothing inconsistent with the principle in engaging in such a factual enquiry and requiring such proof. This has been done in several arbitrations. If in some particular case the limits of the previous territorial sovereign's authority were laid down by a treaty, then those limits are duly established and proved by the treaty. But just as the essential facts are a matter for enquiry and proof in the light of the particular circumstances, so too is the meaning, application, validity and effectiveness of any treaty that may be relied on.

(3) Nigeria accepts that, as the Court said in *the Frontier Dispute Case (Burkina Faso/ Mali)*[57] (in a passage quoted by Cameroon[58]), the obvious purpose of the principle

> "is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power".

This is indeed a valuable function served by the principle. But the principle is not an absolute rule demanding the observance of every pre-existing boundary, however erroneous or defective; its general purpose does not require that there be any such absolute rule. By virtue of the principle there may well be a legal presumption that previous boundaries continue after Independence. But it is a presumption which inevitably begs the question, "what were the boundaries immediately prior to Independence?". This can only be answered by an enquiry into the facts of the particular case and, if reliance is placed on one or more treaties, an enquiry into the meaning, application, validity and effectiveness of those treaties.

(4) Moreover, in the immediate context Cameroon's claim relates to the alleged non-

observance by Nigeria of the principle *uti possidetis juris*, and not with the quite separate matter of the use of force or other "fratricidal struggle": the Court's *dictum* quoted by Cameroon is thus irrelevant to the matter immediately in issue.

(5) In so far as the principle *uti possidetis juris* calls for an enquiry into the territorial extent of the previous sovereign's authority, Nigeria has shown that, in the two areas referred to by Cameroon, it is far from clearly established that the territorial limits of Cameroon's authority extended as far as the line now asserted by Cameroon as the boundary.[59]

(6) In so far as that principle calls for an enquiry into the meaning, application, validity and effectiveness of the treaties on which Cameroon relies, Nigeria rejects Cameroon's assertion that "the line of the boundary ... in its entirety is clearly defined by treaties as well as other international acts, the validity of which is indisputable".[60] First, as Nigeria has been at pains to point out,[61] the line of the boundary is *not* in its entirety 'clearly defined' by the relevant treaties, there being several stretches of the boundary where the delimitation in the relevant instruments is defective. Second, Cameroon's assertion that the validity of the treaties and other international acts "is indisputable" is, again, to elevate a Cameroonian *argument* to the level of accepted fact. As Nigeria has demonstrated, while Nigeria does not challenge the validity of the relevant treaties and other instruments in their entirety, it does partially dispute their effectiveness as well as Cameroon's interpretation of their meaning and application. For Cameroon to say that its own view of these matters is "n'est pas contestable" is self-serving and wishful thinking.

(7) Nigeria's attitude to the principle *uti possidetis juris* is not, contrary to what Cameroon alleges,[62] an attempt at "the denial of the applicability of the principle of *uti possidetis*". Cameroon exaggerates. Nigeria does not deny the applicability of the principle across the board, as Cameroon implies. Nigeria acknowledges the value of the principle for its boundary with Cameroon. Thus Nigeria accepts that the land boundary between Lake Chad and Bakassi is substantially determined by the delimitation recorded in the various instruments which both Parties agree are relevant; Nigeria accepts the validity of those instruments,[63] but at the same time Nigeria submits that in some areas the delimitation in those instruments is defective and therefore cannot be accepted by Nigeria without clarification or interpretation of the relevant parts of those instruments by the Court. Similarly, with regard to Bakassi, Nigeria accepts the relevant instrument except in so far as it unlawfully purported to cede Bakassi to Cameroon. The principle *uti possidetis juris* does not make a treaty clear when it is defective or ambiguous; such legal considerations are an inherent part of the principle. Nigeria's conduct since Independence, and in its conduct of this present case, is thus far from constituting a denial of the principle, but is in substantial accord with the principle.

(8) Similarly, Nigeria is not attempting "to neutralise the application of the principle of *uti possidetis.*"[64] For the reasons already given, Nigeria is seeking rather to apply the principle in its proper perspective, which means[65] that a pre-Independence boundary can only continue after Independence subject to such doubts and defects as attached to it at the time of Independence. The successor State cannot inherit a better title to its frontier lands than its predecessor State had: the principle *uti possidetis juris* does not perfect an imperfect boundary. Nigeria's position is thus fully in accordance with the principle, not a denial or neutralisation of it.

(9) Nigeria's position is also fully consistent with the rules on State succession in relation to boundary treaties. Where a boundary is regulated by a treaty, the matter falls to be considered primarily in the light of the rules of international law relating to succession of States in relation to treaties. Those rules reflect the principle *uti possidetis juris*. Article 11 of the Vienna Convention on Succession of States in Respect of Treaties 1978 provides that

"A succession of States does not as such affect:

(a) a boundary established by a treaty; ..."

Article 14 of the Convention goes on to provide:

> "Nothing in the present Convention shall be considered as prejudging in any respect any question relating to the validity of a treaty".

In its Commentary on the first of these provisions the Commission noted that in a number of modern instances a successor State has become involved in a boundary dispute, but added that

> "these appear mostly to be instances where either the boundary treaty in question left the course of the boundary in doubt or its validity was challenged on one ground or another; and in those instances the succession of States merely provided the opportunity for reopening or raising grounds for revising the boundary which are independent of the law of succession" (paragraph 16) of Commentary to draft Articles 11 and 12).

The Commission went on to conclude that the draft Articles should contain a provision that boundary settlements are not affected by "a succession of States as such". The Commission explained:

> "Such a provision would relate exclusively to the effect of the succession of

> States on the boundary settlement. *It would leave untouched any other ground of claiming the revision or setting aside of the boundary settlement, whether self-determination or the invalidity or termination of the treaty*. Equally, of course, it would leave untouched any legal ground of defence to such a claim that might exist. In short, the mere occurrence of a succession of States would neither consecrate the existing boundary if it was open to challenge nor deprive it of its character as legally established boundary, if such it was at the date of the succession of States." (paragraph 17 of the Commentary to draft Articles 11 and 12: emphasis added)

After further consideration the Commission repeated its earlier conclusion:

> "Most members ... were also of the opinion that the articles, as drafted, were limited to the question of the effects of a succession of States as such on the boundary, ... and *did not affect, in any way, the validity of the treaty itself, or indeed any other grounds that there might be for contesting the boundary*..." (paragraph (44) of the Commentary to draft Articles 11 and 12: emphasis added)

To make the position clear the Commission added a new draft Article, in terms which were subsequently to become those of Article 14 of the Vienna Convention.

(10) In so far as Cameroon relies on the resolution adopted at Cairo in 1964 by the Conference of OAU Heads of State and Government to the effect that "all Member States pledge themselves to respect the borders existing on their achievement of national independence", Nigeria recalls that the International Law Commission commented on this resolution that it

> "does not, of course, mean that boundary disputes have not arisen or may not arise between African States. But the legal grounds invoked must be other than the mere effect of the occurrence of a succession of States on a boundary."[66]

Thus the Commission accepted, consistently with what it said elsewhere,[67] that under the OAU Resolution boundaries may be questioned on grounds other than the mere fact of succession.

J. Additional grounds of complaint against Nigeria

15.48 In its *Memorial* Cameroon raised several major allegations against Nigeria, of alleged breaches by Nigeria of certain major principles of international law. These were summarised by Nigeria, at NC-M paragraph 24.32, as being that Nigeria -

- resorted to force against Cameroon, contrary to the prohibition against the use of force accepted as part of international law;

- infringed Cameroon's territorial sovereignty (including its territorial sea);

- intervened in Cameroon's affairs, contrary to the principle of non-intervention;

- militarily occupied Cameroonian territory; and

- failed to respect Cameroon's sovereignty.

15.49 Cameroon purports to see some paradox in the fact that Nigeria should have so summarised Cameroon's case,[68] and seems to attach importance to the fact that this summary was in Nigeria's own words.[69] Cameroon also observes that this summary occurred "in a passage which is unfortunately isolated within [Nigeria's] Counter Memorial."[70] These remarks by Cameroon are inexplicable. Cameroon implicitly accepts that Nigeria has correctly summarised Cameroon's position. There is no paradox in that. Nor can Nigeria summarise Cameroon's position otherwise than in its own words. Nor, more significantly, is it correct that the passage is isolated: it is simply the briefly stated starting point for the main body of Nigeria's argument in this part of the case, to the effect that Cameroon's allegations are unsound in fact and in law.

15.50 Apart, however, from those somewhat misconceived comments on Nigeria's summary of Cameroon's argument, Cameroon now adds two further grounds of complaint against Nigeria. In RC paragraph 11.15 Cameroon adds the complaints that

> "Nigeria has also violated the fundamental principle by virtue of which 'States settle their international disputes by peaceful means, so that international peace and security as well as justice are not endangered,' "

and

> "Nigeria has taken no account of the measures indicated by the Court in its Order of 15 March 1996"[71]

Nigeria will respond to these additional complaints in the immediately following paragraphs.

K. The duty to settle disputes by peaceful means

15.51 Cameroon merely asserts, without any attempt to substantiate its assertion, that Nigeria is in breach of its duty to settle its international disputes by peaceful means. Nigeria accepts that such a duty

exists, but totally rejects any suggestion that it has acted in breach of it.

15.52 As Nigeria has shown in its *Counter-Memorial* and in this present *Rejoinder*, the *status quo* in the Bakassi and Lake Chad areas, and along the land boundary between them, was one of long-standing Nigerian administration and sovereignty, which Cameroon has sought to undermine. Rather than Nigeria having failed to settle its disputes by peaceful means, it is Cameroon's expansionist aims which have destabilised a previously stable region and have led to the existence of a dispute which is of Cameroon's making and which Cameroon maintained by its military and paramilitary actions. Nigeria recalls that the duty upon States to settle their disputes peacefully has as one of its purposes that justice be not endangered.

L. Fulfilment of the Court's Order indicating Provisional Measures

15.53 Cameroon similarly asserts[72] that Nigeria has taken no account of the measures indicated by the Court in its Order of 15 March 1996. Nigeria rejects as unfounded Cameroon's allegation that Nigeria is in breach of the Court's Order. As regards those allegations made in this context in Cameroon's *Reply*,[73] Nigeria has responded in paragraphs 170-181 of the Appendix to Chapter 16 below, showing Cameroon's allegations to be without foundation. Subsequently to the submission of its *Reply*, Cameroon, by a letter of 28 September 2000,[74] drew the Court's attention to additional complaints as to Nigeria's alleged non-observance of the Court's Order. Nigeria has shown, in its letter to the Court of 25 October 2000,[75] that Cameroon's allegations are baseless.

M. Justifications: honest belief, reasonable mistake, and self-defence

15.54 As Nigeria has noted above (paragraph 15.7), one of the conditions to be satisfied before a State incurs international responsibility for its conduct is that the conduct complained of must not fall within certain accepted justifications. In that context Nigeria invoked honest belief, reasonable mistake and self-defence as justifications for a number of the incidents relied on by Cameroon.

15.55 For its part Cameroon now asserts that 'honest belief' and 'reasonable mistake' are not good defences;[76] Cameroon also asserts that self-defence is not applicable.[77] Nigeria rejects these Cameroonian assertions.

15.56 As regards *honest belief and reasonable mistake*, Nigeria believes that it is correct to distinguish between, on the one hand, the continued presence of a State's officials in territory with the honest belief that that territory belongs to their State and, on the other hand, the forceful incursion of a State's officials into territory which is occupied by another State even if they believe it to belong properly to their own State. It is the former situation which obtains in the present circumstances. Nigeria submits that in such a situation the continued presence of a State's officials and other manifestations of sovereign authority in the territory do not give rise to international responsibility if, in the event, title to territory is held later on by a competent court to vest in another State.

15.57 Cameroon's arguments to the contrary are in effect predicated on two assumptions: first, that there is a known exhaustive list of circumstances precluding illegality,[78] and second, that the existing territorial dispositions as between Nigeria and Cameroon are clearly established.[79] However, neither is correct.

(1) There is no warrant for the assertion that the circumstances precluding liability are already exhaustively listed. Certain such circumstances are indeed well-known, but the list of categories can by no means be regarded as closed. The work of the International Law Commission on State Responsibility is not yet concluded, and even when concluded the degree of its acceptance in State practice is still problematical. It is indeed noteworthy that general State practice hitherto is *not* to link disputes as to territorial title with claims of international responsibility on the part of whichever State loses its claim to sovereignty over the disputed parcel of land. This very strongly suggests an acceptance by States that the considerations of good faith which underlie arguments as to honest belief and reasonable mistake must be given due weight. It is to be noted that in the case concerning the *Temple of Preah Vihear*[80] the Parties did not seek, and the Court did not adjudge, any finding of international responsibility as against the other party should it be held not to have sovereignty over the area in dispute: the Parties, and the Court, limited themselves to certain specific matters such as the return of property and the withdrawal of official personnel.[81]

(2) It is apparent from the whole context of the present case that there is room for argument about each State's territorial limits. It is precisely in such situations of disputed territorial title that considerations of honest belief and reasonable mistake are relevant.

(3) Moreover the International Law Commission in Chapter V of Part 1 of the Draft Articles on State Responsibility is not seeking to specify exhaustively the circumstances precluding wrongfulness in relation to every case that may occur. It is concerned only to formulate the circumstances applicable in principle to all or most international obligations. This is without prejudice to the possibility that in relation to particular obligations or particular primary rules, there may be circumstances which excuse non-performance. Many examples could be cited of such specific defences or excuses, and the Commission has given no indication of any intention to over-ride them, rather the contrary, as its provisions on *lex specialis* (now Article 56) clearly implies. In relation to boundary incidents or disputes, the rules of State responsibility do not exist merely to amplify one State's assertions (whether or not well-founded) as to the correct legal position so far as territorial sovereignty is concerned; they have a distinct purpose, which is to ensure the peaceful settlement of disputes including territorial disputes. Thus where a State is peacefully in occupation of territory under a claim of title (whether or not that claim is ultimately upheld), it is entitled to defend the civilians under its authority and the territory

concerned against attack. Its doing so by the use of proportionate force does not give rise to State responsibility. In any event it is a complete distortion of the work of the International Law Commission in the field of State responsibility, and of the intent of the Draft articles, for Cameroon to imply that the Commission has sought to exclude any such specific argument by way of defence (see further J. Crawford, Second Report on State Responsibility, A/CN.4/498/Add.2 (1999), paragraph 304 and references).

15.58 Cameroon questions the possibility of Nigeria being able to hold any honest belief in this matter, or making any reasonable mistake as to the situation. Cameroon's arguments in this sense are unfounded (as well as being related solely to Bakassi and thus ignoring the Lake Chad area and the land boundary between Bakassi and Lake Chad).

(1) Thus Cameroon asserts that the Anglo-German Treaty of March 1913 put Bakassi on the German side of the boundary: *but* it only did so if that treaty was wholly effective, and Nigeria has shown[82] that that was not the case.

(2) Cameroon goes on to ask whether "Nigeria has never heard of the legal presumption of the validity of treaties": *but* Cameroon might equally be asked whether it is not aware that a *presumption* is no more than that, and that if one party considers that it holds solid proof to the contrary, the presumption no longer stands.

(3) Cameroon asks also how, given that presumption, there can be an honest belief in the partial invalidity of the 1913 treaty: the reason is clear - the *presumption* cannot transform a defective treaty into a fully effective one, and it is in fact rendered inapplicable by the clear evidence and argument as to Great Britain's lack of competence to dispose of the Bakassi Peninsula to Germany.

(4) Cameroon asserts that Nigeria is acting inconsistently with the views on Bakassi expressed by its Attorney-General in 1972: *but* the Attorney-General, however eminent, was but one officer of State (and it is well-known that differences of opinion exist within governments and among lawyers within governments), and what counts in the final analysis is the authoritative opinion that is attributed to the Government.

(5) Cameroon finally asserts that Nigeria's current position on Bakassi contradicts the recognition by Nigerian officials of Cameroon's title to Bakassi: *but* Cameroon seems unaware of the continuous manifestations of Nigerian State authority over the disputed areas since Independence in 1960, as demonstrated above in Chapters 3 and 5.

15.59 As regards *self-defence*, Cameroon rejects Nigeria's reliance on self-defence. Cameroon bases this rejection on the assertion that, by virtue of the principle of *uti possidetis*, the relevant international instruments determine the territorial position as between Nigeria and Cameroon, with the result that the territory in question is Cameroonian and Nigeria cannot, on Cameroonian territory, enjoy a right of self-

defence.

15.60 However, as shown elsewhere,[83] Cameroon's reliance on the principle *uti possidetis juris* for this purpose is misplaced. The relevant international instruments are in some crucial respects unclear or ineffective, and accordingly the assertion that Nigeria was asserting a right of self-defence "in Cameroonian territory" is question-begging. As Nigeria has shown, Cameroon has sought by military and paramilitary actions to upset the *status quo* in Nigerian territory, and Nigeria has acted entirely within its rights in accordance with international law in responding by way of self-defence to those Cameroonian actions.

N. Non-intervention

15.61 In a number of instances Cameroon alleges that Nigerian activities constitute a breach of the duty of non-intervention. Thus where Nigerian customs officials or police are said by Cameroon to have acted in locations over which Cameroon claims to have sovereignty, Cameroon categorises Nigeria's actions as involving intervention in Cameroon's affairs. The alleged incidents considered in paragraphs 46 *et seq.* and 51 *et seq.* of the Appendix to Chapter 16 below are but two examples of this practice.

15.62 Nigeria denies that the alleged activities constitute intervention in breach of the obligation not to intervene in the affairs of another State.

15.63 First, in so far as the activities in question might have occurred in Bakassi or in Bakassi waters, they took place in Nigerian, not Cameroon, territory and therefore no question of intervening in Cameroon's affairs arises.

15.64 Second, even if the alleged activities took place in Cameroon territory (which is denied), they did not constitute intervention in the sense in which that term is used in the context of the obligation of non-intervention. Properly understood, that term involves "forcible or dictatorial interference by a state in the affairs of another state, calculated to impose certain conduct or consequences on that other state".[84] It is, essentially, a prohibition of action directed against the personality and political independence of the victim state, and does not embrace every isolated violation of the State's territory. This is reflected in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty 1965 (General Assembly Resolution 2131 (XX)), which (operative paragraph 1: emphasis added) condemns

> "armed intervention and all other forms of interference or attempted threats *against the personality of the State* or against its political, economic and cultural elements".

That quoted language was repeated in paragraph 1 of the statement of the 'non-intervention' principle in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States 1970 (General Assembly Resolution 2625 (XXV)).

15.65 Moreover, the assertion of Nigerian responsibility on grounds of intervention adds nothing to, and is subsumed within, the underlying Cameroonian claim to sovereignty over the disputed areas. If, as Nigeria contends, Cameroon's claim is unsuccessful in these proceedings, Cameroon's claims for wrongful intervention necessarily fall away. But even if, contrary to the submissions of Nigeria, title to those areas is held to vest in Cameroon, it does not follow that the separate head of claim on grounds of wrongful intervention must necessarily succeed. As Nigeria has shown,[85] considerations of honest belief and reasonable mistake would then serve to preclude international responsibility for the Nigerian activities which took place in territory which Nigeria reasonably considered to be its own territory.

O. Consequences flowing from Nigeria's alleged international responsibility

15.66 Cameroon argues that Nigeria's international responsibility gives rise to certain consequences.[86] Nigeria acknowledges that international responsibility for a breach of international obligations carries with it certain consequences in the way of remedies and reparation which may be ordered by the Court. The precise remedies and reparations to be ordered will depend upon the specific findings of the Court regarding the nature and circumstances of the particular breach in question.

15.67 Nigeria, however, denies that it is in breach of any international obligation owed to Cameroon, and accordingly rejects as premature, irrelevant and question-begging the observations made in this respect by Cameroon.

15.68 At the same time Nigeria maintains its own claims for reparations in respect of the counter-claims which it has raised against Cameroon on the basis explained in Chapter 18 below.[87]

P. Burden of proof

15.69 Cameroon's arguments on the burden of proof [88] call for a number of comments.

15.70 Cameroon purports to regard Nigeria as having admitted its occupation by force of a part of the Bakassi Peninsula and of the Darak area. This view of the matter is wrong; Nigeria refers to what is said above, at paragraphs 15.8-15.11.

15.71 As regards the incidents said to have occurred along the land boundary, Nigeria notes that Cameroon accepts the obligation to establish the facts it mentions:

> "Cameroon must provide the required proof ... One cannot deny the necessity for the defendant Party as well as for the Court itself to know the subject matter, the place, the date and the manner in which the incidents to which Cameroon refers took place."[89]

15.72 Cameroon goes on to say that it "considers that it has established the facts to a sufficient degree"[90]

Nigeria strongly disagrees. In its *Sixth Preliminary Objection*, in its *Counter-Memorial* and now in this present *Rejoinder*, Nigeria has demonstrated Cameroon's repeated "lack of precision"[91] in respect of incidents cited, its failure to provide "all the information capable of identifying"[92] them, including ... "[a]bove all, the date on which [they] allegedly took place," and generally the fact that. "all the ... factual pieces of information are very scanty in nature, to the extent that Nigeria is unable to put together a precise idea of the facts." *Cameroon accepts the need for adequate information on all these matters* - for the phrases quoted are all (with the exception of the substitution of "Nigeria" for "Cameroon" in the last one) taken from Cameroon's *Reply*[93] where they appear as criticisms of Nigeria's counter-claims.

15.73 Cameroon seeks to justify its own failure to provide adequate evidence to satisfy the burden of proof resting upon it by seeking to assert that the requirement to provide evidence is applied "with a certain flexibility, according to the circumstances characterising the dispute in question"[94] Cameroon, however, appears to equate "flexibility" with "laxity". The Court has never said, or even suggested, that allegations need not be properly proved. The cases cited by Cameroon are unhelpful to its argument. In the *Corfu Channel* case[95] the Court's acceptance of circumstantial evidence arose in the particular circumstances of that case, where the alleged violation of international law occurred wholly within the territorial sea of the Respondent State and the Applicant, in the absence of co-operation from the respondent, was therefore unable to produce direct evidence of what had happened. The case concerning *United States Diplomatic and Consular Staff in Teheran*[96] equally involved special considerations: the Court did not just open the door to press reports in general, but rather, faced with a non-participating defendant, recognised that press reports can be used as evidence in the particular circumstances where they testified to a situation which is of world-wide notoriety and of which, in effect, the Court has judicial knowledge. The great caution needed before placing reliance on media reports was emphasised by the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua*[97] - even though that case too concerned (at the merits) a non-participating Respondent State. And in that case the Court made clear that the burden of proof rests with the party making an allegation, and it is that party which suffers the consequences if it fails to satisfy that burden. The relevant passages have already been put before the Court in Nigeria's *Counter-Memorial*.[98]

15.74 Cameroon seeks also to excuse its lack of adequate evidence by invoking the limited facilities for evidence-gathering available in the Cameroonian countryside far from urban centres.[99] Nigeria is well aware of those constraints. But they cannot be allowed to diminish to vanishing point the normal legal requirement that allegations must be properly established by adequate proof. Thus, to take but one example, Cameroon accepts that

> "It is clear that, *quite often*, no witness was present at the precise moment an incident occurred, or that the witnesses were simple individuals."[100] (emphasis added)

Whatever the reason, the absence "quite often" of witnesses to an incident cannot but undermine Cameroon's attempt to substantiate the incident. Similarly, witnesses who were only simple individuals

are in no way being reproached for that fact, but at the same time that fact does cast doubt on the weight to be attached to their testimony.

15.75 Again, Cameroon states that

> "In the majority of cases, a certain lapse of time is necessary before public officials arrive on the scene."[101]

This too is understandable. But there is, in a case where international responsibility is being alleged against another State, a world of difference between the lapse of a few days before officials can get to the scene of an alleged incident, and the lapse of several - sometimes many - years before that incident is brought to the knowledge of the other party. The former does not justify the latter.

15.76 Finally, Cameroon seeks to justify the use of official reports by departments or agencies of a State's central administration in lieu of first-hand evidence. Nigeria acknowledges that such reports will usually not be written by those with direct personal knowledge of the incident being referred to; they will, as Cameroon puts it, reflect information which "is gathered by some people, and synthesised, reported and used by others."[102] But therein lies the precise problem. All those with experience of bureaucracies know the extent to which the 'synthesising, reporting and use' of information by persons other than those with first-hand knowledge of the circumstances is apt to involve distortions, abbreviation and embellishment of the original version of events. That is why Nigeria does not object to the use of such second-hand or third-hand reports as such, but to their use *unsupported by the original evidence, statements, etc., on which they were based.* A report by a distant official, giving a third-hand account of an event, is simply not a reliable basis for the attribution of international responsibility. If the original evidence on which the report was based is available, it should be produced; but if, without good reason, there is no such evidence available, it is difficult to accept the report itself as sufficient to satisfy the burden of proof - which is necessarily high in cases involving so serious a matter as a State's international responsibility.

Q. The role of protests

15.77 Cameroon seeks to argue that its failure to protest against those of Nigeria's actions which it regards as a violation of its rights should not be held against it.[103]

15.78 Cameroon appears to regard a protest as a method of proof, and as such as only one among many such methods, capable of being replaced if necessary by other methods of proof.[104] But that is to misunderstand the role of protest. The position is expressed thus in *Oppenheim's International Law* (9th ed., 1992, at pp. 1193-1195 paragraph 579; footnotes omitted):

> "A protest is a formal communication from one state to another that it objects to an act performed or contemplated by the latter. ... A protest principally serves the purpose of

> preserving rights, or making it known that the protesting state does not acquiesce in, or does not recognise, certain acts: but it does not nullify the act complained of....
>
> On the other hand, if a state acquires knowledge of an act which it considers internationally illegal and in violation of its rights, and nevertheless does not unambiguously protest, this attitude may imply a renunciation of those rights and acquiescence in the act complained of. The significance of an absence of protest will to a large extent depend upon all the circumstances of the situation; failure to protest by a state being directly and substantially affected by the act in question will be of greater significance than failure by a state not so affected."

There can be no doubt that in relation to the Nigerian acts of which Cameroon now complains, Cameroon is a State - indeed, *the only* State - directly and substantially affected.

15.79 Cameroon's failure to protest when it should have done so in order to protect its rights leads inevitably to the conclusion as a matter of law that Cameroon acquiesced in the acts in question. The relevance of protest against Nigerian actions, and of failure to protest, is thus not so much a matter of proof, but a matter of preserving, or losing, the right to present a claim against Nigeria arising out of those actions.

15.80 Cameroon seeks to justify its failures to protest when it should in principle have done so if it was to preserve its rights to present a claim, by suggesting that it did not always lodge protests because it did not wish to raise tensions in its relations with Nigeria. This calls for two comments.

> (1) Cameroon cites President Ahidjo's letter of 23 May 1981[105] as evidence that it had told Nigeria that it would not raise every incident as an affair of State but would prefer to keep them to a local level. But the portion of that letter quoted by Cameroon says something rather different, since in it the President states that "time and time again ... I instantly drew your attention to the incidents which are occurring...". So Cameroon did raise such incidents "time and time again" at Head of State level. And Cameroon's protestations of wishing in future to downgrade these matters to the purely local level must be seen against the background that this letter was written in the context of Cameroon's ambush of Nigerian soldiers in Nigerian territory for which President Ahidjo apologised and paid compensation.[106] It is not surprising that Cameroon should wish to keep such incidents at a local and unobtrusive level.
>
> (2) Cameroon is free to make the lawful choices it wishes to make for political reasons; in that respect it is free to choose not to protest for political reasons associated with its view of relations with a neighbouring State. It has preferred a policy of reduced political tensions to the protection of its legal position, and has in consequence chosen to run the risk that its failure to protest will be held against it. It is free to make such a choice, but cannot thereby escape the legal consequences of doing so - particularly when it is itself the

initiator of the proceedings which depend upon its legal position not having been prejudiced.

R. Facts need to be clearly established

15.81 In cataloguing the requirements to be met if a State was to be held internationally responsible for its conduct, Cameroon omitted to deal with the need for the facts to be clearly established. Nigeria raised this question in its *Sixth Preliminary Objection*. This was to the effect that Cameroon had not, in its *Applications* and *Memorial*, given an adequate indication of the facts on which its allegations of Nigeria's international responsibility were based. In rejecting this Preliminary Objection the Court (in a passage quoted with approval by Cameroon[107]) stated that while Cameroon's statement of the facts on which it relied was sufficient to enable the *Application* to proceed, this did not "prejudge the question whether, taking account of the information submitted to the Court, the facts alleged by the Applicant are established or not ... Those questions belong to the merits."[108] In other words, the Court held that while the facts given were adequate to enable Cameroon's case to proceed, they were not necessarily adequate to enable it to succeed.

15.82 Whether the facts are sufficient to enable Cameroon to sustain the serious allegations made against Nigeria is now an issue which the Court must consider. This is a matter which can only be examined in relation to the alleged circumstances of each incident relied on by Cameroon as the basis for or in support of its claims against Nigeria. Nigeria will therefore revert to this question in its incident-by-incident consideration of Cameroon's allegations in the Appendix to Chapter 16 below.

S. Incidents must not to be time-barred

15.83 In cataloguing the requirements to be met if a State was to be held internationally responsible for its conduct, Cameroon also omitted to include the need for the claim to relate to incidents occurring sufficiently recently so as not to be time-barred. Cameroon has refrained from any detailed comment on this issue.[109]

15.84 Cameroon does not seek to deny that a rule of extinctive prescription forms part of international law. Given the authorities cited by Nigeria,[110] Cameroon can scarcely do so. While international law does not prescribe a specific time limit after which claims are barred, the rule is rooted in considerations of equity, good faith and acquiescence, and the practical problems associated with the pursuit of stale claims. Examples of such problems are to be found in the Appendix to Chapter 16 below, at paragraphs 12 and 16(3).

15.85 These considerations are reflected in the approach adopted by the International Law Commission in its work of State Responsibility. Draft Article 46 as adopted in 2000[111] provides:

> "Loss of the right to invoke responsibility

> The responsibility of a State may not be invoked if:
>
> (a) The injured State has validly waived the claim in an unequivocal manner;
>
> (b) The injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim."

The Special Rapporteur's Third Report,[112] submitting the proposal which became Article 46, noted that

> "The overall picture is one of considerable flexibility... [T]he decisive factor is whether the respondent could have *reasonably* expected that the claim would no longer be pursued... Moreover, given modern means of communication and the increased availability of third-party remedies in many cases,[113] a somewhat more rigorous approach to the pursuit of available remedies seems justified, even in the context of inter-State claims."[114] (emphasis in the original)

15.86 Much depends on the circumstances of particular cases. These include not just the immediate circumstances of the incident itself, but also such associated matters as the level of public awareness of events in the locality in question and the state of communications with outlying areas. Cameroon itself invokes this latter consideration in the different context of the burden of proof[115]: it states that

> "it is necessary to take into account the factual circumstances which prevail far from urban centres, in the Cameroonian countryside near the boundary with Nigeria."[116]

15.87 While that is a bad argument in relation to the burden of proof, as explained in paragraph 15.74 above, it is very relevant to the practical implications of Cameroon's pursuit of stale claims. In relation to remote and rural communities, like all those concerned in the incidents put forward by Cameroon, unless complaints are made reasonably soon after the events in question have occurred it is often not possible for a respondent State to trace and comment upon what is said to have happened. A much shorter period for extinctive prescription is justified in those circumstances than that which would be appropriate "were a similar incident to occur in the urbanised areas of industrialised countries."[117]

15.88 Cameroon makes only three brief comments on extinctive prescription, all in RC paragraph 11.213. Each is mistaken.

15.89 Cameroon says that Nigeria has not indicated which are the incidents in respect of which claims are barred by extinctive prescription. This is wrong. When elaborating the general rule of extinctive prescription at NC-M paragraphs 24.52-24.54, Nigeria stated that it would draw attention to each alleged incident which it considered to be now barred by lapse of time. In examining the 82 alleged incidents

raised by Cameroon, Nigeria did precisely that: see, for example, the incidents numbered 8 (at NC-M paragraph 24.101), 9 (at NC-M paragraph 24.107), 10 (at NC-M paragraph 24.116), 11 (at NC-M paragraph 24.121) and 22 (at NC-M paragraph 24.190). Many other incidents are specifically identified in a similar way as being now too stale to be the subject of international claims.

15.90 Cameroon says that the incidents only "date back some fifteen years in the oldest cases". This is wrong. Thus the incident numbered 8 by Nigeria dates back to 1970 (i.e. 24 years before Cameroon instituted these proceedings, and now some 30 years old), and that numbered 49 dates back to 1962 (i.e. 32 years before the case was started, and now some 38 years old). Even in its *Reply* Cameroon cites incidents much older than its own 15-year limit: thus one incident is said to have occurred in 1964.[118]

15.91 Cameroon adds that in any event Cameroon's main claim relates to Nigerian occupation of Cameroonian territory, which is a continuing state of affairs and therefore not a matter to which extinctive prescription is relevant. But (a) Nigeria has not cited extinctive prescription in relation to current circumstances, and (b) Nigeria's response to Cameroonian claims arising out of current circumstances rests on other grounds (principally that the territories in question are Nigerian and not Cameroonian).

15.92 Since Cameroon is now no longer pursuing claims arising out of each of the various alleged incidents taken separately and on its own (see below, paragraph 16.11 *et seq*.), considerations of extinctive prescription may play a less formal role. But they cannot be wholly disregarded. Just as the facts of incidents must still be properly established even if the incidents are cited not as in themselves a basis for individual claims but as illustrations of some broader allegation (see below, paragraphs 16.31-16.33), so too the staleness of allegations, with consequent problems in properly identifying and substantiating them, inevitably diminishes their value, and will frequently extinguish it altogether.

T. Cameroon's 'late-mentioned' incidents

15.93 Cameroon sought by a letter dated 9 April 1997, i.e. *after* the deposit of its *Memorial*, to put before the Court certain additional facts in its so-called 'memorandum on procedure'.[119] Nigeria objected to that attempt to introduce what amounted to an unauthorised extra written pleading.[120] Cameroon has now reintroduced this 'memorandum' as an Annex to its *Reply*.[121] Moreover, Cameroon has chosen to mention certain further incidents for the first time in its *Reply*.

15.94 These late-mentioned incidents are said to have occurred during the period 1964-1999. Those said to have occurred before the date on which Cameroon submitted its *Memorial* could, and should, have been dealt with in that pleading. Nigeria objects to the introduction into these proceedings of such late-mentioned incidents, which it cannot deal with properly since Cameroon has, as usual, not identified them with sufficient particularity.

15.95 Despite the lateness of Cameroon's mention of these incidents and the lack of adequate particulars

about them, Nigeria will nevertheless, in the Appendix to Chapter 16, do its best to respond to them.

15.96 However, in relation to the newly-mentioned incidents Nigeria would at this stage make four preliminary points.

> (1) Cameroon's failure to mention them in a timely manner casts doubt on Cameroon's sincerity in raising them at this very late stage in the proceedings.
>
> (2) By raising new incidents at this late stage, Cameroon is preventing there being a full opportunity for them to be fully pleaded in successive rounds of written pleadings (a matter to which Nigeria adverted in NC-M paragraph 24.9).
>
> (3) By raising, in its *Reply* of 4 April 2000, incidents which only occurred after 29 April 1998 (the date of Nigeria's amended Declaration under Article 36(2) of the Court's Statute), Cameroon is in effect seeking to introduce into the present case new allegations which could not have been the subject of proceedings against Nigeria under the terms of Nigeria's Declaration at the time the allegations were made.
>
> (4) Since Cameroon has seen fit to introduce new incidents at such a late stage, Nigeria will, as envisaged in its *Counter-Memorial*,[122] present in this *Rejoinde*r some additional counterclaims (below, Chapter 18).

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1 RC para. 11.168: "accessoire".

2 See below, paras. 16.26-16.27.

3 RC para. 10.03.

4 RC para. 10.07.

5 See e.g. RC para. 10.14.

6 At RC para. 10.39.

7 At RC para. 11.31: "que certains, parmi les plus graves, des faits qu'il évoqués pour démontrer l'engagement de la responsabilité internationale du Nigéria sont reconnus comme avérés par le défendeur. En particulier, il y a accord entre les Parties sur l'invasion puis la présence continue des forces militaires nigérianes dans la presqu'île de Bakassi dupuis 1994. Dès lors, la responsibilité du Nigéria ne peut faire de doute en ce qui les concerne."

8 RC para. 10.08.

9 RC paras. 10.09-10.11, and 11.20-11.21.

10 RC paras. 11.20-11.21.

11 RC para. 10.12.

12 NC-M paras. 24.12, 24.14 and 24.20.

13 NC-M para. 24.24.

14 NC-M para. 24.40.

15 RC para. 10.14: "On peut admettre que le fait pour en Etat de défendre une thèse juridique spécifique n'entraîne pas sa responsabilité.", and to similar effect, RC para. 11.13.

16 RC para. 10.13: "distinction ... purement académique."

17 NC-M para. 24.39.

18 Below, para. 15.46 *et seq*.

19 e.g. NC-M paras. 24.12, 24.14, 24.20, 24.24, and 24.40

20 RC para. 10.14: "On peut admettre que le fait pour en Etat de défendre une thèse juridique spécifique n'entraîne pas sa responsabilité."; and similarly RC, para. 11.13.

21 RC para. 10.14: "[aussi] longtemps que, par des moyens pacifiques, il cherche à convaincre l'autre partie du bon-fondé de sa thèse."

22 "Le Nigéria ne s'est pas borné à discuter avec le Cameroun certaines difficultés concernant la frontiére commune qui ont surgi dans la pratique."

23 e.g. NC-M paras. 24.270-24.271, 24.280 and 24.369-24.370; and paras. 99(2), 99(3), and 106 in the Appendix to Chapter 16 below.

24 RC para. 10.14: "agi unilatéralement, et en plusieurs lieux, avec l'intensité la plus extrême, à savoir par la force militaire."

"dans la presqu'île de Bakassi, des luttes armées ont eu lieu ..."

25 RC para. 10.4: "le Nigéria ayant attaqué les forces camerounaises limitées qui y étaient stationnées."

26 "...à remettre en cause la décision, dépourvue de toute ambiguïté, prise par la Cour dans l'arrêt du 11 juin 1998 sur les exceptions préliminaires."

27 Para. 87 is about the criteria for determining whether a dispute exists, and concludes that there exist disputes about Darak etc., Bakassi, and Tipsan: it has nothing to do with the regime for international responsibility.

28 RC para. 10.15.

29 See NC-M, Chapters 9, 10 and 17; and Chapters 2, 3 and 5 of this *Rejoinder*. It is significant, for example, that the report produced by Cameroon as RC Annex 59 shows that at the time the report was prepared (February 1981) Cameroon did not have police and gendarmerie posts along the boundary in the area, and it was being recommended that these should now be built, along with proper support infrastructure, such as transport, communication links and accommodation (para 3); similarly, an increase in Cameroonian military strength is recommended (*ibid.*). This is part of a picture of steady *Cameroonian* incursions into the Bakassi peninsula, at the expense of Nigerian interests and rights.

30 RC paras. 10.23-10.25.

31 "frontière établie".

32 See also paras. 16.5 and 16.44 below, and paras. 64-65 of the Appendix to Chapter 16 below.

33 MC paras. 6.13-6.27; and reaffirmed in RC paras. 11.58-11.76.

34 RC para. 10.16.

35 RC paras 10.17-10.22.

36 "thèse ... salon laquelle, même si les zones disputées entre les deux Etats appartenaient au Cameroun, le Nigéria n'a commis aucun acte illicite, étant donné le manque de clarté concernant le tracé de la frontière."

37 NC-M para. 24.50.

38 Emphasis added.

39 See above para. 6.5(2), footnote 3.

40 *Land and Maritime Boundary between Cameroon and Nigeria (Preliminary Objections)*, I.C.J. Reports 1998, p. 315, para. 90.

41 RC para. 11.19: "ne conteste pas".

42 *ibid.*"que, dans quelques secteurs frontaliers, la démarcation est incertaine et a pu donner lieu à des mésprises

ou à des incertitudes en l'absence de tracé précis sur le terrain."

43 "quelques secteurs frontaliers": See also Cameroon's admission in agreeing with Nigeria that the land boundary "is partly undemarcated": RC para. 12.29.

44 "ces secteurs sont rares car la frontière terrestre camerouno-nigériane est non seulement entièrement délimitée, mais aussi, probablement, l'une des plus largement démarquées en Afrique."

45 NC-M, Chapter 19.

46 RC para. 4.109.

47 NC-M para. 19.6.

48 *African Boundaries* London 1979, at p. 586.

49 RC para. 11.19: "dans quelques secteurs frontaliers, la démarcation est incertaine et a pu donner lieu à des méprises ou à des incertitudes en l'absence de tracé précis sur le terrain"

50 *ibid.* "largement démarquées".

51 RC para. 10.17: "Ce prétendu manque de clarté est pure invention. Aucun doute sérieux n'est permis en ce qui concerne l'appartenance au Cameroun de ces deux zones réclamées par le Nigéria."

52 NC-M, Chapters 8 and 19.

53 See Chapters 1 and 7.

54 See paras. 3.11-3.15 above.

55 "clairement défini": RC paras. 10.18-10.22.

56 "L'ensemble de ce tracé": RC para. 10.19.

57 I.C.J. Reports 1986, p. 565, para. 20.

58 RC para. 10.18.

59 See NC-M, Chapters 9-10 and 16-17; and above, Chapters 2-3 and 5.

60 "L'ensemble de ce tracé est clairement défini par des traités ainsi que par d'autres actes internationaux dont la validité n'est pas contestable.": RC para. 10.19.

61 Paras. 15.38-15.45, above.

62 RC para. 10.19.

63 Para. 6.22 above.

64 "neutraliser l'application du principe de l'*uti possidetis*": RC para. 10.22.

65 NC-M para. 24.39; see also sub-para. (9) of the present paragraph.

66 Year Book of the ILC, 1974, Vol. II, Pt. 1, at p. 199, para (11) of the Commentary on draft Article 11.

67 See above, sub-para. (9).

68 RC para. 11.15.

69 RC para. 11.17.

70 "dans un passage malheureusement isolé de son contre-mémoire": RC para. 11.15. See also RC para. 1.25-1.29, and 11.162-11.163.

71 RC paras. 1.25, 11/15 and 11.162-11.163: "Le Nigéria a également violé le principe fondamental en vertu duquel 'les États règlent leurs différends internationaux par des moyens pacifiques, de telle manière que la paix et la sécurité internationales ainsi que la justice ne soient pas mises en danger'."

"Le Nigéria n'a tenu aucun compte des mesures indiquées par la Cour dans son ordonnance du 15 mars 1996."

72 RC para. 11.15. See also RC paras. 1.25-1.29, and 11.162-11.163.

73 RC paras. 1.25, 11.15, and 11.162-11.163.

74 NR Annex 182.

75 NR Annex 183.

76 RC paras. 10.26-10.32; also para. 1.44.

77 RC para. 10.33.

78 RC para. 10.27.

79 RC para. 10.29.

80 I.C.J. Reports 1962, p. 6.

81 *cf* RC para. 10.35.

82 NC-M, Chapter 8.

83 Above, paras. 15.46-15.47.

84 *Oppenheim's International Law*, Vol. 1 (9th ed., 1992), ed. Jennings and Watts, p. 430, para. 129.

85 NC-M para. 24.34; and see para. 15.54 *et seq.* of this Chapter.

86 RC paras. 10.35-10.37.

87 NC-M, Part VI and Chapter 18 below.

88 RC paras. 10.38-10.50.

89 RC para. 10.41: "Cameroun doit apporter la preuve requise; ... On ne saurait nier la nécessité pour la Partie défenderesse ainsi que pour la Cour elle-même de connaître l'objet, le lieu, la date et la manière dont se sont produits les incidents auxquels le Cameroun se réfère."

90 RC para. 10.43: "Le Cameroun estime avoir suffisamment établi les faits."

91 RC. 10.42: "d'un manque ... de precision."

92 RC. Para. 10.44: "toutes les indications susceptibles d'identifier ..."

"[s]urtout la date à laquelle cet incident aurait eu lieu n'est pas mentionnée."

"Toutes les ... précisions factuelles son extrêmement sommaires, si bien que le Cameroun est dans l'impossibilité de se faire une idée précise des faits. "

93 RC para. 10.42.

94 RC para. 10.44: "avec une certaine flexibilité, en fonction des circonstances caractérisant le différend en question."

95 I.C.J. Reports 1949, p. 4.

96 I.C.J. Reports 1980, p. 3.

97 I.C.J. Reports 1986, p. 14.

98 NC-M para. 24.46.

99 RC para. 10.48.

100 "Il est évident que, *bien souvent*, au moment précis où un incident se produit, aucun témoin n'est présent, ou il s'agit de simples particuliers."

101 *ibid.:* "Dans la majeure partie des cas, un certain laps de temps est nécessaire avant que des agents publics arrivent sur les lieux."

102 RC para. 10.49: "récoltées par certains, synthétisées, rapportées ou exploitées par d'autres."

103 RC paras. 10.51-10.58.

104 RC paras. 10.52 and 10.56.

105 Annex NC-M 343.

106 See para. 16.35 *et seq.* below.

107 RC para. 11.06.

108 I.C.J Reports 1998, p. 319, para.100.

109 RC paras. 11.212-11.213.

110 NC-M paras. 24.52-24.54.

111 Doc. A/CN.4/L.600, 11 August 2000.

112 Crawford, Third Report on State Responsibility (Addendum), 10 July 2000 (A/CN.4/507/Add.2), paras. 257-259.

113 "It is to be noted that Nigeria's acceptance of the Court's compulsory jurisdiction dates from 1965; at any time thereafter Cameroon could have instituted proceedings in the same manner as it chose to do so in the present case."

114 *ibid.* para. 259.

115 See above, para. 15.74.

116 "il faut tenir compte des circonstances factuelles qui prévalent loin des centres urbains, dans les campagnes camerounaises situées près de la frontière avec le Nigéria.": RC para. 10.48.

117 "si un incident semblable s'était produit dans les zones urbanisées de pays industrialisés": *ibid.*

118 RC para. 11.38: see below, Appendix to Chapter 16, para. 112 *et seq.*

119 See RC paras. 11.04-11.10, 11.23 and 11.141-11.164.

120 See the letter dated 13 May 1997 sent by the Agent of the Federal Republic of Nigeria to the Registrar of the Court (Annex NR 184).

121 RC, Vol. III, Annex 1.

122 NC-M para. 25.6.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 16

ALLEGED INCIDENTS
SAID TO INVOLVE NIGERIA'S RESPONSIBILITY

A. Preliminary Observations

119.1 Cameroon has referred to a number of alleged incidents which are said by Cameroon to be relevant to its claim that Nigeria bears international responsibility. A number of preliminary points need to be made in order that these alleged incidents may be seen in their correct perspective.

119.2 *First*, it is apparent that each of these incidents, taken on its own, is not of sufficient gravity to justify the institution of proceedings before the International Court of Justice. Most concern the sort of relatively trivial matters which neighbouring States are expected to sort out between themselves. It is noteworthy that in its *Reply* Cameroon, as will be shown later (paragraph 16.11 *et seq.*), goes a long way to recognising this by withdrawing its claims of Nigerian international responsibility for individual incidents taken on their own.

119.3 *Second*, those incidents are not only mostly trivial, but they are few in number. They are spread over a period of two or three decades and a land border which is some 1,800 kms long plus areas of dispute in Lake Chad and Bakassi. They are thus not, as Cameroon would have it, testimony to the gravity of the overall situation, but rather the opposite.

119.4 *Third*, this reflects the fact that the local populations in the border areas have on the whole managed their border and cross-border relations harmoniously. For the most part, boundary problems are not part of their daily lives, which are more concerned with such matters as tribal affinities, local agriculture and fishing, and local problems of transport communication by road and river.

119.5 *Fourth*, Cameroon seeks to present the overall situation as one in which there was an existing situation in which Cameroon's territorial position was well established, and Nigeria was engaged upon a campaign of seeking to change that *status quo*. As Nigeria has explained elsewhere (e.g. above, paragraph 15.34 and below, paragraph 16.44; and the Appendix to this Chapter, paragraphs 64-65), the opposite is the case. Since Nigeria and Cameroon attained independence in 1960, the general picture has been one of harassment by Cameroon in seeking to erode Nigeria's well-established administration of many border areas and to bring about their Cameroonianisation. Examination of the various so-called incidents makes it apparent that this is what has been happening.

119.6 *Fifth*, Nigeria draws attention again to certain consequences flowing from the Court's treatment of Nigeria's Sixth Preliminary Objection and Nigeria's *Request for Interpretation*. These matters have been dealt with above, at paragraphs 14.16-14.22.

119.7 *Sixth*, Cameroon complains that Nigeria, in its *Counter-Memorial*, did not address the various incidents cited in Cameroon's so-called "Memorandum on Procedure" or the facts involved in Cameroon's request for an indication of provisional measures (RC, paragraph 11.29).

> (1) Nigeria did not refer to the incidents referred to in the "Memorandum on Procedure" because it was of the view that that Memorandum had been improperly put before the Court as a pleading and that Nigeria therefore had no need to respond to it. Now that Cameroon has formally submitted that document as part of its *Reply* (RC, Vol. III, Annex 1), Nigeria will take its contents into consideration in this *Rejoinder*.
>
> (2) As to the facts forming the basis of Cameroon's request for provisional measures, far from Nigeria having omitted all mention of them, Nigeria in fact made those events the subject of one of its counterclaims (NC-M paragraphs 25.14-25.17).

119.8 *Seventh*, although Nigeria drew attention in its *Counter-Memorial* to the general inadequacy of the facts given by Cameroon, it is apparent that in many instances Cameroon still has either failed to realise the need for adequate facts to be given if its allegations are to be substantiated, or has been unable to provide more facts, or has been unwilling to provide them in time for Nigeria to give a considered response in this *Rejoinder*.

119.9 *Eighth*, Cameroon continues to display a carefree attitude to the facts of particular incidents. This is, for example, evident in Cameroon's treatment of the question of the date when an incident is said to have occurred. Thus Cameroon takes the position that it would be futile to try to fix a particular date, and just one, for acts which Cameroon has alleged were regular occurrences.[1] This is unacceptable: Cameroon cannot establish a legal case against Nigeria on the basis of unspecific allegations as to alleged wrongdoing by Nigeria, and Nigeria cannot respond adequately to such generalised allegations other than by rejecting them outright.

119.10 It is for Cameroon, as the Applicant, to make good its case, and if Cameroon "gives an inadequate rendering of the facts ... on which the claim is based"[2] it is Cameroon which bears the consequences. The date on which an incident occurs is one of the essential facts of the case (as Cameroon itself accepts: see above, paragraph 15.72): without knowing when an incident is said to have occurred Nigeria cannot check the circumstances which gave rise to it, or indeed verify whether it occurred at all. If the occurrences were as regular as Cameroon says, Cameroon presumably has access to reports on the basis of which it was in a position to assert that these occurrences were indeed taking place on a regular basis, and there should be no difficulty for Cameroon in giving dates for them. If Cameroon does not have such internal reports, then the veracity of Cameroon's general allegation is very much called into question and it can only be regarded as unsubstantiated.

B. Cameroon's withdrawal of its assertion of Nigeria's international responsibility for individual incidents

119.11 There is a *ninth* preliminary point to be made, which is of a very different order from those previously mentioned. It seems that Cameroon is no longer seeking to establish Nigeria's international responsibility in relation to each of the various alleged incidents, taken separately and on its own, which Cameroon has mentioned in the successive written and oral stages of this case.

119.12 Cameroon first claims that Nigeria behaved misleadingly "when it tries to suggest that Cameroon intends to have the Court acknowledge its [sc. Nigeria's] responsibility for each of the incidents it cites taken in isolation."[3] In other words Cameroon here asserts that Nigeria was wrong in thinking that Cameroon wanted the Court to hold Nigeria responsible for each of the incidents taken as separate and individual incidents.

119.13 However, everything that Cameroon did in and before its *Memorial* clearly indicated that that was precisely what Cameroon wanted.

119.14 Cameroon cites[4] its Submissions as set out in paragraph 9.1 of its *Memorial*. It includes paragraph 9.1(g) in its citation, but does not give that sub-paragraph any further examination. Yet that sub-paragraph, which is essentially identical with paragraph 20(e') of Cameroon's *Application* and paragraph 17(e) of its *Additional Application*, is the procedural basis for the discussion of Nigeria's alleged international responsibility.

119.15 That paragraph 9.1(g) of Cameroon's *Memorial* reads as follows:

> "(g) That the internationally unlawful acts referred to above and described in detail in the body of this Memorial involve the responsibility of the Federal Republic of Nigeria"

It is apparent from that language that Cameroon was asserting that Nigeria bore international responsibility, and that that responsibility was incurred as a result of the "internationally unlawful acts referred to above [i.e. in the previous Submissions] and described in detail in the body of [the] Memorial.

119.16 The previous Submissions in sub-paragraphs (a) to (e) included not only alleged violations of certain fundamental principles, but also included (in sub-paragraph (e)) references to acts involving[5]

> - "using force" against Cameroon,
>
> - "militarily occupying" parcels of Cameroonian territory in the Lake Chad area and in Bakassi, and
>
> - "repeated incursions, both civilian and military", all along the land boundary.

Those alleged acts were all also the subject of detailed description in Cameroon's *Memorial*, as separate and individual incidents, even if in many cases the level of detail and specificity provided by Cameroon left much to be desired. They were thus clearly included within the scope of Cameroon's Submissions as to Nigeria's international responsibility.

119.17 That that was so is borne out by even the most cursory reading of the relevant Chapters of that *Memorial*. Thus, after referring to "repeated incursions" by Nigeria at several points along the land boundary, Cameroon stated that these acts "constitute the internationally wrongful acts imputable to Nigeria and underlying that country's international responsibility to Cameroon"[6]; again, in Section 4 entitled "Nigeria's Responsibility by Reason of Such Internationally Wrongful Acts" Cameroon, in claiming that the relevant facts are attributable to Nigeria, states that "*each of the acts* described in Section 6.2[7] above *requires, as a rule, an individual analysis*".[8] (emphasis added)

119.18 Nigeria also recalls that its understanding as to Cameroon's allegation of separate international responsibility for each incident was the evident basis for Nigeria's *Sixth Preliminary Objection.* At no time during that phase of this case did Cameroon seek to deny that understanding or to explain its position in the way which it has now done. Allegations of misleading conduct are more appropriately addressed to Cameroon than to Nigeria.

119.19 It was thus in no way "misleading" for Nigeria to treat Cameroon's *Applications* and *Memorial* as alleging that Nigeria bore international responsibility for each and every one of the incidents so referred to and described by Cameroon.

119.20 Cameroon in its *Reply* has fundamentally changed its position. Cameroon has now withdrawn its claims of Nigeria's international responsibility in respect of the various incidents taken in isolation and on a separate and individual basis. Nigeria welcomes this change, which greatly simplifies the task facing the Court.

119.21 Cameroon now draws a distinction between, on the one hand, its allegation that Nigeria has violated its obligation to respect established boundaries and, on the other, the particular acts by which that violation has been manifest.[9] Cameroon goes on to say that

> "the incidents to which Cameroon has referred until now, and those which it is entitled to cite in the future ..., must be considered for what they are: grounds in support of the submissions, which feature at the end of the different written procedural documents and which will be finalised ... at the end of the final statement to be made in its name".[10]

119.22 To the same effect is Cameroon's statement[11] that Nigeria, in focussing discussion on individual incidents, was dealing with "accessory issues" and seeking to divert the Court from the essentials: as Cameroon then went on to say,

> "The subject of Cameroon's request for [recognition of] responsibility is the invasion and occupation of part of its territory by the Nigerian authorities. The specific incidents that have followed one another since the 1980s are merely facts that testify and illustrate this occupation. They are not therefore the essential subject of this claim [i.e. for responsibility]."

119.23 Cameroon restates its position in the following passage:

> "Furthermore, the Republic of Cameroon is at pains to reiterate, in the most formal manner and in order to avoid all ambiguity, that with the exception of the massive occupations of major parts of its territory in the North-West (region of Lake Chad) and in the South-West (Bakassi Peninsula), it is not so much the incidents in themselves, taken in isolation, which matter, as the incidents as a whole, which establish beyond all doubt, that Nigeria must be held liable for grave, frequent and generalised violations of the fundamental principles and rules specified above ... and for repeated and deliberate violations of the border between the two countries"[12]

119.24 Later Cameroon further explains its position in saying that[13]

> "[Cameroon's] intention, in presenting these facts, *is not to ask the Court to accept that the Respondent is liable with respect to each of them*, but to show that Nigeria has violated and continues to violate the rights of Cameroon founded on the most fundamental principles of public international law, in particular, the following principles:
>
> - the non-use of force;
>
> - territorial integrity;
>
> - territorial sovereignty;
>
> - non-intervention in internal affairs." (emphasis added)

119.25 So far as concerns the position in the Lake Chad area, Cameroon's decision not to pursue separate and individual claims of international responsibility is clear. Cameroon says:

> "The subject of Cameroon's request for [recognition of] responsibility is the invasion and occupation of part of its territory by the Nigerian authorities. The specific incidents that have followed one after another since the 1980s are merely facts that testify and illustrate this occupation. They are not therefore the essential subjects of this claim."[14]

....

"It is not therefore a case of lodging a host of claims for responsibility dealing separately with each act of incursion and then occupation by Nigeria. ..."[15]

"In this context, the incidents referred to below should not be considered to be autonomous bases for implying responsibility. Rather, they are facts proving the continued occupation by Nigeria of part of Cameroonian territory."[16]

119.26 So far as concerns alleged incidents along the land boundary between Lake Chad and Bakassi, Cameroon puts its withdrawal of separate and individual claims of international responsibility beyond doubt in the following passage:

"As Nigeria itself mentions in paragraph 25.40 (NC-M, vol. III, pp. 814-815), it clearly appears, on reading Cameroon's Application and Additional Application, that the *issues of State responsibility did not concern the sector between the North of Bakassi and the South of Lake Chad*. Cameroon had cited the numerous incidents that had occurred in this sector of the frontier only to prove, primarily, that the dispute between the two countries also applies to this part of the land boundary. It was predictable that such a long section of a boundary, which Cameroon agrees with Nigeria is partly undemarcated, could not be incident-free."[17] (emphasis added)

119.27 Nigeria welcomes Cameroon's acknowledgement that, as Nigeria had earlier noted, the issues of State responsibility did not concern the land boundary between Bakassi and Lake Chad. As for Cameroon's assertion that it cited incidents occurring along that land boundary to prove that the dispute between the two countries applied also to that land boundary, Nigeria recalls that the Court has already stated in its Judgment on *Preliminary Objections* that "not every boundary incident implies a challenge to the boundary" (Judgment, paragraph 89) and that "Even taken together with the existing boundary disputes [*scil*. regarding Darak, Bakassi and Tipsan], the incidents and incursions reported by Cameroon do *not* establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria" (paragraph 90, emphasis added). This conclusion is all the stronger now that, given Cameroon's admissions in its *Reply*, there is no longer a dispute with respect to Tipsan.

119.28 The cumulative result of these various statements is as follows. Apart from those incidents which can be regarded as in effect the very manifestation of Cameroon's broader assertions as to Nigerian encroachment onto Cameroonian territory, and which are thus pursued as part of those broader assertions,

(1) Cameroon is withdrawing any claims that Nigeria bears international responsibility for individual alleged incidents arising along the land boundary between Lake Chad and Bakassi; Cameroon regards them as only "accessory issues" and not part of the

> "essentials" of its State responsibility claims,[18] and, as Cameroon puts it elsewhere,[19] not among those of a "particularly grave nature" such as "in themselves [to] constitute internationally unlawful acts which engage the responsibility of Nigeria"; instead those incidents are merely relied on as evidence of Nigeria's alleged violation of certain major principles of international law;
>
> (2) Cameroon is also, on a similar basis, withdrawing any claims that Nigeria bears international responsibility for individual alleged incidents arising in the Lake Chad area and in Bakassi.

119.29 Nigeria welcomes Cameroon's clarification of its position in respect of Nigeria's alleged international responsibility for the various individual incidents referred to by Cameroon. Despite that clarification, however, Cameroon's submissions in paragraph 13.01 of its *Reply* do not remove all doubt on this matter. The relevant sub-paragraphs read:

> "e) That by using force against the Republic of Cameroon and, in particular, by militarily occupying parcels of Cameroonian territory in the area of Lake Chad and the Cameroonian Peninsula of Bakassi, and by making repeated incursions, both civilian and military, all along the boundary between the two countries, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law.
>
> ...
>
> g) That the internationally wrongful acts referred to above and described in detail in the Memorial of the Republic of Cameroon and in the present Reply involve the responsibility of the Federal Republic of Nigeria."[20]

There is in these formulations a slight change compared with the equivalent formulations in paragraph 9.1 of Cameroon's *Memorial*, and this may represent an attempt to reflect Cameroon's new approach. They are, however, still subject to the considerations indicated in paragraphs 16.15-16.17 above. In the light of the clear indications given in its *Reply*, and quoted in paragraphs 16.21-16.26 above, Cameroon's position is evidently that all claims arising out of individual incidents taken separately and on their own have been withdrawn, whichever part of the boundary these incidents concern.

119.30 In thus withdrawing its allegations of individual and separate international responsibility for the various discrete incidents to which it had previously referred, Cameroon may have recognised that it is in no position to substantiate those allegations by the production of evidence of sufficient probative value to support a claim of Nigeria's international responsibility in relation to each incident taken on its own. Cameroon may have hoped instead that by reducing the significance of these alleged incidents it will similarly have reduced the evidentiary burden resting upon it.

119.31 This is not so. Allegations about particular happenings are of no forensic value at all unless they are supported by evidence sufficient to establish that they did in fact occur in the manner alleged and are relevant to the purpose for which they are relied on. This applies as much to allegations about incidents which are relied on as evidence in support of violations of what Cameroon refers to as certain "fundamental principles of international law"[21] as to incidents which are relied on as themselves giving rise to international responsibility on the part of Nigeria.

119.32 Treating the incidents "as a whole"[22] rather than as separate, discrete events, does not avoid the need to establish them by proper evidence: and where something is alleged to have been done "persistently" or "regularly", it must be *proved* to have been done on several occasions, not just once. Incidents cannot simply be taken "as a whole" and without more, on the basis of assertions however often repeated, but must be substantiated one by one. Alleged incidents "illustrate" nothing, and "establish" nothing, except and to the extent that they are proved by evidence. The cumulative effect of several zeros is still zero.

119.33 Cameroon's assertions are not by themselves sufficient. In fact, Cameroon's assertions are seriously defective. Nigeria has already in its *Counter-Memorial* drawn attention to the inadequacies of Cameroon's presentation of the facts and circumstances surrounding the various incidents on which it relies.[23] In its *Reply* Cameroon has attempted in some respects to make good those inadequacies, and to amplify its account of the incidents referred to.[24] Nigeria will in turn, in the Appendix to this Chapter, demonstrate again that Cameroon's account of the various incidents is still inadequate, even as grounds and evidence in support of Cameroon's principal allegations of Nigeria's international responsibility for violation of certain major principles of international law, and even more so as themselves a basis for individual and separate claims of international responsibility on the part of Nigeria (should the Court conclude that Cameroon, despite the terms of its *Reply*, has not withdrawn all of its individual and separate claims).

119.34 However, Nigeria will now, in the main body of this *Rejoinde*r, refer in substance to two important allegations by Cameroon. Both are wholly without foundation. The fact that Cameroon nevertheless has seen fit to pursue them exemplifies the mistaken approach adopted by Cameroon in putting forward its claims of Nigerian international responsibility. The first of these incidents is that which occurred on 16 May 1981; the second concerns the allegation of Nigerian incursions into Cameroon territory at Tipsan.

C. Incident of 16 May 1981

119.35 The incident of 16 May 1981 has been dealt with previously by Nigeria.[25] It is dealt with in greater detail in the Appendix to this Chapter,[26] and only the salient points will be referred to here.

119.36 It is the incident for which President Ahidjo of Cameroon, by a letter of 16 July 1981,[27] made a

full apology to President Shagari of Nigeria, and paid compensation for the loss suffered by the families of the Nigerian soldiers who had been killed by Cameroon armed forces. In addition to the regrets expressed orally by the Cameroon Foreign Minister who went specially to Nigeria for the purpose,[28] President Ahidjo three times expressed, in writing in his letter of 16 July, his regrets at this incident. And Cameroon paid compensation.[29] There can be no doubt that Cameroon accepted at the highest level that responsibility for this affair rested with Cameroon. That Cameroon has sought to use this incident as an example of Nigeria's wrongful actions in incomprehensible.

119.37 That, nevertheless, appears still to be Cameroon's position. It is manifestly incorrect. On the facts of the incident, Nigeria recalls that President Ahidjo's letter of apology was written in response to a letter from President Shagari.[30] That letter set out Nigeria's account of the facts which had led to the Cameroonian murder of the Nigerian soldiers on Nigerian territory, which differed from Cameroon's account as given in President Ahidjo's letter of 23 May 1981.[31] President Ahidjo's reply to President Shagari's letter in no way contradicted or dissented from President Shagari's statement of the facts, save only that he referred to it as having occurred on the Rio del Rey, whereas, as President Shagari stated (and repeated in his reply of 20 July 1981 to President Ahidjo[32]), it actually occurred on the Akpa Yafe River,[33] in Nigeria's Cross River State.

119.38 Cameroon's payment of compensation was in response to Nigeria's assertions (not contradicted by President Ahidjo) that

> "The fact of the matter is that Nigerian troops have been murdered and seriously wounded by Cameroonian soldiers on Nigerian territory and Nigeria insists on its demand of unqualified apology, full compensation and reparations to the families of the victims of the wanton aggression, and bringing the perpetrators of the dastardly murders to justice."

In these circumstances the payment of compensation by Cameroon is a clear acceptance of the correctness of Nigeria's account of the incident.

119.39 In the face of these admissions by Cameroon, at the highest level, of responsibility for the incident and resulting loss of Nigerian life, Cameroon's attempts to cast its position in a more favourable light are of no value.

119.40 The evidence originally invoked by Cameroon in support of its version of events consisted of an Information Note of 23 May 1981,[34] and an AFP despatch of 8 July 1981.[35] The first, having been prepared before President Ahidjo's admission of responsibility for the incident, is scarcely compelling evidence; the second, being (once again) merely a press report some 6 or 7 weeks after the event, is wholly unreliable. New evidence is now put forward by Cameroon in support of its version of events. It consists of statements by three members of the armed forces. One is a report dated 17 May 1981 by Captain Sintafeu: but he was not himself involved in the incident, and his statement does not indicate

that he had spoken to any of the armed forces personnel who had been present at the time. The other two statements, by CPOs Mahamat and Meka, are dated August 1999: i.e. some 18 years after the incident to which they relate, and therefore of questionable reliability. Thus none of these three statements can be regarded as good evidence of the matter in issue.

119.41 Against those questionable statements by Cameroonian military personnel is the statement, in a formal letter to President Ahidjo, by Nigeria's Head of State, President Shagari. That statement contains much circumstantial detail about the incident. It is not usual for Heads of State to treat letters to a fellow Head of State as if they were pleadings before a Court, and therefore it was not to be expected that President Shagari would have accompanied his letter with all the detailed information available to him. But equally, President Shagari would not have written in the terms he did if there had not been available to him and his officials well-documented information to substantiate his letter.

119.42 Cameroon seeks to suggest that President Ahidjo's letter of 16 July 1981, offering compensation (and regret for the incident, but Cameroon does not mention this), was decided upon "extremely wisely .. [as].. a political gesture of appeasement,"[36] and was "merely a gesture of appeasement designed to restore a climate of dialogue between the two countries"[37]. This is to turn history on its head.

119.43 Nigeria would first recall what President Shagari said. He asserted "most emphatically and unequivocally ... that the sad event ... did take place on Nigerian territory"; he added that "it was a deliberate, premeditated and carefully prepared ambush against our patrol"; it "took place on Akwa yaji River, about 2km South of Ikang, a Nigerian town"; he added that it was "stretching credibility too far" to say, as did Cameroon, "that Nigerian troops in two patrol boats opened fire first on an unsuspecting Cameroonian patrol boat and yet killed not a single Cameroonian soldier" while at the same time five Nigerian soldiers were killed and three others seriously wounded.

119.44 The crucial aspect of President Shagari's statement is that the incident was "a deliberate, premeditated and carefully planned ambush against our patrol". President Shagari did not at the time go into further details, but Cameroon's distortion of these events makes it necessary for Nigeria to reveal the true facts behind President Shagari's statement. The facts show that Cameroon's conduct was aggressive, reckless and irresponsible, and provided yet another illustration of Cameroon's repeated attempts to advance its presence into Nigerian territory (see paragraph 16.5 above).

119.45 Information available to Nigeria at the time (and set out in detail in the Appendix, paragraphs 42-43) showed that Cameroon's conduct involved (a) a major build-up of its armed forces in the region, (b) a carefully laid ambush of a Nigerian patrol, (c) with the hope of provoking Nigeria into starting a major, full-scale armed response, and (d) thereby enabling Cameroon to make political capital by painting Nigeria as an aggressor.

119.46 It was President Shagari whose conduct prevented this incident from developing from a limited ambush into the major armed confrontation which Cameroon had been trying to provoke; it was President Shagari who was able to quell the Nigerian people's justified outrage at this incident, which as

he said, "shook the entire Nigerian nation morally and politically" (letter of 25 May 1981); and it was President Ahidjo who, after taking time for consideration, found it advisable in the circumstances to apologise and pay compensation and to press the matter no further.

D. Tipsan

119.47 The second allegation which Nigeria wishes to examine in some detail in this *Rejoinder* is Cameroon's complaint about the alleged occupation of Tipsan by Nigeria.[38] This complaint hinges on the location of Tipsan and its relation to the frontier in that area. As Nigeria has conclusively shown (above, paragraphs 7.169 *et seq.*), the frontier in that region, as delimited in Articles 40-41 of the Thomson-Marchand Declaration, runs along the River Tipsan, and the village of Tipsan together with the Nigerian Immigration Post near that village are well on the Nigerian side of that River. Moreover, Cameroon not only acknowledges that the boundary in this area is delimited by the Thomson-Marchand Declaration[39] but now admits that the Immigration Post is "undoubtedly situated in Nigerian territory".[40] Nevertheless, Cameroon, in its Chapter dealing with matters of international responsibility puts forward different, and conflicting, arguments.

119.48 Thus Cameroon seeks to show that up to 1994 Nigeria was present at Tipsan only by virtue of Cameroonian consent to a presence in Cameroonian territory. This presence is said to result from a request, made apparently in the late 1970s, to the (Cameroonian) Lamido of Kontcha by the local Nigerian inhabitants of Ethnie Moumie to move closer to Kontcha, and they are said to have been followed, in 1984, by the movement of the Nigerian Immigration Post (allegedly formerly at Mayo-Bagboua - "until that time, at the correct boundary") to Tipsan.[41] Nigeria must observe, however, that Cameroon makes no attempt to justify this assertion that the boundary was at Mayo-Bagboua: that location is not mentioned in the Thomson-Marchand Declaration, and as the line of the boundary is inconsistent with that Declaration's clear stipulation that the boundary follows the River Tipsan.

119.49 Cameroon seeks to support this account by another report, dated 6 July 1993,[42] which recognises that at that date there was no dispute between Cameroon and Nigeria with respect to Tipsan. This report, indeed, accepts that "the boundary [is] currently situated along the Tipsan watercourse", although it continues that it "should actually be well beyond this point on Nigerian land at the Mayo-Djigawal, a brook four kilometres from Kontcha" - a frontier which is said to be "marked by stone piles placed by the French and the English around the years 1939-1945 on both sides of the brook over an unspecified length". Again, Cameroon does not explain why the Maio-Djigawal should be the boundary when it is nowhere mentioned in the Thomson-Marchand Declaration and (at 4 kms from Kontcha) is inconsistent with that Declaration which states that the boundary follows the River Tipsan (which is about 3 kms from Kontcha).

119.50 A further report, dated 20 February 1995,[43] largely repeats the story set out in the previous reports. But this report says that the result of the 1961 referendum "subsequently caused a further delimitation of the boundary which is today situated 9 km from Kontcha, that is to say, 6 km from the

river Tipsan, which itself is 3 km from Kontcha".

119.51 Cameroon nowhere explains what this "further delimitation" consisted of, or indeed why it was needed at all given the clear terms of the Thomson-Marchand Declaration; nor does Cameroon explain why this new boundary should prevail over the terms of that Declaration; nor why the boundary is, in this report, said to be 9 kms from Kontcha when the previously mentioned report put it at only 4 kms from Kontcha (while, of course, the River Tipsan, which was established by the Thomson-Marchand Declaration as the boundary, is about 3 kms from Kontcha).

119.52 This report of 20 February 1995 also states that the original Nigerian request to move closer to Kontcha and the Cameroonian consent to that request were related to the Nigerians being allowed "to settle on the banks of the Tipsan watercourse". But (the Nigerian) Tipsan village, and the (Nigerian) Immigration Post at Tipsan are not on the banks of the River Tipsan, but nearly a kilometre to the west of the river. Although Cameroon alleges that Nigeria has confused the location of the Immigration Post with the location of the village of Tipsan,[44] it is, as explained elsewhere in this *Rejoinder,*[45] Cameroon which is doing precisely that in introducing, for the first time, the notion that there is some second settlement called Tipsan "located some 3 kilometres from ... Kontcha", that it is this "other" Tipsan which is on the Cameroonian side of the boundary as delimited by Thomson-Marchand, and that "Nigeria is seeking to establish an immigration post in this locality in addition to the post shown on Map No. 73 [in Nigeria's *Counter-Memorial*]".

119.53 This is pure invention: and for the record Nigeria formally states that it has only one Immigration Post at Tipsan, that that Post is at the location indicated on Map No. 73 annexed to its *Counter-Memorial* (i.e. about 1 km to the west of the River Tipsan), and that it has not built, and is not building or planning to build, a second Immigration Post any closer to Kontcha than the existing Post at Tipsan.

119.54 For all the above reasons, Nigeria reaffirms its conclusion that Cameroon's allegations regarding the presence of a Nigerian Immigration Post at Tipsan are wholly without merit: the relevant international instrument, which Cameroon accepts as governing the delimitation of the boundary in this area, clearly and expressly establishes the River Tipsan as the boundary, and the Nigerian Immigration Post and the Nigerian village of Tipsan itself are well on the Nigerian side of this boundary.

119.55 Cameroon's treatment of these two so-called incidents demonstrates in the clearest possible way the inadequacy of Cameroon's approach to the serious matter of alleging that Nigeria has incurred international responsibility. Nigeria's Conclusions on State Responsibility are set out in full in Chapter 17, below.

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1 RC, para. 11.89.

2 I.C.J. Reports 1998, p. 319, para 101, quoted at para. 14.17(4) above.

3 RC, para. 11.11, referring to the totality of the arguments set out at NC-M, pp. 651-797, which deal with *all* the incidents alleged by Cameroon to have occurred in Bakassi and the Lake Chad area, and along the land boundary in between: "lorsqu'il tente de faire croire que le Cameroun entend faire reconnaître par la Cour sa responsabilité pour chacun des incidents qu'il invoque pris isolément."

4 RC, para. 11.12: "Que la responsabilité de la République fédéral du Nigeria est engageée par les faits internationalement illicites exposés ci-dessus et précisés dans le corps du présent Mémoire."

5 "utilisant la force."

"en occupant militairement."

"incursions répétées, tant civiles que militaires."

6 MC, para. 6.05: "constituent les faits internationalement illicites imputables au Nigeria et qui sont à l'origine de la responsabilité internationale de ce pays à l'egard du Cameroun."

7 The text of MC, para. 6.170 refers to "Section 5.1", but this is obviously a typographical error, and it is clear from the context that Section 6.2 was intended

8 MC, para. 6.169-6.170: "La responsabilité du Nigéria par ces faits internationalement illicites": "chacun des faits décrits dans la section [6.2] ci-dessus requiert, en principe, une analyse individuelle."

9 RC, paras. 11.13-11.17.

10 RC, para. 11.16: "les incidents don't le Cameroun a fait état jusquà présent, et ceux qu'l est en droit d'invoquer à l'avenir ... doivent être considérés pour ce qu'ils sont: des moyens qui viennent à l'appui des conclusions figurant à la fin des différentes pièces de procédure écrite et qui seront finalisées ... à l'issue du dernier exposé qui sera présenté en son nom. "

11 RC, para. 11.168: "L'objet de la requête camerounaise en responsabilité est l'invasion et l'occupation d'une partie de son territoire par les autorités nigérianes. Les incidents spécifiques qui se sont succédé dupuis les années 1980 ne sont que des éléments qui attestent et illustrent cette occupation. Ils ne fournissent donc pas l'objet essentiel de la réclamation.".

12 RC, paragraph 11.25: "En outre, la République du Cameroun tient à redire, de la maniére la plus formelle et afin de ne laisser subsister aucune ambiguïté, qu'à l'exception des occupations massives de parties importantes de son territoire au nord-ouest (région du lac Tchad) et au sud-ouest (presqu'île de Bakassi), ce sont moins les incidents en eux-mêmes et pris isolément qui important que l'ensemble qu'ils constituent et qui établit, au-delà de tout, que le Nigéria doit étre tenu pour responsible de violations graves, fréquentes et généralisées des régles et des principes fondamentaux énoncés ci-dessus ... et de violations répétes et délibérées de la frontiére entre les deux pays."

13 RC, paragraph 11.30: [le] propos [de Cameroun], en présentant ces faits, n'est pas de demander à la Cour de constater l'engagement de la responsabilité du défendeur à propos de chacun d'eux. Son but est de démontrer que le Nigéria a violé et viole encore les droits du Cameroun fondés sur les principes les plus fondamentaux du droit international public, et notamment les principes suivants: non-recours à la force; intégrité territoriale; souveraineté territoriale; non-intervention dans les affaires intérieures. "

14 RC, para. 11.168: "L'objet de la reqête camerounaise en responsabilité est l'invasion et l'occupation d'une partie de son territoire par les autorités nigérianes. Les incidents spécifiques qui se sont succédé depuis les années 1980 ne sont que des éléments qui attestent et illustrent cette occupation. Ils ne fournissent donc pas l'objet essentiel de la réclamation."

15 RC, para. 11.170: "Il ne s'agit donc pas de fomuler une multitude de réclamations en responsabilité qui traiteraient séparéde chaque acte d'occupation due Nigéria."

16 RC, para. 11.171: "Dans ce contexte, les incidents dont il sera question ci-dessous ne doivent pas être considerérés comme des bases autonomes de mise en cause de la responsabilité. Il s'agit plutôt d'éléments attestant de l'occupation continue par le Nigéria d'une partie du territoire camerounais. "

17 RC, para. 12.29: "Comme le Nigéria la rappelle lui même au paragraphs 25.40 (CMN, vol. III, pp. 814-815), il apparaît clairement, à la lecture de la requête additionnelle du Cameroun, que les questions de responsabilité de l'Etat ne portaient pas sur le secteur compris entre le nord de Bakassi et le sud du lac Tchad. Le Cameroun n'avait invoqué les nombreux incidents survenus dans ce secteur de la frontière que pour prouver, à titre principal, que le différend qui oppose les deux pays s'étend également à cette partie de la frontière terrestre. Il était prévisible qu'un segment aussi long d'une frontière, dont le Cameroun convient avec le Nigéria (CMN, vol. III, p.815, par 25.41) qu'elle est en partie non démarquée, ne pouvait être à l'abri d'incidents."

18 RC, para. 11.168: "l'essentiel" : "caractère particulier de gravité": "en eux mêmes des faits internationalement illicites qui engagent la responsabilité du Nigéria."

19 RC, para. 11.17.

20 "Qu'en utilisant la force contre la République du Cameroun, et, en particulier, en occupant militairement des parcelles du territoire camerounais dans la zone du lac Tchad et la péninsule camerounaise de Bakassi, en procédant à des incursions répétées, tant civiles que militaires, tout le long de la frontière entre les deux pays, la République fédérale du Nigeria a violé et viole ses obligations en vertu du droit international conventionnel et coutumier."

> "Que la responsabilité de la République fédérale du Nigéria est engagée pas les faits internationalement illicites exposés ci-dessus et précisés dans le mémoire de la République du Cameroun et dans la présente réplique."

21 RC, para. 11.17: "principes fondamentaux du droit international"

22 RC, para. 11.25: "l'ensemble qu'ils constituent"

23 NC-M paras. 24.60 *et seq.*

24 RC, paras. 11.34 *et seq*.

25 NPO, Introduction, paras. 34-39, NC-M paras. 2.20-2.21 and 24.65-24.67; Cameroon's response is at RC, paras. 11.58-11.76.

26 At paras. 29-45.

27 Annex NC-M 345.

28 NC-M para. 24.66.

29 A copy of the cheque paid by Cameroon is at Annex NC-M 63.

30 Annex NC-M 344.

31 Annex NC-M 343.

32 Annex NC-M 346.

33 President Shagari's letter referred to the "Akwa yaji River": it is the same river, as he recognised in his reply to President Ahidjo's letter where he referred to the "Akwa Yafe River".

34 Annex MC 260.

35 Annex MC 262.

36 RC, para. 11.70: "avec beaucoup de sagesse, de faire un geste politique d'apaisement".

37 RC, paragraph 11.75: "n'a été qu'un geste d'apaisement, destiné à restaurer un climat de dialogue entre les deux pays."

38 See NC-M paras. 24.260-24.267; RC paras. 11.218-11.238.

39 RC para. 4.95.

40 RC para. 4.99: and see above, para. 7.177: "est indiscutablement situé en territoire nigérian."

41 RC para. 11.224: this quotes from a report by a local official dated, it may be noted, *after* the commencement of the present proceedings.

"jusqu'alors, à la vraie limite. "

42 RC para. 11.225: "... actuellement située au niveau du cours d'eau Tipsane ... la frontière réelle se trouverait bien au-delà en terre nigérianne au niveau .... du Mayo-Djigawal, ruisseau qui se situe à quatre kilomètres de Kontcha. ... matérialisée par des amas de pierre placés par les Français et Anglais vers les années 1939-1945, de part et d'autre du ruisseau sur une longueur non déterminée."

43 RC para. 11.226: (This too was prepared after the institution of the present proceedings, although referring to events many years before):- "ce qui a alors provoqué une nouvelle délimitation de la frontière qui se trouve aujourd'hui située à 09 km de KONTCHA, soit 06 km de la rivière TIPSAN, coulant elle-même à 03 km de KONTCHA."

44 See RC para. 4.99.

45 See above, para. 7.178.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 16

APPENDIX

Alleged Incidents

A. Introduction

1. In its *Counter-Memorial* Nigeria sought to introduce some order into Cameroon's confused and unspecific presentation of the various incidents on which it relied by itemising them by reference to the order in which they appeared in the successive documents in which Cameroon referred to them (*Applications, Memorial, Observations on Nigeria's Preliminary Objections*). In doing so Nigeria gave each incident a number, from 1 to 82. In its *Reply* Cameroon has followed a different approach to these allegations, treating a selection only of them by reference to their general location (Bakassi, Lake Chad, and the land boundary in between), and moreover treating those in the Bakassi area in approximately chronological order while treating those occurring elsewhere more haphazardly.

2. The numbered incidents referred to by Nigeria in its *Counter-Memorial*, with an indication against each of where (if at all) in Cameroon's *Reply* its further response is to be found, are:

No. 1 (NC-M paras. 24.65-24.67) RC paras. 11.58-11.76

Nos. 2-7 (NC-M paras. 24.68-24.96) RC paras. 11.136-11.140

No. 8 (NC-M paras. 24.97-24.102) RC paras. 11.34-11.39

No. 9 (NC-M paras. 24.103-24.108) RC paras. 11.77-11.80

No. 10 (NC-M paras. 24.109-24.117) RC paras. 11.81-11.100

No. 11 (NC-M paras. 24.118-24.122) no response

No. 12 (NC-M paras. 24.123-24.127) RC para. 11.118

No. 13 (NC-M paras. 24.128-24.133) RC paras. 11.48-11.57

Nos. 14-21 (NC-M paras. 24.134-24.179) RC paras. 11.101-11.121

No. 22 (NC-M paras. 24.180-24.193) RC paras. 11.40-11.47

No. 23 (NC-M paras. 24.194-24.223) RC paras. 11.122-11.135

Nos. 24-27 (NC-M paras. 24.224-24.246) no response

No. 28 (NC-M paras. 24.247-24.256) RC paras. 11.197-11.200

No. 29 (NC-M paras. 24.257-24.259) no response

No. 30 (NC-M paras. 24.260-24.267) RC paras. 11.218-11.238

No. 31 (NC-M paras. 24.268-24.272) RC paras. 11.239-11.242

No. 32 (NC-M paras. 24.273-24.282) RC paras. 11.243-11.244

Nos. 33-35 (NC-M paras. 24.283-24.310) no response

No. 36 (NC-M paras. 24.314-24.319) RC paras. 11.186-11.188

No. 37 (NC-M paras. 24.320-24.325) no response

No. 38 (NC-M paras. 24.326-24.332) RC paras. 11.179, 11.191-11.192.

Nos. 39-74 (NC-M paras. 24.333-24-24.534) no response

No. 75 (NC-M paras. 24.535 - 24.538) RC paras. 11.115-11.118

No 76-82 (NC-M paras. 24.539 - 24.564) no response[1]

Thus of the 82 incidents originally raised by Cameroon and dealt with by Nigeria in its *Counter-Memorial*, Cameroon in no fewer than 53 cases has made no attempt to comment further on Nigeria's account of the incident.

3. In addition to Cameroon's withdrawal of its claims of international responsibility for individual incidents taken on their own (see paragraph 16.11 *et seq.*), Cameroon also does not even appear to regard these 53 alleged incidents as illustrating Nigeria's international responsibility. Cameroon prefaces its consideration of those incidents which it does deal with by saying that "Cameroon will therefore deal below with the facts which at this stage it considers to be such as to illustrate Nigeria's international

responsibility ....",[2] thus indicating that it does not regard the 53 omitted incidents as falling within that description.

4. In this Appendix Nigeria will first deal with incidents Nos. 1-82 under three headings, covering Bakassi, Lake Chad and the Land Boundary. Under each heading Nigeria will deal with the incidents in approximately chronological order (so far as Cameroon's treatment of them allows), identifying as appropriate the relevant passages (if any) in Cameroon's *Reply* which deal with the same incident. Nigeria will then deal with incidents mentioned for the first time in the *Reply* (which it will number 83 onwards).

5. In dealing with incidents said to have occurred in the Bakassi and Lake Chad areas, Nigeria repeats[3] that, despite the fact that sovereignty over the relevant areas vests in Nigeria and not in Cameroon and that therefore all those parts of Cameroon's case which assume the contrary are without foundation,

> "Nigeria will nevertheless, and without prejudice to its position as to its sovereignty over the areas in question, respond to each incident which Cameroon alleges occurred in order to explain them and/or to show that the details given by Cameroon are insufficient to establish any international responsibility on the part of Nigeria."

- to which must now be added "or to serve as grounds or support for wider allegations of international responsibility on the part of Nigeria".

B. Incidents dealt with in Earlier Pleadings

6. In the following paragraphs the headings and numbers of the incidents are the headings and numbers given to them in Nigeria's *Counter-Memorial*.

BAKASSI

Incident referred to in an AFP dispatch of 1 July 1970 (No. 8)

7. This incident concerns alleged Nigerian inspections of Cameroonian fishing vessels at sea off Bakassi. It thus forms no part of any alleged "invasion or occupation" of Bakassi, and is among the incidents for which Cameroon has withdrawn any claim that, as separate and individual incidents taken on their own, they give rise to international responsibility on the part of Nigeria; rather it is an incident which Cameroon now seeks to treat as evidence in support of some broader claim of Nigerian responsibility[4].

8. This incident was nearly 24 years old when Cameroon instituted proceedings in the present case.

9. During all that time there has been no Cameroonian protest: Nigeria has no trace of any protest having

been received, and Cameroon has not put any protest in evidence.

10. Nigeria welcomes the further documentary evidence now belatedly submitted in substantiation of this incident. Nigeria also welcomes Cameroon's correction of its earlier omission to quote fully the text it was relying on (see NC-M paragraph 24.100): Cameroon now accepts that the "inspections really could have taken place on the high seas",[5] and this is indeed borne out by the report of 27 May 1970 by the Commissioners to the Fishing Industry, who state that the inspections were "carried out when our trawlers were either in Cameroon waters, or in international waters..."[6]

11. The Commissioners' report refers to only two specific incidents (the third matter - of which no details are given and which cannot therefore even be called an "incident" - involved the "Kergroise", but the Sea Report from this vessel is not with Annex RC 21). They occurred "in the Calabar River" ("Catalan"), and "in front of the bay of Calabar" ("Rochella").

12. These locations, off the *west* coast of Bakassi, could only be regarded as having occurred in Cameroonian waters on the hypothesis that Bakassi belongs to Cameroon: but it does not - it belongs to Nigeria, and the waters are Nigerian waters. But even if Bakassi were held to be Cameroonian it is noteworthy that although the Sea Reports attached to the Commissioners' report appear to give descriptions from which the locations of the incidents might be deduced, they are in fact wholly unclear since they depend on the locations of buoys which cannot easily be identified, particularly after this length of time (the incidents are said to have occurred as long ago as 1970). Given that Cameroon acknowledges that the Calabar River and Estuary are predominantly (if not wholly) Nigerian waters, there can be no certainty that such stale incidents occurred elsewhere than in Nigerian waters.

13. Moreover, the Commissioners' report states that the inspections and boardings had been conducted in an irregular manner, with assaults, death threats, and theft of property. It is noteworthy that neither of the two Sea Reports annexed to the Commissioners' report mention any such 'irregularities'. They can therefore only be regarded as unsubstantiated and therefore irrelevant assertions.

14. Cameroon adds to its comments on the incident of 1 July 1970 the further assertion of other examples of Nigerian violation of Cameroon waters bordering the Bakassi Peninsula.[7] To the extent that that assertion is unsubstantiated it is not evidence of anything other than Cameroon's practice of making unsubstantiated assertions. Cameroon seeks to substantiate its broad statement by mentioning only a single alleged incident, said to have occurred on 26 June 1964. This new incident is dealt with below, paragraphs 112-113.

Incident of 21 January 1981 (No. 22)

15. This alleged incident is said to involve the abduction and illegal confinement of Mr Simon Esabe, the district chief of Idabato, and members of his delegation, at "Kombo Abedimo". On the basis of the evidence submitted by Cameroon in its *Memorial*, Nigeria, in its *Counter-Memorial*, noted a number of

defects in that evidence and concluded that "This alleged incident is thus stale, and supported only by contradictory and inadequate evidence."[8]

16. In its *Reply* Cameroon puts in evidence a number of new documents, principally a report by Mr Esabe,[9] a medical report dated 1 February 1981,[10] a report by the Cameroonian Consul in Calabar,[11] a letter from a Nigerian Commissioner of Police (Mr Akpabio),[12] and a Report drawn up by the Secretary-General of Cameroon's Ministry of Foreign Affairs.[13]

(1) As regards all these new documents, there is first of all a question why, if they existed, Cameroon did not make them available in its *Memorial*.

(2) Moreover, Cameroon attributes[14] to Nigeria the statement that "it doubts the veracity of these facts", citing as the source NC-M paragraph 24.187: first, however, Nigeria notes that nowhere in that paragraph did it use that language, instead referring there (and elsewhere) to contradictions and inadequacies in Cameroon's own various versions of the alleged facts, and second, of course, Nigeria was only commenting on the 'facts' as they were put forward by Cameroon in its *Memorial* and could not have taken into account any new reports which Cameroon has only in its *Reply* seen fit to produce.

(3) As regards the fourth document, Cameroon prefaces its introduction of that document with the remark "it is to be regretted that [Nigeria] has not based its argument on the searches it could have carried out in its own archives":[15] Nigeria has to note that the burden rests with Cameroon to establish the facts on which it relies, and that it was the inadequacy of the facts as originally presented by Cameroon, and their staleness, which made and continues to make it difficult for Nigeria to identify the incident and so research into possibly relevant Nigerian records.

17. In the light of the new evidence so belatedly put forward by Cameroon, Nigeria has the following comments:

(1) nothing in those new documents can remedy the essential staleness of any claim based on the alleged incident, which is said to have occurred as long ago as 1981;[16]

(2) nothing in those documents shows that Cameroon made any written protest to Nigeria about the incident (although the fifth document refers to oral representations having been made);[17]

(3) that fifth document is undated: even the cover sheet in Cameroon's Annexes reads in part, for Annex RC 69, "1981 (?) sans date";

(4) it is noteworthy that although the medical report of 1 February 1981[18] refers to various indications of physical maltreatment by those said to have been arrested (including Mr Esabe), no mention of any maltreatment was made either by Mr Esabe[19] or by the Cameroonian Consul;[20] on the other hand, while Mr Esabe reported that during the surrender to the Nigerian forces "one of our army men, Ngwa Bidyinsi was seriously wounded on the head",[21] no injury of that kind suffered by a person of that name is included in the medical report;

(5) the incident, even on Cameroon's account, reached a satisfactory outcome with the release of the Cameroonians said to have been arrested;

(6) Cameroon has in any event withdrawn any claim as to Nigeria's international responsibility in relation to this incident taken separately and on its own (above, paragraph 16.11 *et seq.)*

Incident referred to in a Note dated 16 April 1981 (No. 13)

18. This incident is said to involve the "presence of Nigerian troops in [the district of][22] Idabato" in 1981.[23]

19. Cameroon treats this incident (with others) as establishing violations by Nigeria of certain broader international obligations relating to Cameroon's territorial integrity, non-use of force, territorial sovereignty and non-intervention.[24] It appears therefore that the incidents mentioned, taken on their own, are not the subject of any Cameroonian claim of international responsibility on the part of Nigeria.

20. Cameroon's initial account of the alleged incident, which was referred to in an internal note dated 16 April 1981, gave rise to a number of uncertainties. These were detailed in Nigeria's *Counter-Memorial*.[25] Moreover, Nigeria there noted that Cameroon had not protested against the incident, and that in any event, that incident having occurred as long ago as 1981, any claim in respect of it was barred by lapse of time.[26]

21. Cameroon still relies heavily on the internal note of 16 April 1981. Nigeria drew attention to the inadequacies of that note as adequate evidence of any action by Nigerian soldiers in its *Counter-Memorial*, in particular as regards provenance and its identification of the people concerned as Nigerian soldiers.[27] Those doubts remain: Cameroon still refrains from saying who wrote the note and on what sources the contents of the note were based, and Cameroon offers no explanation for the reference in the note to the persons involved wearing camouflage trousers of the type worn by the *Cameroon* army, or as being "pirates", nor any explanation of why they came to disembark from two *civilian* vessels. Cameroon asks merely what other status these "intruders" could have had if not Nigerian. Such a

rhetorical question falls far short of the standard of evidence required for the purpose of attributing international responsibility - as does the internal note of 16 April 1981, given its inconsistencies and other deficiencies.

22. In apparent recognition of the weakness of its argument based solely on this one ambiguous (to say the least) incident, Cameroon seeks to show that there had been other similar incidents on 21 January 1981,[28] on 15 February 1981,[29] in (or before) April 1981,[30] and on 16 May 1981.[31] These other incidents of alleged Nigerian military activity in the area are said to be "examples" of incursions which had occurred "throughout 1981, in Jabane [Abana], in the district of Idabato and, more generally, in the Bakassi peninsula".[32]

23. Nigeria must first observe that "examples" are, at best, only evidence of themselves. Even if examples are adequately established, they do not legally serve as evidence of alleged other incidents; and if they are not adequately established (as with those now cited by Cameroon), then their lack of relevance as evidence of yet other incidents is an *a fortiori* case.

24. The incident of 21 January 1981 is discussed elsewhere, in response to Cameroon's treatment of it as a separate incident: see above, paragraphs 15-17.

25. The incident of 15 February 1981 is now raised by Cameroon for the first time, as is the allegation contained in RC paragraph 11.55. They are dealt with in paragraphs 114-119 below.

26. As regards the last 'example' given by Cameroon, involving the incident of 16 May 1981, Nigeria has fully demonstrated the fanciful nature of Cameroon's allegations that this incident gives rise to international responsibility on the part of Nigeria (see also below, paragraphs 29-45). It will be recalled that this is an incident for which Cameroon expressed its regrets, and paid compensation. Rather than being an 'example' of Nigerian incursions into Cameroonian territory, it is the opposite - a Cameroonian attack on Nigerian forces, in Nigerian territory.

27. All the incidents put forward by Cameroon relate, of course, to Nigerian activities (or alleged activities) in the Bakassi Peninsula. Nigeria must repeat that where there have been activities by Nigerian civil or military authorities in or around Bakassi, they have been the activities of the authorities of the State which has sovereignty over that area. They have been an exercise of that sovereignty, often - especially in more recent years - in the face of Cameroonian attempts at harassment of the Nigerian population and authorities in the Bakassi Peninsula despite the long-established exercise of authority there by Nigeria.

28. For the foregoing reasons, Nigeria rejects Cameroon's claims that the incident originally referred to in MC, paragraph 6.56, as well as the four other incidents now adduced by Cameroon in this context, give rise to any international responsibility on the part of Nigeria either separately and individually when taken on their own (in so far as such separate claims of responsibility have not been withdrawn by Cameroon), or provide evidence in support of alleged Nigerian responsibility for breach of certain

broader international obligations.

Incident of 16 May 1981 (No. 1)

29. This incident is that for which President Ahidjo of Cameroon, by a letter of 16 July 1981 (at Annex NC-M 345), made a full apology to President Shagari of Nigeria, and paid compensation for the loss suffered by the families of the Nigerian soldiers who had been killed by Cameroon armed forces. In addition to the regrets expressed orally by the Cameroon Foreign Minister who went specially to Nigeria for the purpose,[33] President Ahidjo three times expressed, in writing in his letter of 16 July, his regrets at this incident. And Cameroon paid compensation: a copy of the cheque paid by Cameroon as compensation is at Annex NC-M 63. There can be no doubt that Cameroon accepted at the highest level that responsibility for this affair rested with Cameroon. That Cameroon has sought to use this incident as an example of Nigeria's wrongful actions is incomprehensible.

30. That, nevertheless, appears still to be Cameroon's position. It is manifestly incorrect. On the facts of the incident, Nigeria recalls that President Ahidjo's letter of apology was written in response to a letter from President Shagari.[34] That letter set out Nigeria's account of the facts which had led to the Cameroonian murder of the Nigerian soldiers on Nigerian territory, which differed from Cameroon's account as given in President Ahidjo's letter of 23 May 1981.[35] President Ahidjo's reply to President Shagari's letter in no way contradicted or dissented from President Shagari's statement of the facts, save only that he referred to it as having occurred on the Rio del Rey, whereas, as President Shagari stated (and repeated in his reply of 20 July 1981 to President Ahidjo),[36] it actually occurred on the Akpa Yafe River,[37] in Nigeria's Cross River State. It may be noted that while President Shagari's response to President Ahidjo's first letter of 23 May followed only 2 days later, and clearly shows full awareness of the facts of the incident, President Ahidjo took some 7 weeks to reply to President Shagari's letter of 25 May, during which period he would have had ample time in which to check the circumstances.

31. Cameroon's payment of compensation was in response to Nigeria's assertions (not contradicted by President Ahidjo, even after 7 weeks' study) that

> "The fact of the matter is that Nigerian troops have been murdered and seriously wounded by Cameroonian soldiers on Nigerian territory and Nigeria insists on its demand of unqualified apology, full compensation and reparations to the families of the victims of the wanton aggression, and bringing the perpetrators of the dastardly murders to justice."[38]

In these circumstances the payment of compensation by Cameroon is a clear acceptance of the correctness of Nigeria's account of the incident.

32. In the face of these admissions by Cameroon, at the highest level, of responsibility for the incident and resulting loss of Nigerian life, Cameroon's attempts to cast its position in a more favourable light are

of no value.

33. Cameroon maintains that the incident took place in the Rio del Rey, and refers to three statements now attached to its *Reply* (as Annexes RC 63 and RC 241). It prefaces its citation of these documents by a statement suggesting they are "facts" and not (as it suggests Nigeria's version is) "mere assertions".[39] This contrast is misplaced: the 'facts' are the events which actually took place, and the various statements about them are not in themselves the facts of the incident but at best are evidence of those facts.

34. The evidence originally invoked by Cameroon in support of its version of events consisted of an Information Note of 23 May 1981,[40] and an AFP despatch of 8 July 1981.[41] The first, having been prepared before President Ahidjo's admission of responsibility for the incident, is scarcely compelling evidence; the second, being (once again) merely a press report some 6 or 7 weeks after the event, is wholly unreliable. The new documents now put forward by Cameroon as evidence of its version of events, and in particular that they took place in the Rio del Rey, consist of statements by three members of the armed forces. One is a report dated 17 May 1981 by Captain Sintafeu: it is to be noted that he was not himself involved in the incident, and his statement does not indicate that he had spoken to any of the armed forces personnel who had been present at the time. The other two statements, by CPOs Mahamat and Meka, are dated August 1999: they offer an apparently impressive detailed account of the incident - until it is noted that this very detailed record of events was allegedly recalled 18 years after the incident to which the statements relate, and must therefore be of questionable reliability. None of these three statements can be regarded as good evidence of the matter in issue.

35. Nigeria also draws attention to a number of discrepancies in Cameroon's version of events which emerge from these accounts.

> (1) Although Cameroon asserts that the incident, which was by no means insignificant, occurred in the Rio del Rey, and close to a fishery there and to a dredging company installation, i.e. not in some isolated location, it appears from Captain Sintafeu's statement that the local District Chief and military unit were totally unaware of the confrontation more than 24 hours after it is alleged to have occurred (see Annex RC 63, at p. 634);
>
> (2) Captain Sintafeu[42] suggests that the Cameroonian soldiers began their journey from Lobe, while CPOs Mahamat and Meka[43] indicate that they had started from Idabato;
>
> (3) Captain Sintafeu says that the Cameroon soldiers were merely travelling in order to charge certain batteries, and does not mention that, as the 2 CPOs assert, they were carrying out military surveillance;
>
> (4) Captain Sintafeu says that the batteries were left to be charged at Bos et Kalis, while the two CPOs says they were left at Elf Serepca;

(5) Captain Sintafeu puts the timing of the incident at some time after 9.00 a.m., while the CPOs have it starting at 6.30 a.m.

(6) Captain Sintafeu and the two CPOs give differing accounts of the circumstances in which shots were fired, how many, by whom and in what order, and at what (as to which see also Annex MC 260, suggesting that they were fired at the motor of the Cameroonian vessel); and

(7) Captain Sintafeu's statement makes no mention of any Cameroonian casualties (surely important for a contemporaneous report), while the statements by the two CPOs do.

36. Against those questionable statements by Cameroonian military personnel is the statement, in a formal letter to President Ahidjo, by Nigeria's Head of State, President Shagari. That statement contains much circumstantial detail about the incident. It is not usual for Heads of State to treat letters to a fellow Head of State as if they were pleadings before a Court, and therefore it was not to be expected that President Shagari would have accompanied his letter with all the detailed information available to him. But equally, President Shagari would not have written in the terms he did if there had not been available to him and his officials well-documented information to substantiate his letter. Nigeria will refer to this information in a moment.

37. But first Nigeria will just observe that disagreement about whether the incident took place in the Akwa Yafe River rather than the Rio del Rey, which seems at present to be the major point with which Cameroon takes issue in its account of the circumstances of this incident, is perhaps less than crucial. Even if it were the fact that Nigerian armed personnel were patrolling in waters of the Rio del Rey that would not make Nigeria's presence there unlawful, or the presence there of Cameroon's forces lawful. For the reasons fully explained elsewhere,[44] Nigeria regards its boundary with Cameroon as running up the Rio del Rey, so that the locations referred to, even in Cameroon's version of events, are in Nigerian territory: it would thus be the Cameroonians who were wrongly on Nigerian territory, and the Nigerians who were lawfully there.

38. Cameroon makes the further comment that Nigeria rejected Cameroon's proposal that there should be a Joint Commission of Enquiry into the incident, and seeks to draw the conclusion that this could only have been because the Commission of Enquiry would have confirmed Cameroon's position.[45] Cameroon overlooks the fact that in his reply of 20 July 1981[46] to President Ahidjo's letter, President Shagari made a more far-reaching proposal, for the establishment of an Arbitration Panel composed of members from other countries ("countries acceptable to both of us") which "will look into our different positions concerning the boundaries". Cameroon did not see fit to respond to that proposal.

39. Cameroon seeks to suggest that President Ahidjo's letter of 16 July 1981, offering compensation (and regret for the incident, but Cameroon does not mention this), was decided upon "extremely wisely .. [as].. a political gesture of appeasement",[47] and was "merely a gesture of appeasement designed to

restore a climate of dialogue between the two countries".[48] As Nigeria will show, this is to turn history on its head.

40. Nigeria has referred above to the fact the President Shagari's account of the incident was not a "mere assertion" but was a statement for which there was well-documented evidence to substantiate what he said (above, paragraph 36). Nigeria would first recall what President Shagari said. He asserted "most emphatically and unequivocally ... that the sad event ... did take place on Nigerian territory"; he added that "it was a deliberate, premeditated and carefully prepared ambush against our patrol"; it "took place on Akwa yaji River, about 2km South of Ikang, a Nigerian town"; he added that it was "stretching credibility too far" to say, as did Cameroon, "that Nigerian troops in two patrol boats opened fire first on an unsuspecting Cameroonian patrol boat and yet killed not a single Cameroonian soldier" while at the same time five Nigerian soldiers were killed and three others seriously wounded.

41. The crucial aspect of President Shagari's statement is that the incident was "a deliberate, premeditated and carefully planned ambush against our patrol". President Shagari did not at the time go into further details, but Cameroon's distortion of these events makes it necessary for Nigeria to reveal the true facts behind President Shagari's statement. The facts show that Cameroon's conduct was aggressive, reckless and irresponsible, and provided yet another illustration of Cameroon's repeated attempts to advance its presence into Nigerian territory (see paragraph 16.5 above). Information available to Nigeria at the time showed that Cameroon's conduct involved (a) a major build-up of its armed forces in the region, (b) a carefully laid ambush of a Nigerian patrol, (c) with the hope of provoking Nigeria into starting a major, full-scale armed response, and (d) thereby enabling Cameroon to make political capital by painting Nigeria as an aggressor. It was President Shagari whose conduct prevented this incident from developing from a limited ambush into the major armed confrontation which Cameroon had been trying to provoke; it was President Shagari who was able to quell the Nigerian people's justified outrage at this incident, which as he said, "shook the entire Nigerian nation morally and politically" (letter of 25 May 1981); and it was President Ahidjo who, after taking time for consideration, found it advisable in the circumstances to apologise and pay compensation and to press the matter no further.

42. In substantiation of this account of what lay behind Cameroon's outrageous behaviour, Nigeria wishes to place before the Court a full account of this incident and its background.

> (1) On 13 May 1981 an intelligence summary for the period from 10 to 30 April recorded increasing Cameroonian harassment of Nigerians in the Bakassi area (Annex NR 185), including making the inhabitants learn French and adopt Cameroon customs - a clear indication that the local population were not already Cameroonianised.
>
> (2) On 26 May 1981 a situation report was sent from HQ 13 Infantry Brigade to Army HQ 'G' (Annex NR 186): this report recorded that "before the incident of 16 May 81, two ships from Germany discharged arms at Victoria port for three weeks. More than one hundred armoured cars including assorted weapons were discharged. Arms later transported to Yaounde and stored at Mentui about 24 kilometres from Yaounde." That report also

records the subsequent build-up of Cameroon's arms in the area.

(3) At 1007 hours on 15 May a message was sent reporting that "Gendarmes have intensified molestation and brutality on Nigerian inhabitants of the CRS [i.e. Cross River State] fishing ports" (Annex NR 187).

(4) At 1912 hours on 16 May a message reported that "Own creek patrol of about one platoon strength with 2 boats went on Akpa Yafe River and by about 0855 on 16 May were ambushed by Cameroon troops"[49] (Annex NR 188).

(5) At 2210 hours on 16 May a further message, which referred back to that mentioned at (3), reported "Army creek patrol ambushed by Cameroon troops. Five soldiers including one officer killed. Three ORs seriously wounded." (Annex NR 189).

(6) At 1514 hours on 17 May HQ, following receipt of the message at (5), requested information as to the position of the ambush (Annex NR 190), and the message in reply sent at 2106 hours that day stated "Own troops ambushed in Akpa Yafe River near Ikang" (Annex NR 191).

(7) After the incident, Lt. Colonel Ehigiator, the Commanding Officer at HQ 35 Infantry Battalion, made an on the spot investigation of the circumstances which led to the killing of the 5 Nigerian soldiers. His full report, dated 18 May 1981, i.e. just two days after the incident occurred, is at Annex NR 192. From this report (particularly paragraph 10) it is clear that the killings took place several kilometres within Nigerian territory, that the Cameroonian ambush was well planned and that the Cameroonian personnel were in disguise and using a patrol boat similar to those used by Nigerian Customs.

43. Nigeria draws the Court's attention to the compelling nature of this evidence, all of it contemporary with the incident referred to, and provided by people directly involved in or with operational responsibility for the consequences of the Cameroonian attack.

44. In conclusion, Nigeria notes that (a) this incident occurred 13 years before Cameroon instituted the present proceedings; and (b) as regards any Cameroonian claim that Nigeria bears international responsibility for this incident taken on its own, it is apparent that the facts have not been sufficiently clearly established by Cameroon to make possible a finding of international responsibility on the part of Nigeria, and Cameroon itself has in any event - and very properly - acknowledged its responsibility for the incident.

45. As for Cameroon's possible alternative argument, that the incident is supporting evidence for Cameroon's more general claim of Nigerian responsibility for violation of various 'fundamental' international obligations, the same absence of clearly established facts showing Nigerian responsibility for the incident (and indeed, the facts showing that it was rather Cameroon which instigated the whole

affair), as well as Cameroon's assumption of responsibility for it, deprives the incident of even that supporting role for Cameroon's case.

Incident of 16 June 1984 (No. 9)

46. This incident is said by Cameroon to have involved the establishment on 16 June 1984 of a Nigerian customs control post in the waters of the Rio del Rey. It does not, therefore, involve any alleged "invasion or occupation" of Bakassi. Consequently it is among the incidents for which Cameroon has withdrawn any claim that, as a separate and individual incident taken on its own, it gives rise to international responsibility on the part of Nigeria; rather it is an incident which Cameroon now seeks to treat as evidence in support of some broader claim of Nigerian responsibility.[50]

47. In its *Counter-Memorial* Nigeria drew attention to several inadequacies in Cameroon's account of this incident, which led Nigeria to deny that it gave rise to any international responsibility on the part of Nigeria.[51]

48. In its *Reply* Cameroon sidesteps the inadequacies to which Nigeria drew attention. The only point of substance made by Cameroon is to deny Nigeria's assertion that the boundary between Nigeria and Cameroon is on the Rio del Rey: as Cameroon says, "This is not the case."[52] Nigeria can only respond by repeating its view that that is precisely where the international boundary runs, for the reasons explained in NC-M, Chapter 11. Nigerian customs officials in the Rio del Rey were simply carrying out the normal duties of Nigerian authorities in policing and regulating the movement of people and goods into and out of Nigerian territory.

49. For this incident to have any possible bearing on questions of international responsibility, it is necessary to know in precisely which creek it occurred and whether that creek was undoubtedly within Cameroon territory. It is not enough to say just that it occurred "in a creek in the vicinity of the Rio del Rey",[53] since the Rio del Rey has many creeks, some of which are quite long; and even creeks outside the Rio del Rey may be regarded as 'in its vicinity'.[54] Cameroon has ignored this need to be more specific than it had been so far, presumably because it cannot provide the necessary precision. Cameroon seems to think that giving the name of the boat which was inspected is sufficient to establish that the Nigerian customs inspection took place in Cameroon's territorial waters:[55] but the mere name of the boat being inspected says nothing about *where* the inspection took place.

50. This alleged incident, which still remains insufficiently identified, has been withdrawn by Cameroon as a separate and individual claim for Nigerian international responsibility. It is relied on simply as evidence in support of alleged Nigerian breaches of some broader obligations owed to Cameroon. For the reasons given by Nigeria above (and in its *Counter-Memorial*) this incident is insufficiently established to constitute either alone or taken together with other incidents, credible evidence in support of allegations of breach by Nigeria of other broader international obligations.

Incidents referred to in a message dated 2 December 1985 (No. 10)

51. These incidents mentioned in MC paragraph 6.52 concerned, in substance, allegations of Nigerian maritime police and customs patrols in waters off Bakassi, in particular near the Innua-Mba fishery.

52. These incidents fall within those for which Cameroon has withdrawn any claim that, taken on their own, they give rise to international responsibility on the part of Nigeria; rather they are incidents which Cameroon now seeks to treat as evidence illustrating some broader claim of Nigerian responsibility.[56]

53. In its *Counter-Memorial* Nigeria showed that the alleged incidents had in no way been adequately identified or substantiated, that Cameroon had at no time protested against them before the filing of Cameroon's *Memorial*, and that they were by now stale. Accordingly Nigeria denied that they gave rise to any international responsibility on its part.[57]

54. Cameroon now says that it only cited the incidents referred to in its *Memorial* as a means of illustrating the numerous incursions into Cameroon's waters.[58] Nigeria must point out, once again (see above paragraph 23), that any one incident can only be evidence relating to that one incident, and cannot be evidence of, or illustrate, other incidents said to have occurred; and even as evidence relating to the one incident itself, it is only evidence to the extent that it is properly substantiated.

55. Cameroon seeks to provide further information about the reality of the principal incidents to which it referred,[59] and then goes on to refer to some additional new incidents of a similar kind.[60]

56. As to the principal original incidents, Cameroon first admits that the Nigerian "customs post" in question in these incidents is nothing more than a boat.[61] It is thus said to be sometimes impossible to locate a single place where the incursions by Nigerian maritime customs authorities took place. This is only partially true: if a customs boat stops and inspects another boat it does so at a particular location, and that location can be identified - indeed, it *must* be identified if any question of international responsibility is in issue (particularly in relation to locations at sea), since the question of responsibility is closely related to the exact location at which an incident is said to have occurred. If a boat moves from place to place, it simply means that incidents will take place at several separate places: but if they are to be the basis for complaints of international responsibility, that in turn means that the several separate locations must each be identified.

57. Contrary to Cameroon's assertion, Nigeria did not say that Cameroon did not know where Inua Mba was: Nigeria simply noted that Cameroon had not clearly identified the location of the "Innua-Mba Fishery", and that there was on the material provided by Cameroon at the time some confusion as to its whereabouts.[62] Cameroon now confirms that the fishery it was referring to as being at Inua Mba is located at the place marked on the sketch map at Figure 24.3 facing p. 674 of Nigeria's *Counter-Memorial*. Cameroon was thus at fault in indicating on its map on p. 359 of its *Observations* on Nigeria's

Preliminary Objections the location of the sub-prefecture under which Inua Mba comes, rather than Inua Mba itself, which is some distance away (see NC-M, Figure 24.3 facing p. 674). Now, however, it is to be noted that Inua Mba is known in Cameroon as Forisane. Yet Cameroon itself refers to "Inua Mba", so the allegedly Cameroonian name has clearly not been effectively imposed on the local population.

58. Cameroon concludes its reply on the question of the location of this incident by in effect saying that its precise location does not matter since, "In any case, as this fishery is located in the Bakassi Peninsula, it is clearly in Cameroonian territory". That assertion has no more weight than that of an *argument*: it is not a fact, from which consequences follow as to international responsibility. For its part, Nigeria must say that Inua Mba, being in Bakassi, is clearly in Nigerian territory, and therefore no violation of Cameroonian territory was involved in Nigerian maritime police and customs authorities carrying out their normal functions in Nigerian territory. Indeed, by raising this and similar incidents Cameroon is again demonstrating the reality of Nigeria's effective police and customs control of the area in which they were operating.

59. Nigeria pointed out in its *Counter-Memorial* that not only was Cameroon unspecific about the location of the incident, but also about the date on which it is said to have occurred. Cameroon admits that its *Memorial* was not explicit about this.[63] But Cameroon goes on to argue that a date - "albeit an approximate one", nothing more specific than sometime during the month of August 1985 - could be deduced from Annex MC 277 to its *Memorial,* and that in any event fixing a specific date, and just one, for acts which are said to have regularly occurred over a period of time would be futile.

60. These comments reveal very starkly Cameroon's total failure to appreciate that it is now involved in serious and detailed legal argument, rather than generalised political rhetoric. If the mere fact that a State alleges a whole series of broadly similar acts could have the effect of establishing, without more, that such a series of acts had indeed occurred, the whole process of international litigation in cases of State responsibility would be undermined. Either the acts occurred or they did not, and if they occurred they either did so in particular circumstances and with particular legal consequences or they did not. If they occurred, in the circumstances and with the consequences alleged, *that must be established by evidence produced by the Party making the allegation*. If no, or only inadequate, evidence is produced, their occurrence will not have been established, and for legal purposes they have to be disregarded.

61. So it is in the present context. Cameroon's presentation of its factual case remains full of uncertainties, which are not only sufficient to deprive it of any basis for an individual claim of responsibility, but also to deprive it of any legal weight in support of any claim of breaches by Nigeria of more general legal obligations. Cameroon has provided no evidence that it protested about this incident at any time prior to the filing of its *Memorial*, or otherwise brought it to the attention of the Nigerian Government. For present purposes it must be disregarded.

Incident Nos. 14-21

(i) Incidents referred to in a note dated 15 March 1984 (No. 14)

(ii) Incident referred to in a message dated 29 September 1990 (No. 15)

(iii) Incident referred to in message dated 10 December 1990 (No. 16)

(iv) Incident referred to in message dated 13 December 1990 (No. 17)

(v) Incident of 27 April 1991 (No. 18)

(vi) Incidents referred to in a note dated 29 October 1992 (No. 19)

(vii) Incident referred to in a note dated 18 December 1992 (No.20)

(viii) Incidents referred to in a message dated 23 June 1993 (No. 21)

62. Cameroon, in its *Reply*,[64] refers to the response to Cameroon's *Memorial* given by Nigeria in paragraphs 24.134-24.179 of its *Counter-Memorial*. Those paragraphs deal with the incidents identified in the heading immediately preceding this paragraph. Cameroon deals collectively with these incidents, to which it adds some new incidents mentioned now for the first time. It refers to them as relating to "Recurrent Nigerian incursions into Jabane during the second half of the 1980s" (Heading to Sub-section 7, preceding RC paragraph 11.101), and in paragraph 11.101 itself it refers to them as "relating to the progressive occupation of Jabane as from the middle of the 1980s".

63. Cameroon presents its collective account of these incidents in the perspective of being "part of a plan to invade the Bakassi Peninsula".[65] This is a mistaken view of the true situation in respect of the Bakassi Peninsula.

64. Cameroon seeks to present itself as the victim of Nigerian expansion in this region. Nothing could be further removed from the truth. As Nigeria has consistently made clear, not only does Nigeria's territorial sovereignty extend to and embrace the Bakassi Peninsula, but Nigerian authority there at the time of and following upon the attainment of independence in 1960 was well established, while Cameroon's presence was non-existent.

65. Gradually, however, Cameroon has sought to change the *status quo* and to infiltrate into the Peninsula, and evict Nigeria. It is Cameroon, and not Nigeria, which particularly in the early 1990s stepped up its campaign to acquire Bakassi, both by increasing the level of its harassment of Nigerian authorities and civilians in the region and by a heightened campaign of diplomatic activity, including protests against what it presented as Nigerian wrongdoing: as Cameroon's advances into Bakassi became more audacious, the occasion for such spurious protests naturally became more frequent - but rather than being evidence of increasing Nigerian wrongdoing, they only testify to steadily increased Cameroonian attempts to confront the Nigerian authorities in their own territory. Nigeria has naturally not acquiesced

in these attempted Cameroonian encroachments, and has continued to exercise its legitimate authority in the area.

66. Against that background, it would be straightforward for Nigeria to respond to Cameroon's various claims, based allegedly on a variety of incidents said to involve Nigerian civil and military authorities in the Bakassi Peninsula, by simple reliance on Nigeria's sovereignty over the area and the consequential assertion that *any* exercise of authority by Cameroon in Bakassi was in violation of Nigeria's territorial sovereignty. Nigeria, while indeed maintaining that position, has however taken Cameroon's allegations of wrongdoing by Nigeria at face value, and - without prejudice to its underlying position as set out above - has shown them generally to be wholly inadequate to establish any international responsibility on the part of Nigeria.

67. Nigeria would first observe that of the eight incidents with which Cameroon purports to deal collectively in RC paragraphs 11.101-11.121, Cameroon does not there discuss items (i) and (vi). Nigeria accordingly stands by its criticisms of those alleged incidents contained in NC-M paragraphs 24.134-24.139 and 24.163-24.169. Although Cameroon has now produced the internal note missing from its *Memorial* (see NC-M paragraph 24.135), that note[66] is in no way specific about the matter being discussed in it, particularly as regards any relevant dates (see NC-M paragraph 24.136): it thus does nothing to meet the criticisms advanced by Nigeria about an incident said to have occurred as long ago as 1984.

68. Item (ii) concerned alleged visits by Nigerian navy and police officials to Abana. Nigeria criticised Cameroon's presentation of this incident as being inadequately particularised, including as to date. Cameroon replies by simply stating,[67] without providing any further evidence, that the alleged incident (s) occurred in "the year 1990". This is a wholly inadequate basis for identifying an incident which is said to give rise to Nigeria's international responsibility.

69. Cameroon treats incidents (iii) and (iv) as involving the same matter, namely the removal of the Cameroonian flag in Abana (Jabane) and its replacement with the Nigerian flag; in its *Reply* Cameroon says that the information given about this incident in its *Memorial* is repeated in a further letter of 21 December 1990 from the Governor of the South-West Province to the Minister for Territorial Administration.[68] Nigeria put forward a number of reasons to show that these alleged incidents were inadequately established by the evidence relied on by Cameroon. The only point of criticism which Cameroon addresses is the contradiction involving the manuscript notation of the date of the document, which Cameroon seeks to explain by saying that such errors are to be expected in the first few days of a new year.[69] Apart from the feebleness of this explanation, even if correct (which is improbable in an efficient bureaucracy) it reveals a degree of carelessness which undermines the value of the document as evidence supporting a claim of international responsibility. It also, of course, leaves untouched the other points on which Nigeria criticised the adequacy of Cameroon's allegations (at NC-M paragraphs 24.144-24.153).

70. The new document which Cameroon supplies in support of its allegations[70] does not add any evidence regarding this alleged incident. So far as that incident is concerned, the document, which consists of a letter from the Governor of the South-West Province, merely refers to a telex of 12 December 1990 from (apparently) the Minister of Territorial Administration which is said to have reported a flag lowering/raising incident: but that telex is not itself attached, and the rest of the Governor's letter concerns future action which he is recommending that Cameroon should take, and offers no evidence of or further reference to the alleged incident.

71. Item (v) concerned the hoisting of a Nigerian flag at Abana and the erection of a signboard involving the Nigerian commune of Mbo. Of Nigeria's many criticisms of the adequacy of the evidence supporting this incident,[71] Cameroon only seeks to respond to one, namely Nigeria's alleged claim "that these actions are attributable to local officials", arguing that the activities of even local public employees are attributable to the State.[72]

72. But Cameroon has oversimplified the point which Nigeria was making. Nigeria noted that the text relied on by Cameroon "suggests at least serious doubt about whether the persons were acting as organs or agents of the Federal Republic of Nigeria, and about the capacity in which they were present".[73] Nothing in Cameroon's *Reply* does anything to dispel those doubts. In any event, the remaining points of criticism raised by Nigeria have not been addressed by Cameroon in its *Reply*, and Nigeria still stands by them.

73. Item (vii) concerns the building of a Nigerian school in Abana. As Cameroon notes,[74] Nigeria accepts that in Abana it built "a Nigerian Government primary school" - while Cameroon quoted that passage from Nigeria's *Counter-Memorial*, Cameroon did not complete the part of the quotation which states "that this was a Nigerian Government primary school built in a Nigerian town, Abana". That remains Nigeria's position; and from NC-M paragraph 10.96 and paragraphs 3.205-3.218 of this *Rejoinder*, it will be seen that this was part of a consistent pattern of Nigerian schools built in Bakassi for more than a century past, between 1893 and 1993.

74. Item (viii) concerns alleged incidents referred to in a Cameroonian protest Note of 23 June 1993. Nigeria identified a number of inadequacies in Cameroon's accounts of these alleged incidents.[75] Cameroon merely makes a bare reference to that protest Note as annexed to its *Memorial*,[76] but adds nothing in the way of response to points made in Nigeria's *Counter-Memorial*. Nigeria can therefore only repeat that "These alleged incidents have not been adequately identified, or established by sufficient evidence. Nor is it clear why Nigeria is thought to bear international responsibility for what appear to be acts by civilians".[77]

75. All but one of the remaining paragraphs of this section of Cameroon's *Reply* raise new incidents which are alleged to have occurred in the context of what are alleged to be Nigerian incursions into Abana in the late 1980s and early 1990s (as to which, see paragraphs 120-125, 134-136 and 143-150

below). The one exception is in RC paragraph 11.118, where Cameroon refers to the incident identified by Nigeria as Incident No. 12: this is now dealt with further in paragraph 84 below.

Incident of 6 March 1990 (No. 23)

76. This incident concerns the arrest of three Cameroonian policemen at Abana. The supporting documents submitted by Cameroon in its *Memorial* were considered carefully and in considerable detail by Nigeria in its *Counter-Memorial*.[78] That consideration led Nigeria to conclude that the documents were unreliable in material respects, failed to support parts of Cameroon's allegations, and gave rise to a number of inconsistencies.[79] Moreover, it was an incident which, even on Cameroon's account,[80] came to a satisfactory conclusion at a joint "ceremony" to mark the release of the Cameroonians. For a variety of such reasons Nigeria denied that the incident involved any international responsibility on the part of Nigeria.[81]

77. Despite its apparent efforts[82] Cameroon is still, in its *Reply*, unable to give a precise location for this alleged incident. In its *Memorial* it is said to have taken place at sea "off" Abana.[83] Cameroon in effect cannot improve on that description, and merely repeats the assertion that the location was within Cameroonian territorial waters. But that assertion must be proved: the waters "off" Abana are the waters of the Cross River estuary, the greater part of which even Cameroon acknowledges are Nigerian waters.[84] That is why precision is essential before it can be established that any violation of territorial sovereignty was involved in the alleged incident. The burden rests with Cameroon to make good its case: it has failed to do so.

78. For its part, Nigeria has been able to uncover some of the facts of this incident - in particular the Incident Report of 6 March 1990 of Sub-Lieutenant Gofwan (Annex NR 193); the Report of Captain Ebhaleme of 8 March 1990 forwarding that Incident report to the Flag Officer Commanding, Calabar (Annex NR 194); and the Report of Rear Admiral Olu Omotehinwa of 8 March 1990 to the Chief of Naval Staff (Annex NR 195).

79. These show that the incident involved the arrest of three Cameroonian security agents together with a boat driver and miscellaneous armaments, and that it occurred at about Latitude 4° 35' N, Longitude 8º 22.5' E. The approximate location is shown on the sketch map (Fig. 16.1): it is well within Nigerian waters, and Captain Ebhaleme states that the arrest took place "in Nigerian territorial water". The recording of this incident can be seen to be meticulous.

80. It will also be noted that Captain Ebhaleme recorded that there had been a "report from Abana about Camerounian Gendarmes continuous terror in this area"; further, Rear Admiral Olu Omotehinwa's report notes that the naval patrol had "acted in response to series of complaints by the villagers around Abana about Gendarmes excesses and harassment"; that the fact that the Cameroonian agents had had on them Nigerian currency indicates that "they might have extorted such money from Nigerian inhabitants of the

Villages around Abana"; and that "The presence of Cameroonian Military Installations around Atabong West (still within the disputed territory) might have encouraged the incessant harassment and violation of Nigerian territorial waters". He also recommends "that a Military base and Police Post be sited at Abana and environs as a mater of priority", thus indicating a clear belief that those areas were part of Nigeria, and that at that time no such posts were located there.

81. It will thus be seen that the inadequacies inherent in Cameroon's original account of this incident, and brought out in detail at NC-M paragraphs 24.194-24.223, remain. Nothing in this incident gives rise to any international responsibility on Nigeria's part. It was an incident which came to a satisfactory conclusion with the release of the persons concerned, and is in any event an incident in relation to which, taken separately and on its own, Cameroon has withdrawn any claim as to Nigeria's international responsibility (above, paragraph 16.11 *et seq.*).

Jabane - 16.05.1991 (No. 75)

82. This incident is based on a Cameroonian protest Note of 16 May 1991, involving alleged "frequent incursions" by Nigerian police at Jabane. Nigeria noted that Cameroon's account of this alleged incident (or incidents) was lacking in necessary details.[85]

83. Cameroon, in its *Reply*, makes no effort to respond to Nigeria's comments. Cameroon merely repeats the text of its 1991 protest Note, which was already available as part of its *Memorial*. Nigeria accordingly stands by its previous comments,[86] and denies that the alleged events referred to by Cameroon give rise to any international responsibility on Nigeria's part (claims as to which Cameroon has in any event now withdrawn: see paragraph 16.11 *et seq.*).

Incident referred to in a note dated 27 August 1991 (No. 12)

84. This concerned two small craft which left Abana at the approach of a Cameroonian naval patrol. Nigeria drew attention to a number of inadequacies in Cameroon's account of this alleged incident,[87] including in particular that there was no evidence that the vessels were Nigerian or that the persons on board the vessels were Nigerian officials.[88] Cameroon, in its *Reply*, deals only with this latter point, and can do no better than suggest that the supposition that they were Nigerian officials would be "consistent with the increasingly permanent nature of their [i.e. Nigerian agents'] presence in this fishery during this period".[89] This is a manifestly inadequate basis for the attribution of international responsibility for some specific alleged incident - quite apart from the other inadequacies in Cameroon's account of the matter to which Nigeria has drawn attention and which Cameroon has not sought to answer.

Incident Nos. 2-7

(i) Incident of 21 December 1993 (Abana and "Diamond Island") (No. 2)

(ii) Infiltrations on and after 21 December 1993 (No. 3)

(iii) Incident of 28 December 1993 (No. 4)

(iv) Incidents on 3, 4 and 5 January 1994 (No. 5)

(v) Incidents of February 1994 (No. 6)

(vi) Cameroon's allegations concerning the occupation by Nigeria of parts of the Bakassi Peninsula since 1993 or 1994 (No. 7)

85. Cameroon's *Memorial* identified these 6 separate alleged incidents among those for which it sought to hold Nigeria internationally responsible. Nigeria dealt carefully with each of them in its *Counter-Memorial* at paragraphs 24.68-24.96. Cameroon now chooses to ignore Nigeria's response to the original allegations, and instead treats them all together (for, in its brief reference to this part of Nigeria's *Counter-Memorial*, Cameroon, in RC paragraph 11.137, refers collectively to paragraphs 24.68-24.96 of the *Counter-Memorial*). Cameroon's collective treatment of these separate incidents is now put under the new heading, "The Nigerian military invasion of December 1993-February 1994".

86. This confirms that Cameroon has withdrawn any claim that these incidents, as separate and individual incidents taken on their own, give rise to international responsibility on the part of Nigeria; rather - in line with the new position which Cameroon has adopted in its *Reply* (see above, paragraph 16.11 *et seq.*) - Cameroon seeks to treat them as evidence in support of its broader claims against Nigeria (see RC paragraph 11.140).

87. As Nigeria has already noted (above, paragraphs 16.31 and 16.32), Cameroon cannot, by changing its approach to questions of Nigeria's international responsibility from one of seeking to establish responsibility case by case for each of a series of separate incidents to one of treating those incidents as merely supporting evidence for the breach by Nigeria of some so-called 'fundamental' international obligations, avoid the need to establish that the facts which it cites did in fact occur in the manner alleged by Cameroon, and had the legal consequences which Cameroon attributes to them.

88. Nigeria, in its *Counter-Memorial*, refuted or cast grave doubt on Cameroon's allegations, given certain deficiencies in Cameroon's account of them. Cameroon has made no attempt to reply to, let alone remedy, those deficiencies: indeed it has now added to them, by attributing the beginning of these incidents to 28 December 1993,[90] and not 21 December 1993 as in its *Application* and *Memorial* (see NC-M paragraphs 24.68 and 24.71). Because of these unanswered and unremedied deficiencies, Nigeria continues to reject Cameroon's allegations, and the consequences in respect of alleged Nigerian responsibility which Cameroon seeks to draw from them.

89. The only point which Cameroon makes in its *Reply* in this context relates to item (vi) in the heading

preceding paragraph 85 above. Cameroon thus offers no comment whatsoever on items (i) to (v) in the heading, corresponding to Incidents Nos. 2-6 in Nigeria's *Counter-Memorial*. Those alleged incidents still cannot, accordingly, be taken as either giving rise, separately and individually, to any international responsibility on the part of Nigeria - claims as to which Cameroon now appears in any event to have withdrawn - or as evidence in support of some broader claim of Nigerian responsibility.

90. The one point which Cameroon makes, in relation to item (vi) in the heading, is to emphasise Nigeria's acknowledgement that in December 1993 its armed forces were "deployed to certain locations in the Bakassi Peninsula"[91] and that it had maintained "the presence of its military forces in the Bakassi Peninsula from February 1994".[92]

91. Cameroon purports to see this as reflecting agreement between the Parties on "the sudden occupation of certain parts of the Bakassi Peninsula by the Nigerian military forces and their constant presence in the peninsula since the beginning of the year 1994".[93] With further reference, apparently, to the events of December 1993 Cameroon refers to them as showing "that the Nigerian army took control of the South-West of the Bakassi Peninsula at the end of 1993 although, until then, it did not have any position there".[94]

92. Nigeria totally rejects the construction which Cameroon seeks to put on the events of December 1993 and February 1994. Quite apart from Nigeria's fundamental position (affirmed by the Co-Agent of Nigeria in 1996)[95] that it has, and at the relevant times had, sovereignty over Bakassi and that events in Bakassi have to be seen in that light, Nigeria makes the following points.

(1) There is no agreement on Nigeria's part to there having been any "sudden occupation" by its armed forces of part of Bakassi.

(2) As explained in NC-M paragraph 24.94, the presence of Nigerian forces was occasioned by the risk of violent clashes between claimants representing two Nigerian States, namely Akwa Ibom and Cross River (as explained in Nigeria's Note of 4 March 1994 to the President of the Security Council.[96] Cameroon was well aware of this: see NC-M paragraph 24.94. An additional cause of concern lying behind the measures taken was the persistent acts of harassment by Cameroon *gendarmes* in the Bakassi region (above, paragraphs 3.136-3.141).

(3) That background, which Cameroon fails to mention and still less to dispute, shows clearly that (i) the incident was not directed against any unlawful Cameroonian presence in Bakassi, and (ii) the area in question was a bone of contention between two *Nigerian* States, thus showing that the area was under the active control of Nigerian Federal and State authorities.

(4) That alone shows the incorrectness of Cameroon's statement that until December 1993 Nigeria "did not have any position there [i.e. in south-west Bakassi]".

(5) There was thus no question of Nigerian action disturbing the territorial *status quo*, as Cameroon states.

(6) As regards the continuing presence of Nigerian troops in Bakassi, Cameroon makes no mention of the reasons why they were there. These reasons are fully explained in NC-M paragraphs 24.95-24.96. Put briefly, Cameroon launched repeated attacks on Nigerian settlements and military positions in Bakassi, and severely harassed the Nigerian inhabitants, embarking on a systematic campaign against the Nigerians living in Bakassi, driving out many of them; in particular, as recorded in Nigeria's Note of 4 March 1994 to the President of the Security Council,[97] Cameroon launched attacks on Nigerian troops on 14, 18 and 19 February 1994. None of the circumstances cited by Nigeria in its *Counter-Memorial* is contradicted by Cameroon in its *Reply*. They left Nigeria with no choice but to keep its troops in Bakassi from February 1994 onwards.

(7) Since Nigerian military and administrative authorities were in control in the area at the time, it was Cameroon which, by sending forces into Bakassi in February 1994, was violating the territorial *status quo*.

(8) The mere fact, taken by itself, that Nigerian military forces were in Bakassi in December 1993 and again from February 1994 onwards does not in itself establish, as Cameroon seems to think, that Nigeria has thereby violated any international obligation owed to Cameroon. The facts of and circumstances surrounding those troop deployments, and the reasons for them, are relevant to any consideration of questions of international responsibility. In particular, Nigeria draws attention to the right of all States to take the necessary action within their own territories to maintain order in cases of threatened internal violence, and the right of all States to take necessary and proportional action in self-defence, and to protect their territories, troops and inhabitants from unlawful attack and harassment by other States.

93. This one incident consequently neither gives rise to international responsibility on the part of Nigeria if taken as a separate and individual incident, nor does it provide any supporting evidence - either by itself or in combination with the other incidents (i) to (v) covered by the heading preceding paragraph 85 above - for any more general claim of responsibility which Cameroon might seek to advance.

94. It does, however, give rise to international responsibility on the part of Cameroon, and is the subject of a counterclaim by Nigeria: see NC-M paragraph 25.13, and the Appendix to Chapter 18 below.

LAKE CHAD

95. In its *Counter-Memorial* Nigeria responded to all the alleged incidents which Cameroon said had occurred in the Lake Chad area.[98] Underlying Nigeria's response was the consideration that, as explained in Part III of its *Counter-Memorial* and at NC-M paragraph 24.62, sovereignty over the relevant areas in Lake Chad vested at all material times, and still vests, in Nigeria, which occupies and administers them as of right. Nevertheless, Nigeria considered the incidents raised by Cameroon. Cameroon's assertion[99] that Nigeria had, in its *Counter-Memorial*, abstained from replying in substance to any of the incidents raised by Cameroon is wrong. Nigeria examined each alleged incident with care (indeed, with much greater care and attention to detail than Cameroon devoted to putting them forward), and showed that each of them had not been adequately established in order to support a claim of international responsibility on the part of Nigeria. In its *Reply* Cameroon only returns in any remotely substantive way to three of those incidents. Nigeria will therefore in this *Rejoinder* respond further only to those three.

Faransa - 19.12.1984 (No. 38)

96. Nigeria drew attention to several deficiencies in Cameroon's allegation of events taking place at Faransa as long ago as 1984.[100] Cameroon makes no serious attempt to remedy them.

(1) As to Cameroon's assertion that Nigeria "stresses" the fact that there was no mention in the Note on which Cameroon was relying of the Cameroonian flag having been replaced with a Nigerian one,[101] Nigeria notes, first, that the point was made *without* any particular emphasis but just as one of several factual deficiencies in Cameroon's account, and second, that the point being made by Nigeria was simply that the only document being relied on by Cameroon in support of this alleged incident described it in terms different from those used by Cameroon to describe it in its *Memorial*: in other words Cameroon's description of the incident was unreliable.

(2) One of the deficiencies in Cameroon's allegation to which Nigeria drew attention was that Nigeria knew of no place named Faransa, and Cameroon had not identified where this village was located. Although Cameroon refers to the various names by which this village is known (Faransa, Faransia, Fransia: RC paragraph 11.179), Cameroon still nowhere identifies its location: the map at R4 (preceding p.115 of Cameroon's *Reply*), which Cameroon says is a map "showing the location of villages in dispute"[102] contains no reference to Faransa, either by name or by reference to the numbers given to various locations in the Annex to RC, Chapter 3 (RC, p.147). In fact it now transpires that Faransa's location *can* be identified. Faransa is the name given by Cameroon to Kirta Wulgo,[103] and Cameroon acknowledges that Kirta Wulgo is in Nigeria.[104]

97. Nigeria still, accordingly, denies that Cameroon has established any basis on which Nigeria is to be held internationally responsible. Indeed, in so far as Cameroon has admitted that the Cameroon flag was raised by Cameroon at Kirta Wulgo (*alias* Faransa), which Cameroon admits is in Nigeria, it is clearly Cameroon which has incurred liability in this respect.

Darak - 26.06.1987 (No. 36)

98. In Annex OC 1 to its *Observations*, at p.198, Cameroon referred to repeated incursions by political and administrative officials and by the Nigerian forces at Darak. In its *Counter-Memorial* Nigeria showed that Cameroon had failed to provide adequate or reliable evidence of wrongful conduct by Nigeria such as to give rise to international responsibility on Nigeria's part, and pointed out that in any event Cameroon was seeking to attribute international responsibility to Nigeria for acts by Nigerian officials in a location over which Nigeria has sovereignty.[105]

99. In its *Reply* Cameroon does not have anything more to say about the inadequacy of the evidence it had previously submitted, although it purports to provide additional information about Nigerian official and military activity in the area.[106] This information is, however, very selectively presented. The documents from which it is derived need to be looked at as a whole in order to gain a true picture of circumstances in the region. Thus:

(1) the report of Lt. Kegne[107] is cited as evidence of the presence of Nigerian forces in Darak, and gives details of an incident involving the detention by Nigerian military personnel of some presumably Cameroonian members of PAMINT (which stands for Mixed International Patrol) as they were approaching Darak; the report makes it clear that the Nigerians "wanted only to check if indeed [they] were from the PAMINT"[108] - a perfectly routine task for military personnel;

(2) the report also makes clear that once the Cameroonian personnel's membership of PAMINT had been established, the Nigerians were apologetic for having detained them: they were told that Darak was open to them, and the Nigerian officer organised "a drink (party) of reconciliation in our honour, and altogether with the Nigerian soldiers we all drank";[109] they were also given 40 litres of petrol (shortage of petrol being why the Cameroonian personnel had gone to Darak in the first place);

(3) the report concludes "Despite all these disorders, we did not register any real threat, nor any insult worthy of the name, and in the end everybody apologised...".[110] It is clear that the whole matter was utterly insubstantial, and as a basis for an allegation of international responsibility bordering on the frivolous;

(4) the report moreover refers to a number of matters involving misconduct by Cameroonian gendarmes against Nigerians - thus the Nigerian Lieutenant is reported to say "that he did not understand why the Nigerian personnel are always arrested by the Cameroonians"[111] and the report states that "03 days previously the Cameroonian gendarmes were apprehended at NAGA in the process of carrying out exactions against

the population;"[112]

(5) the Monthly Summary of Information for June 1987[113] similarly records that on the night of 4/5 June 1987, "two gendarmes from the Mora brigade and six members of the Chari OPS were apprehended in Banki *on the Nigerian side* by members of that country's patrol. They were released the following day."[114] (emphasis added);

(6) the Monthly Summary, while recording Nigerian military activity in Darak on 17 June 1987 (which is the matter in relation to which Cameroon cites this document), concludes "Despite a few incidents observed all along the Cameroon-Nigeria border, the 3rd Military Region continues to experience *its usual calm*...".[115] Again, it is clear that the matters about which Cameroon is now so loudly complaining were wholly insubstantial.

100. Apart from the crucial consideration that, since Nigeria has sovereignty over Darak, the presence there of Nigerian forces is entirely legitimate (and the presence there of Cameroonian forces unlawful), Nigeria draws attention to the following additional considerations:

(1) The removal of the other State's flag and its replacement with that of one's own State is a regular occurrence in situations where there is a dispute over territory. It is seldom a one-way activity. Thus after reporting that in June 1987 Nigerian soldiers removed the Cameroon flag in Darak and replaced it with their own, the Cameroonian report continues "we are keeping the Nigerian flag here",[116] presumably after having taken it down and replaced it with another Cameroon flag. Nigeria is certainly aware of many other instances in which a Nigerian flag has been taken down by Cameroon forces or officials and replaced by a Cameroon flag; when the opportunity offers itself, Nigeria naturally in turn takes down that improperly raised Cameroon flag and replaces it with the Nigerian flag. Which State first starts this reciprocal de-flagging and re-flagging in any one locality is a question the answer to which can probably never be known.

(2) Similarly, where a boundary is unclear (e.g. because it is not demarcated) and even more so where it runs through territory which is in dispute, what are seen by one State as cross-border 'transgressions' by the other are likely to occur with some regularity in *both* directions. Neither side has a monopoly of such 'transgressions'. As demonstrated above, even Cameroon's own documents show that Cameroon officials went, improperly, into Nigeria.

(3) Both the de-flagging and re-flagging incidents, and those involving cross-border 'transgressions', are relatively minor consequences of the underlying dispute over territory. The local authorities do not treat these incidents as serious matters, and they are usually rapidly settled locally in a spirit of co-operative 'give and take'. They do not in themselves raise major issues of international responsibility.

No. 28. Incident of 13 May 1989

101. This incident allegedly involved the arrest and confiscation of a Cameroonian fisheries boat by Nigeria armed forces. As Nigeria noted in its *Counter-Memorial,* it was the only incident allegedly occurring in the Lake Chad area which was put forward by Cameroon in its *Memorial* with even a colourable degree of particularity.[117] Even so, on closer examination of the particulars given by Cameroon, Nigeria concluded that this

> "alleged incident has not been adequately established by sufficient evidence. The facts of the incident are unclear, Cameroon's supporting evidence is contradictory, and Cameroon's diplomatic correspondence about the matter did not constitute any protest or even reservation of rights."[118]

102. Cameroon now seeks to explain the inadequacy of its supporting material by saying that the reports it was relying on were not designed to be exhaustive accounts of the incidents referred to, but only to provide a "brief résumé of the events".[119] But that is simply not good enough as a basis for an allegation of international responsibility. By limiting itself to such a "brief résumé", Cameroon (quite apart from deficiencies in its supporting 'evidence') has clearly failed to discharge the burden resting on it to make good its case against Nigeria in respect of this alleged incident.

103. Cameroon addresses only one issue in any detail, namely the lack of certainty about the location at which the alleged seizure is said to have taken place. Although the various reports initially relied on by Cameroon contain clear discrepancies on this issue,[120] Cameroon ignores these discrepancies and, choosing between various possibilities, now states that the version of events which is to be believed (and by implication that its other documents submitted in evidence are not to be believed) is that the alleged seizure took place in Blaram, between Blangoua and Kofia.[121] This assertion still does not clarify matters sufficiently, since Cameroon continues not to specify the location of Blaram, despite Nigeria having pointed out that it was not familiar with any place bearing that name,[122] and despite the fact that the map appearing on page 209 of Cameroon's *Observations* alleges that this incident occurred in close proximity to Cameroon's border with Chad, and nowhere near Nigeria:[123] certainly, Kofia itself is, according to Cameroon,[124] in Chad.

104. It is incorrect for Cameroon to say that the exact place at which an incident occurs is "without legal consequence":[125] in cases where incidents are said to give rise to international responsibility, especially where sovereignty over the general region in which an incident is said to have taken place is a matter of dispute, it is essential to know precisely where an incident took place because not only is that an essential part of the facts of the matter and a crucial consideration in relation to questions of territorial sovereignty which might be issue, but also it is important in enabling the respondent State to identify the alleged incident so as to be able to respond to the allegation made against it.

THE LAND BOUNDARY

Incident of 29 May 1989 "at Kolofata" (No. 31)

105. This incident is said to have involved the abduction of a Cameroonian citizen by three Nigerian police officers. In its *Counter-Memorial* Nigeria drew attention to a number of deficiencies in the only document relied on by Cameroon in support of its allegation.[126] Contrary to Cameroon's assertion,[127] even the contradictions between a document and its cover sheet do affect its probative value, since any document which contains internal contradictions is rendered suspect, as also is an account in the *Memorial* which, while purporting to be based on that document, in fact differs from it. Similarly Cameroon's assertion that, where no date for an incident is given in a message about it, the date of the incident is to be taken as the same date as the date of the message, is insufficient for present purposes. The facts relating to many of the incidents alleged by Cameroon show that in many instances the first message about an incident is written only following some delay - sometimes quite a significant delay - after it is said to have occurred. State responsibility is not a matter of approximate generalisation, but a matter of very considerable specificity, and it is Cameroon's obligation to establish its case *in detail*.

106. As Nigeria noted,[128] the matter was "closed locally" in May 1989, and Cameroon had never made the incident the subject of any protest.[129] Cameroon now asserts[130] that "by the time it produced its *Memorial* in 1995, Cameroon had officially protested against the abduction and sequestration of its citizen." But Cameroon produces no record substantiating the making of any such protest (unless Cameroon is suggesting that by raising this incident in its *Memorial* it was thereby 'protesting' against it: but no such action constitutes a protest sufficient to establish a *pre-existing* claim against Nigeria). Similarly, Cameroon's suggestion that an incident, despite being closed locally, could still be alive internationally,[131] is an attempt to reopen already settled matters. International relations between States which share lengthy common boundaries give rise to many minor local incidents which are settled locally to everyone's satisfaction: to regard all these affairs as capable of springing back to life for purposes of international claims is to create disputes where in reality none exists.

Incident of 6 July 1992 (No. 32)

107. This incident is said to have involved the arrest of 4 Cameroon citizens by the Nigerian police in Mandur Yang on 6 July 1992. In its *Counter-Memorial*[132] Nigeria demonstrated that the evidence relied on by Cameroon in its *Memorial* in support of this alleged incident was clearly inadequate to form the basis for a claim of international responsibility on the part of Nigeria: as Nigeria put it, "Cameroon's account of the facts of this alleged incident is imprecise, inconsistent, and unsubstantiated by reliable evidence."[133] Nigeria also noted that the subject matter underlying the alleged incident was of an apparently local and private nature involving a claim to land,[134] that there had been no protest by Cameroon (*ibid.*), and that the affair, such as it was, appeared, even on Cameroon's own account of the

matter, to have been settled through local discussions (*ibid.*).

108. Cameroon, in its *Reply*, makes no serious attempt to answer Nigeria's contentions, asserting that "Nigeria raises its usual objections as to the probative value of the documents produced by Cameroon, which do not need to be answered again".[135] Cameroon thus shows that it has failed to appreciate that each allegation of international responsibility has to be separately established: whatever Nigeria may have said in relation to *other* incidents, and whatever Cameroon may have said in response in relation to those *other* incidents, has no effect upon Nigeria's contentions in relation to *this* different incident or the need for Cameroon adequately to respond to those contentions. Cameroon has failed - indeed, has not even tried - to do so.

The Occupation of Tipsan by Nigeria (No. 30)

109. Cameroon's complaint about Nigerian actions at Tipsan is dealt with in Chapter 16, paragraphs 16.47-16.54.

C. New allegations made by Cameroon in its *Reply*

110. Nigeria will now proceed to examine a number of allegations raised by Cameroon for the first time in its *Reply*. It will respond to these on their merits, on the basis of available documents, leaving to one side (a) Cameroon's apparent withdrawal of issues of State responsibility as they relate to individual incidents considered as such,[136] and (b) any question of the admissibility of new claims of State responsibility in terms of the Court's judgment of 25 March 1999.[137] For convenience the following account will deal separately with incidents in and around the Bakassi Peninsula (paragraphs 111-181), with incidents in Lake Chad (paragraphs 182-201), and with incidents along the land boundary between these two areas (paragraphs 202-206). Within each of these sections, incidents will be dealt with in chronological order.[138]

(i) New allegations in and around the Bakassi Peninsula

111. As to all of these allegations the point has already been made that Cameroon's claims depend, *inter alia*, upon its assertions as to the status of the Bakassi Peninsula itself. Furthermore the existence of a territorial dispute and of a civil administration on the disputed territory is not as such a basis for responsibility. These points apply to all those incidents discussed here which occurred on territory title to which is undetermined or in dispute. For reasons of economy they will not be repeated on each occasion.

Incident of 26 June 1964

112. Cameroon complains that, on 26 June 1964, Nigerian police intercepted a canoe in the Rio-del-Rey, "in a fishery called Okomkiet, which features under the name 'Big Ekom' on Cameroon maps of the

Bakassi Peninsula".[139] The allegation concerns an incident said to have taken place over 36 years ago. There is no evidence that Cameroon protested this incident at the time or subsequently. In these circumstances, any claim in respect of this alleged incident is now barred by lapse of time.[140]

113. In any event, the circumstances of the alleged incident could not form the basis of a claim of Nigerian responsibility. Its location is given by Cameroon as Okomkiet, which is a Nigerian settlement located in the north-eastern part of the Bakassi Peninsula, an area under Nigerian sovereignty and control. The extent of this control is indicated by the two internal documents produced by Cameroon in support of its allegation.[141] These documents, from a Cameroon government source, imply that Nigerian customs officers were openly carrying out patrols of the Peninsula. It may also be noted that the settlement concerned is referred to by its Nigerian name, Okomkiet, and not by the name "Big Ekom" which subsequently appears on Cameroon's maps.[142] In the circumstances, no significance is to be attached to this isolated report so far as any question of responsibility is concerned.

Incident of 15 February 1981

114. Cameroon also refers to "a new incursion" on 15 February 1981.[143] It is said that uniformed Nigerian soldiers in four large motor ferries "entered the fishing settlements of Ene-Koi, Abana and Inosi in the District of Idabato, properly armed".[144] The document relied upon by Cameroon for this "new" allegation is a French translation of the English document appearing immediately after it: this seems to have originated with a Divisional Officer located in Isangele. There is no indication as to the original source of the information contained in the note, which refers to events which allegedly took place some distance away in the Bakassi Peninsula (see Fig. 16.2). Indeed at certain parts of the note, the author admits that his information is based on "a series of rumours" and he uses phrases such as "it is said", which show that his report was at best a second-hand one. Moreover the contrast presented is between a "regular" and open Nigerian activity and Cameroon passivity, with a population "indifferent" to the concerns expressed by the Regional Officer. The picture presented by the letter is not one of a Nigerian incursion into areas administered by and under the sovereignty of Cameroon.

115. Cameroon claims that the information contained in that note "ties up with" a telex dated 16 February 1981 which is allegedly cited in another telex of 20 February 1981 appearing at Annex RC 61. The abbreviated wording used in the latter telex is difficult to comprehend, and it is not clear what other message or messages are being cited.[145] The telex reports that the Nigerian army "has already built its Inekon [Ine Ikoi] barracks and occupied houses in Abana". There is no suggestion as to the date on which these incidents took place, but they are inconsistent with the allegation of a later Nigerian invasion of Bakassi in the 1990s.

116. Even if the allegation were taken as proved, it would not form the basis of a claim of Nigerian responsibility. The locations concerned are named by Cameroon as Ine Ikoi, Abana and Onosi, all of which are Nigerian settlements located in the Bakassi Peninsula, an area that at the relevant time was

(and still is) under Nigerian sovereignty and control. The appearance of Nigerian soldiers in these settlements would have been entirely consistent with Nigeria's continuing administration of the Bakassi Peninsula. The telex appearing at Annex RC 61 implies that army barracks had been constructed at Ine Ikoi some time before 20 February 1981, thus indicating that the Nigerian presence in Bakassi as at that date was a continuing one.[146]

117. So far as this "incident" is cited by Cameroon in a chapter on State responsibility, it is relevant to point out that (a) the documents cited are merely internal; (b) no official protest is cited, and (c) the incident, if it occurred at all, is nearly 20 years old.

Cameroon internal note of 30 April 1981

118. Cameroon refers to an internal note of 30 April 1981, which is said to reveal that "Nigerian soldiers had continued their infiltrations as far as Kombo Itindi and into Cameroon's oil installations."[147] No other document is provided, nor any evidence of the form these "infiltrations" took. The original reports on which the verbal protest was presumably based are not produced, and no specific allegations are made. The note focuses on areas outside Bakassi itself, *viz.*, Kombo Itindi and Cameroon's offshore oil installations. In fact there were Cameroon oil installations to the south of Bakassi whose presence was not taken to depend on sovereignty over the Peninsula itself.[148] As to Kombo Itindi, this is a Cameroonian settlement, located some 12 kilometres to the east of the Bakassi Peninsula. It has never been claimed by Nigeria. It is possible that the reference to Kombo Itindi is to the district or sub-prefecture of that name.[149] It appears that the district of Kombo Itindi may extend as far west as the Rio del Rey, in which case it may be that the Nigerian soldiers were sailing on the Rio del Rey. But Cameroon provides no particulars.

119. Again, so far as issues of State responsibility are concerned, it is relevant to add (a) that no note verbale or other document was transmitted to Nigeria, and (b) that the allegation is nearly 20 years old.

Incident said to have taken place on 15 May 1984

120. Cameroon quotes from a document apparently dated 5 July 1984 (the date is illegible), which asserts that "an armed Nigerian police officer nonchalantly made his way into our Country to arrest a certain Christopher SOKARI, in the fishery of TINKORO, KOMBO ITINDI district on 15 May 1984."[150] Cameroon has not identified the location of the village which is referred to in the document. Nigeria is not aware of any village by the name of "Tinkoro" situated in the Bakassi Peninsula. There is no such locality in or near Abana, despite the fact that the heading on page 517 suggests that this allegation is supposed to relate to an "incursion ... à Jabane". Cameroon maps show a village of "Tikoro" situated about 7 kilometres to the east of the Bakassi Peninsula on the Ndian River, and accordingly in Cameroon.[151]

121. As to the single document produced by Cameroon in support of this allegation,[152] this appears to have been sent by the Minister of Territorial Administration, and was apparently based on information passed on by the Governor of the South-West Province, presumably based in Buea.[153] It is thus reporting events at third hand. Cameroon gives no indication of the circumstances in which the arrest took place, nor of any follow-up in relation to the allegation. There is no information as to whether Cameroon ever proceeded to obtain "clarifications" from Nigeria, or what is supposed to have become of Christopher Sokari (whose nationality is not stated). At more than 16 years remove, and in the absence of any protest or any detailed indication of the circumstances, there seems nothing more that can usefully be said.

Allegation contained in an internal document of 28 May 1984

122. Cameroon relies on an internal document of 28 May 1984, which claims that "three Nigerian soldiers were seen in the house of Oron Chief of Inosi on the morning of 27/05/84 at about 8 a.m. ... They later left and went over to Abana to meet their colleagues who were waiting there...".[154]

123. As to the single document relied on in support of this allegation,[155] the following comments apply:

(a) Neither the text of the Reply nor the document itself gives an indication of precisely who the author of the document is or of the source of the information contained in it.

(b) Although the three Nigerians soldiers were apparently in uniform, they travelled in a civilian boat, and did not carry any arms. It is far from clear whether they were on duty: from the fact (if it is a fact) that they were drinking gin and smoking marijuana, it may be inferred that they were not.

(c) No description is given of the "colleagues" the three Nigerians were supposed to have met in Abana (Jabane).

124. The locations specified are both within the Bakassi Peninsula, assuming that "Inosi" is a reference to "Onosi", in the southwest of Bakassi. Apart from the confirmation of the presence of Nigerian military personnel at their ease in Bakassi, the Nigerian character of the Peninsula is further evidenced by the reference to the Chief of Onosi as an "Oron Chief". Oron is the division of Nigeria's South-Eastern State under which the Chief of Onosi was originally designated within the Effiat Clan.[156]

125. So far as issues of State responsibility are concerned, it is relevant to add (a) that there is no record of any protest being made to Nigeria, and (b) that this entirely trivial incident is said to have occurred more than 15 years ago.

Allegations contained in an Internal Cameroon Note of 28 November 1984

126. Cameroon refers to an "analysis" of recorded border problems contained in a "Note on Cameroon-Nigerian Border Dispute", produced by the Cameroon Ministry of Foreign Affairs on 28 November 1984.[157] Part 2 of the analysis, headed "Present Day Border Problems", lists approximately 16 matters. Of these 16, Cameroon refers to four, but the author of the Note drew no distinction between these four and the other 12: he was arguing simply (and sensibly) that "in the next Nigerian-Cameroon Joint Commission, the border problem should be looked into seriously so that a solution should be found to it". The four incidents which Cameroon selects from the miscellany contained in the Note and elevates to the status of complaints in the realm of State responsibility are as follows:

> "letter ... of 23/2/84 from the Ministry of Territorial Administration stated that the elements of the Nigerian Army intercepted a canoe transporting goods of Cameroonian businessmen in Cameroonian Territorial waters and conducted it back to Calabar ...
>
> Telex n_102 revealed that on 25th July 1984 a combined team of the Nigerian Navy, Police and Customs anchored in two speed boats in Mudemba and proceeded to Isangele, Idabatu Ngosso II and Opopo fishing ports. They indoctrinated Nigerian citizens resident there not to pay taxes to the Cameroon government...
>
> Telex n_106 revealed that on 23 July 1984, three Nigerian soldiers in a flying boat came to Opopo and threatened the lives of certain Cameroonian citizens.
>
> Telex of 12/11/84 from the Governor of the South West Province revealed that the Nigerian Navy is stationed around Koumbo in ABEDEMO Sub Division and is sea monitoring the movement of boats and canoes at the creeks."

But Cameroon has failed to provide sufficient details in respect of any of these four alleged incidents to support its claim, as will now be demonstrated.

127. As to the *first* of the four allegations, no indication of the date or precise location of the alleged incident has been provided by Cameroon. The reference to "territorial waters" tells us little; in February 1984 Cameroon claimed a 30 n.m. territorial sea (increased to 50 n.m. later that same year). The "businessmen" in the canoe could have been almost anywhere doing almost any kind of business. The letter of 23 February 1984 is not provided. On the face of it this is a trivial incident unrelated to any territorial issue before the Court.

128. As to the *second* of the allegations, Cameroon has failed to identify with precision any of the locations referred to: Isangele and Mundemba are both large sub-divisions of Cameroon, and Nigeria is not familiar with Opopo. It is not clear what the author of the document understood by the curious compound expression "Idabatu Ngosso II": of course "Idabato II" is the Cameroon name for East Atabong, but Nigeria is not aware of an "Idabatu Ngosso II" or even a "Ngosso II".[158] If the reference is to Nigerian settlements on Bakassi, it is not surprising that the relevant Nigerian officials "indoctrinated"

the Nigerian civilians not to pay taxes to Cameroon. But in the absence of any specific information and having regard to the subsequent lapse of time, Nigeria is unable to say whether these events occurred or what precise form they took.

129. As to the *third* of these allegations, Nigeria again notes that the location of the alleged incident, Opopo, has not been properly identified by Cameroon, nor have any particulars of the alleged incident other than its date, 16 years ago.

130. As to the *fourth* allegation, Nigeria notes that the document quoted is almost certainly erroneous in referring to a location by the name "Koumbo in ABEDEMO Sub-Division". There is no Cameroonian Sub-Division bearing that name, so far as Nigeria is aware. It may be that the author of the document merely misunderstood a reference in some other report to "Kombo Abedimo Sub-Division", which is the name now given by Cameroon to a geographical area which includes part of the Bakassi Peninsula; this error does not suggest much familiarity with the locality. In any event Cameroon has failed to specify the precise location of the alleged incident, which is merely said to have taken place "around" Kombo Abedimo Subdivision. Again the allegation is wholly unspecific and is consistent with lawful monitoring of traffic at sea which would fall within the responsibilities of any navy. The presence of Nigerian naval personnel in the area is clearly not, as such, a matter which could be said to involve the international responsibility of Nigeria.

131. Turning to the Internal Cameroon Note of 28 November 1984,[159] which transcribes these four allegations as well as the twelve others, it is not clear for whom or in what circumstances the Note was written. None of the original telexes or letters to which the Note refers have been produced by Cameroon in its *Reply*, and there is no indication of the original source of the information contained in them.[160]

132. These four allegations are old, stale and vague, as well as unsupported by first hand accounts. They do not seem to have been the subject of any bilateral protest at the time, and it is submitted they add nothing to Cameroon's case on State responsibility.

Allegation contained in an internal message of 22 February 1985

133. Cameroon relies on another internal Cameroon telegraphic message, which refers to the alleged "... presence on 14 February 1985 in Navanga II in the Rio Del Rey stop of a Plascoa of the Nigerian Navy with 4 sailors...".[161] Again Cameroon does not identify the precise location in question. Cameroon maps do however show a village "Nawango II", the original Nigerian name of which is Ine Mba.[162] It is on Hecuba Creek, 3 miles west of the Rio del Rey. Since Nigeria was in peaceful occupation of Bakassi at the time, it would not be surprising that a Cameroon supply vessel in the Rio del Rey may have sighted a Nigerian boat with naval personnel. There is no suggestion from the report cited by Cameroon (which is a second-hand report; the original is not supplied) that the boat was engaged in any unlawful or harmful activity. No protest was forthcoming at the time, and it is far too late now to raise a mere sighting of

naval personnel in 1985 as a basis for State responsibility, even if the other conditions for State responsibility had been met (which is not the case).

Allegation contained in a Note of 7 October 1985

134. Then Cameroon quotes from a Note dated 7 October 1985 addressed by the Cameroon Ministry of Foreign Affairs to the Nigerian Embassy in Yaounde. It asserts that:

> "On 15 July 1985, two armed Nigerian soldiers made their way into Cameroonian territory and arrested a Nigerian housewife, Mrs. BOUBOU who was living in AFAGBA II, Sub-Prefecture of ISANGELE, in the *Département* of the Ndian."[163]

Apparently the two soldiers took Mrs. Boubou to Ikang. It is also recorded that they subsequently attempted to arrest her husband, Mr. Wilson Monday, with the assistance of a Nigerian guide, Mr. Kari, "who lives in Abana": Mr. Monday nonetheless succeeded in escaping from them.

135. Cameroon has not identified the location of "Afagba II". Nigeria is not aware of any village of this name in the Bakassi Peninsula; there is no such village in or near Abana.[164] Nor has Cameroon provided any evidence that the alleged incident actually took place. The Note of 7 October 1985 provides no indication of the source of the information on which the allegation was based, or of the underlying circumstances.

136. So far as issues of State responsibility are concerned, it is relevant to note (a) that there is no record of any protest being made to Nigeria (the note of 7 October 1985 can in no way be regarded as the making of a protest), and (b) that this trivial incident is said to have occurred some 15 years ago.

Allegation contained in a Note dated 24 February 1986

137. Cameroon purports to quote from a Note sent by the Cameroon Ministry of Foreign Affairs to the Nigerian Embassy in Yaounde as follows:

> "A trawler of the Cameroonian company CHALUTCAM was inspected by the Nigerian navy in Cameroon's territorial waters on 19 February 1986 at 10.30a.m. (CALABAR river, 5 miles from SANDY point and 1 mile to the South at approximately 8_25' longitude EAST and 4_33' latitude North).
>
> Furthermore, Nigerian soldiers intruded onto the trawler and forced the crew to follow them to Calabar."[165]

The Note itself however refers to the relevant longitude as 8_ 23' E, not 8_ 25' E.

138. It should be noted that for the vast majority of allegations involving incidents at sea, made by Cameroon, geographical co-ordinates are not provided and the Court is given only the vaguest indications of locality, or none at all. In the present case, where Cameroon does give co-ordinates, the co-ordinates place the location squarely within Nigerian territorial waters (see Fig. 16.3). In fact the point identified lies in the Calabar Estuary, nearly 4 kilometres to the west of point 10 of the maritime boundary line claimed by Cameroon.[166]

139. Wherever the arrest may have occurred, far too little information is given for any claim of State responsibility to be sustained. The Cameroon Note of 24 February 1986 does not provide any indication of the source of the information, nor does it specify the name of the Cameroonian trawler allegedly involved. The point of the Note is to seek the release of the trawler: Cameroon does not bother to say whether and when it was released. The incident took place, of course, nearly 15 years ago. On the information provided there is no basis whatever for establishing the international responsibility of Nigeria with respect to this incident.

Allegation contained in a Note dated 12 July 1986

140. Cameroon quotes from another Note sent by the Cameroon Ministry of Foreign Affairs to the Nigerian Embassy in Yaounde on 12 July 1986, as follows:

> "In the morning of 19 February 1986 at 10.30 a.m., the Cameroonian trawler 'MUNGO' fishing fully within Cameroonian territorial waters (4_31' latitude North and 8_28' longitude E, 1 mile to the South of the ELF AONT point and 2.8 miles away from the coast at Sandy Point East) was assailed and inspected by armed Nigerian soldiers.
>
> Subjected to abuse, curses and threats, the Cameroonian trawler and all of its crew were led under escort to Calabar."[167]

In its *Reply* Cameroon presents this as another separate incident, showing "once more that Cameroon's territorial waters had been violated". It may be noted, however, that:

(d) The Note is dated 12 July 1986, nearly 5 months after the incident referred to.

(e) It is clear from the details given - namely that it involved the inspection of a Cameroonian trawler by Nigerian authorities at 10:30 am on 19 February 1986, and the subsequent escorting of the trawler to Calabar - that the incident described is the same as that described in the Note of 24 February 1986, which has already been discussed.[168]

(f) The only difference between the two accounts is the location of the incident. The new set of co-ordinates given identifies a location nearly 9 km to the southeast of the point identified in the previous Note.

141. Cameroon does not explain why its Ministry for Foreign Affairs sent a Note alleging the same incident as that alleged in its Note of 5 months earlier, nor why it provided a different set of co-ordinates for the incident. It accepts that the vessel was released 24 hours later, though apparently without its cargo. No details are given of any charges that may have been laid against the vessel, and the note makes no claim for reparation.

142. Even if the second version of this incident is the correct one (and there is no basis for saying which of them is correct),[169] and even if (*quod non*) the vessel was seized in Cameroon waters, there would be no basis for a claim of responsibility now, 15 years later, based on scanty and conflicting assertions and on no direct evidence.

Allegation contained in an internal telex of 12 February 1987

143. Then Cameroon quotes from an internal telex to the effect that "two Nigerian police officers in uniform from Iket police station Cross River State [were] arrested here yesterday 31/1/87...".[170] No indication is given as to where "here" is supposed to have been, or of the circumstances in which the named Nigerian policemen are supposed to have been arrested (for example, whether they were purporting to exercise their police powers). The telex referred to by Cameroon fails to mention where the arrest occurred or why. The message quoted in the telex is said to be dated 6 February 1987; however, this is contradicted by the text of the message, which indicates that it was sent on 1 February. There is no indication of any subsequent investigation by Cameroon, of any correspondence with Nigerian authorities, or of when or on what basis the policemen were released. In the absence of such information the allegation does not even begin to raise questions of State responsibility on the part of Nigeria, quite apart from the lack of any intergovernmental protest and the delay of 13 years since the incident occurred.

Allegations contained in a telegraphic message dated 30 October 1990

144. Cameroon quotes an internal telegraphic message of 30 October 1990,[171] which includes the following allegations:

> "Occupation fishery Jabane in Idabato district by Nigerian Navy since 02.10.90 ended 7.10.90..."

> "... 17.3.90 stop attempted capture Isangele Sub-Prefect off Rio del Rey by a Nigerian 'water Police' patrol ..."

> "...12 to 13.8.90 stop occupation Jabane by Nigerian troop in 6 boats stop threats and plundering stop..."

"... 2 to 7.10.90 stop further occupation by navy units led by an officer..."

In addition, it refers to an alleged incident of 7 March 1990, which has already been dealt with.[172] Although there remain four items listed in the passage above, the fourth is plainly the same as the first, and there are accordingly three. Something should be said about each of them.

145. Concerning the first allegation (relating to the period 2-7 October 1990), this appears to assert "occupation" of Abana by a naval unit under regular command, i.e. a regular patrol. There is no indication that it was opposed. As to the second allegation, no information is given by Cameroon concerning the precise location of the alleged incident; it is not sufficient to describe the location as somewhere "off Rio del Rey". Nor has Cameroon provided any details of the circumstances in which the "attempted capture" is supposed to have taken place, or what this "attempt" involved. As to the third allegation, the expression "threats and plundering" is almost devoid of detail: there is no indication of who is supposed to have made the "threats" and carried out the "plundering", or the precise nature of these activities. The author of the message notes that the inhabitants of Abana are "97% Nigerians".

146. Concerning all of the allegations, Cameroon has not provided any other evidence than the telegraphic message. It is an internal Cameroon message sent by the Secretary of State for Defence, presumably based in Yaounde. The author provides no indication of the sources of the information contained in the message. The message was not sent until 30 October 1990, over seven months after the date of the first alleged incident.

147. So far as issues of State responsibility are concerned, it is relevant to add that (a) there is no record of any protest being made to Nigeria about any of these incidents, and (b) if they occurred, they are about 10 years old.

Allegation contained in a telegraphic message of 7 December 1990

148. Cameroon quotes from the telegraphic message, noting a "meeting held in Jabane on 17/11/90 by 13 ... Nigerian sailors and police as well as certain civilians with population of Jabane and Kombo Amunja...".[173] The telegraphic message is the only evidence advanced by Cameroon to support this allegation. The message appears to have been sent by the Ministry of Territorial Administration in Yaounde. Although it appears to have been based on a message received from the Governor of South West Province (presumably based in Buea[174]), Cameroon has not produced either a copy of the latter message, nor of any other message upon which that message was itself based. Furthermore, the document does not reveal who the original so-called "reliable source" of the information was. Evidently it was not an official source, which is hardly surprising since Abana was (and is) under the peaceful control and administration of Nigeria.

149. Cameroon gives the impression that it protested to Nigeria concerning this particular incident.[175] In fact the documents referred to are dated over 2 months[176] and 6 months[177] later, and make no reference

to the specific incident alleged in paragraph 11.110.

150. It is the case that the Nigerian civil administration of Bakassi has been in place since well before December 1990, assisted from time to time by naval, military or police detachments. Meetings such as those referred to would be a normal incident of such administration. They do not, as such, form a basis for any allegation of State responsibility.

The incidents of February 1996

151. Cameroon makes certain allegations concerning the events which took place in February 1996 on the Bakassi Peninsula, after the commencement of the present case.[178] Many of these allegations were advanced by Cameroon previously, in the context of its *Application* to the Court for the Indication of Interim Measures, which was heard by the Court in March 1996. In particular, Cameroon persists with its claim that "on the 3rd day of February 1996, Nigeria launched attacks against Cameroon military positions all along what was at the time the cease-fire line in the Bakassi Peninsula."[179]

152. To the extent that it suggests that Nigeria launched unprovoked attacks against Cameroon on that date, this allegation is untrue. Firstly, there was no cease-fire line in existence in Bakassi at that time,[180] and Cameroon produces no evidence of one. Secondly, as Nigeria pointed out at the March 1996 hearing, it was Cameroon which launched an unprovoked attack on pre-existing Nigerian positions in Bakassi on 3 February 1996.

153. It will be recalled that at the March 1996 hearing, Nigeria made several general observations regarding the inadequacy of the evidence supporting Cameroon's version of events. There is no need to repeat what was said on that occasion.[181] In rehashing in its *Reply* its allegations concerning the events of 3 February 1996, Cameroon relies on three annexed documents. These do not improve its case, and in particular not one of the documents appears to have been generated on Bakassi itself.

154. First, Cameroon relies on the testimony of a certain Captain Jean-Pierre Meloupou who was allegedly "present at the scene".[182] It refers to his affidavit, which is annexed.[183] As to this affidavit, the following comments apply:

> (g) Cameroon describes the affidavit as "sans date". In fact it is dated, but the date is illegible. Evidently Cameroon did not have access to the original at the time it filed its *Reply*.
>
> (h) In the absence of a date, it is difficult to tell whether the document is contemporaneous or was prepared for the purposes of the pleadings.
>
> (i) Only one page of the affidavit, plus the (partly illegible) final page are annexed.

(j) The affidavit refers to the landing of a Nigerian helicopter in an area occupied by Nigerian forces. This is described by Cameroon as "unusual air movements",[184] without further explanation.

(k) The affidavit does not support the conclusion that the alleged Nigerian attack was "unprovoked". From the information provided (and not provided), it could just as well have resulted from a challenge by Cameroon to the territorial status quo.

155. Two further documents, both dated 3 February, are relied upon by Cameroon: these are described as a radio message[185] and a telegram.[186] Both are said to have been sent by "the local Gendarmerie" and to have provided information about "the Nigerian attack". However:

(a) Although Cameroon claims that the messages were sent by "the local gendarmerie", the documents purport to have been sent from Buea, located nearly 80 kilometres from the Bakassi Peninsula.[187]

(b) There is no indication in either of the messages that the attacks referred to in the messages were unprovoked.

(c) Cameroon claims that the "3 suspects arrested" were three sailors captured in a Nigerian boat just before the opening of hostilities.[188] It is not explained why these individuals, supposedly arrested before the "surprise attack" took place, were regarded as "suspects".

(d) Although Cameroon claims that on 3 February 1996 Nigeria launched an large-scale attack "all along what was at the time the cease-fire line in the Bakassi Peninsula", one of the annexed messages reports that "calme relatif regne ensemble notre circonscription" ("our whole district is relatively calm").[189]

(e) The messages are clearly not first-hand accounts of what is alleged to have taken place, and they give no indication of their sources of information. The urgency of the situation is further called into question by the statement in Annex RC 203, "situation suivie" - the situation was being followed.

156. In short, despite the passage of over four years since Cameroon first made its allegations concerning the events of 3 February 1994, Cameroon has still not managed to produce any credible evidence to support its version of events.

157. At the oral hearing of Cameroon's *Application* for the Indication of Provisional Measures, Nigeria demonstrated very clearly that it was Cameroon which had launched an unprovoked attack against

Nigeria on that day.[190] For the convenience of the Court, that demonstration will be summarised here.

158. On market day, Saturday 3 February 1996, at about 12:00 noon, without warning or provocation, Cameroon forces attacked the village of West Atabong[191] with a barrage of artillery. The attack was directed not only at the Nigerian military post located in the village, but also at the market in West Atabong, at which many Nigerian civilians were trading. The attack was recorded in a message which was sent by the West Atabong military post (the 146th Battalion Headquarters) at 1435 hours on the day of the attack, to the Headquarters of the 13th Motorised Brigade in Calabar. The message was sent whilst the military post was actually under attack. It reports on the situation as follows:

> "Sit[uation] Rep[ort]. At about 1200 [hours] 03 Feb[ruary] [19]96, the Camerounian military had infiltrated thru the creeks to about 600m to own pos[ition]s with mor[tar] and high velocity w[eapo]ns from their gun boats. The shelling is still continuing and the market is also a target. Cas[ualties] not yet known. You are please urgently required to auth[orise] quick response to their attacks. As at present, own t[roo]ps on alert awaiting your orders. Treat as most urgent. Ack[nowledge]" (Annex NR 196)[192]

The message was clear. Cameroon was shelling both the Nigerian military post and the market in West Atabong, with mortars and high velocity weapons. The shelling, which had started at approximately midday, was still in progress as at 1435h, at which time the military post was seeking authority to respond.

159. Cameroon seeks to explain that the report that the Cameroon military had "infiltrated" was an incorrect perception of certain Cameroon soldiers, who were on a beach in the Bakassi Peninsula for "relaxation purposes".[193] Yet a contemporary message from the precise locality[194] perceived their activity as an infiltration accompanied by shelling "with mortar and high velocity weapons from their gun boats". This was a curious form of relaxation. Furthermore, Cameroon's inference that Nigerian forces had already started shelling is not only without any basis (the reference in the text to "*the* shelling ... still continuing" is clearly a reference to the Cameroon attack), but is contradicted by the request at the end of the message for authority for the Nigerian forces to respond - indicating that they had not yet done so.

160. Cameroon's attack continued for a period of some hours.[195] Nigeria's response was limited in scope and proportionate to the need to defend the locality and its Nigerian civilian population. The response was only made after authorisation had been received from Nigerian Defence Headquarters. This authorisation, sent at 1730h, read as follows:

> "You are to maintain your pos[ition] repulse Camerounian att[ac]k and [lose] no ground. You should send 6 hourly sit[uation] rep[orts]. Acknowledge." (Annex NR 197)

In the event, the Nigerian response appears to have succeeded in bringing the Cameroon attack to an

end, but not before Nigeria suffered many casualties. A message to Headquarters on the following day at 1300h reported on the situation:

> "...Sit[uation] Rep[ort] as at 1200 [hours] 04 Feb[ruary] [19]96. Cameroonian att[ac]k has been repulsed and driven out of own pos[itio]n area. Cas[ualties]: Civilians - k[illed] i[n] a [ction] - 10, w[ounded] i[n] a[ction] - 20. T[roo]ps - k[illed] i[n] a[ction] - 2 and w [ounded] i[n] a[ction] - 3. ..." (Annex NR 198)

Thus what Cameroon presents as a carefully prepared surprise attack by Nigeria killed or wounded 30 Nigerian civilians.

161. Once again Cameroon seeks to propose an odd and self-serving interpretation of this seemingly clear message,[196] arguing that the expression "own pos[itio]n area" is somehow intended to mean "Cameroon's position area". This assertion is baseless:

(f) It is inconsistent with the context. If the author of the message had intended to refer to Cameroon, he would have used some term such as "Camerounian" or "en[emy]".

(g) The word "own" (an abbreviation of "our own") is used for brevity in Nigerian military correspondence to mean "Nigerian" or "of the Nigerian military", as compared with "en" (meaning "enemy").[197]

(h) In any event, the import of the message is that the Nigerian response to the Cameroon attack had driven the attackers away from the area where the attack was launched.

162. This version of events is also borne out by the terms of the prompt Nigerian protests delivered orally and in writing in the days that followed.[198] It is clear from the evidence that the incident of 3 February 1996 engages the international responsibility of Cameroon, not Nigeria: the incident is accordingly cited as the basis of one of the Nigerian counterclaims.[199]

163. Cameroon seeks to rely on a document which in its view demonstrates the extent of the Nigerian "occupation" of Bakassi at this time.[200] The document is of no evidential value:

(i) It is undated.

(j) There is no indication of the author's identity.

(k) The document is a mere compilation of events said to have taken place over a period of thirty years, and no indication is given of the sources relied upon.

(l) It complains of such matters as the opening by Nigeria of a health centre at Abana (Jabane),[201] which is hardly consistent with a contemporaneous military occupation of foreign territory.

164. Cameroon seeks to make out of some individual allegations of incidents said to have occurred after 3 February 1996 a claim of a concerted "Nigerian advance". But the passages in question[202] give no details about when and where this advance is supposed to have taken place. Indeed with one possible exception, neither the text nor the documents relied on refer to the Nigerian military forces having undertaken any movements whatsoever. The possible exception is an allegation relating to the town of Isangele, north-east of Bakassi and in Cameroon, which Nigeria does not claim, has never "advanced upon" and has never occupied or sought to occupy.[203] This allegation is, in any event, not substantiated: the author of the message, based in Buea, appears to be quoting a message from the Prefect of Ndian Division, presumably based in Mundemba, located approximately 30 kilometres from Isangele,[204] which gives no indication of the original source of the information it contains.

165. Cameroon alleges that "by the end of February 1996" five villages had "fallen into the hands" of Nigerian soldiers.[205] But the document[206] upon which this assertion is based gives no details of any attacks supposed to have been carried out by Nigeria. It merely indicates that as of 23 February 1996, Nigerian forces were in occupation of a number of specified villages in the Bakassi Peninsula. There is no suggestion in the document that the presence of these Nigerian forces in these villages was the result of force being used to dislodge Cameroon forces. As Nigeria has explained previously to the Court, none of these villages was an established Cameroon military position.[207]

166. Neither do the two other documents referred to by Cameroon give details of the alleged attacks. The letter sent by the Cameroon Minister of Foreign Affairs to his Nigerian counterpart refers to an "attack" which allegedly took place on 17 February 1996, but fails to specify the location(s) of that "attack".[208] The letter of 26 February 1996 sent by the Cameroon Minister of Foreign Affairs to the President of the Security Council[209] does not provide any further details of the alleged attack, either.

167. Cameroon's allegations concerning these attacks are unfounded. As explained by the Nigerian Minister of Foreign Affairs in a letter to the President of the Security Council of 26 February 1996,[210] Nigerian troops did not initiate any attacks whatsoever on Cameroon positions in Bakassi; it was Cameroon which had launched a number of attacks. These attacks included, for example, the helicopter attacks on Edem Abasi[211] which took place on 16 and 17 February 1996.[212]

168. Nigeria is mindful of the Court's remarks, in its Order of 15 March 1996, that the material before it did not enable it "to form any clear and precise idea" of the events of February 1996.[213] In this context it should be noted that in the intervening period and despite extensive pleadings, regular and irregular, Cameroon has signally failed to present convincing, non-contradictory first hand evidence of what

happened at that time. By contrast Nigeria has presented first hand accounts from the spot on the day of 3 February, accounts that Cameroon can only seek to refute by asserting that its soldiers were present for "relaxation purposes",[214] or that a Nigerian document referring to "own position" means "Cameroon's own position".[215] An argument reduced to these straits is not convincing. Above all it should be noted that it was Nigerian civilians who were killed on 3 February, as well as Nigerian soldiers defending them. That has become the regrettable pattern on Bakassi since.

169. It was Cameroon's decision to convert this territorial dispute also into a State responsibility case. Its position is unequivocally that of Applicant, and it has a corresponding burden of proof, to which it should be strictly held. In Nigeria's respectful submission it has not discharged that burden, whether with respect to the events of February 1996 or more generally.

Allegation concerning attacks said to have been carried out in April 1996

170. Cameroon repeats in its *Reply* four allegations which it had made in its so-called "Memorandum on Procedure", relating to Nigeria's alleged non-compliance with the Court's Order of 15 March 1996.[216] Nigeria has already noted that it does not intend to respond to every minor allegation made in that "Memorandum". It will, however, respond in this and succeeding paragraphs to the four allegations made in the Memorandum which are repeated in Chapter 11 of the *Reply*.[217]

171. The first of these alleged incidents is described in the *Reply* as involving...

> "... military attacks launched by the Nigerian troops armed with heavy machine-guns and mortars on the Cameroonian positions in Inuamba and Benkoro, to the South of the Bakassi Peninsula, on 21, 22, 23, 24 and 25 April 1996..."[218]

172. The allegation is set out in slightly more detail in the "Memorandum on Procedure", which refers to a number of documents.[219] An examination of these reveals that the allegation is unsubstantiated.

> (a) The first is a telegraphic message apparently dated 25 April 1996, sent by the "Head of the National Security border station" in Ekondo-Titi in Cameroon.[220] Although the message refers to a Nigerian attack, it does not indicate that the attack took place in the places mentioned in the "Memorandum". It gives no indication of the alleged date or dates of the attack, but instead postulates a single date when "dits affrontments *auraient* commencé" ("the said confrontations *would have* begun"; emphasis added). It is unclear when these subjunctive attacks took place. Moreover the message gives very little detail concerning the circumstances of the alleged attacks, and in particular does not indicate that they were unprovoked. The statement that Nigerian forces apparently suffered heavy losses, whilst Cameroon suffered none, does not support the thesis of a surprise attack by Nigeria; quite the contrary. In any event, the message originated in Ekondo-Titi, nearly 40

kilometres from the Bakassi Peninsula[221]: it does not identify the original source of the information it contains, and is thus a second-hand or third-hand report.

(b) The second is a newspaper article which quotes an undated press release delivered by the Cameroon Minister of Foreign Affairs.[222] It provides no independent confirmation of any fact.

(c) The third is a letter dated 30 April 1996 sent by the Cameroon Minister of Foreign Affairs to the President of the Security Council.[223] Like the second, it makes no attempt to identify any sources. Neither document asserts that the alleged Nigerian attacks were carried out without provocation.

(d) Two further documents[224] are internal letters of 7 and 8 May 1996 sent by the Minister Delegate to the Presidency in Charge of Defence in Yaounde to the Cameroon Minister of Justice. They make no attempt to identify any sources for the allegations contained within them, and are essentially self-serving. Indeed the title of the second letter is "Gestion médiatique de la Crise de Bakassi" ("Media Management of the Bakassi Crisis"). In the circumstances, Nigeria submits that no particular weight should be attached to these documents.

(e) The internal letter of 7 May 1996[225] implies that a village called "Guidi Guidi" was one of the positions attacked during the alleged incident of April 1996. Elsewhere in its Reply, however, Cameroon asserts that as of the end of February 1996, "Guidi Guidi" was already "in the hands" of Nigerian forces.[226]

(f) The internal letter of 8 May 1996,[227] in conformity with its purpose of media management, is extremely brief and vague. It says nothing about the location of the alleged attacks.

(g) Two further annexes[228] contain extracts from Nigerian newspapers dated 8 and 10 May 1996. They do not support the version of events maintained by Cameroon. In fact, the extracts refer to unprovoked attacks by Cameroon on Nigeria's positions, and suggest that Nigeria had been careful not to react to Cameroon's attacks.

173. Indeed, it was Cameroon which launched attacks against Nigerian positions during the period between 21 April and 1 May 1996. These attacks were the subject of complaint in a letter dated 21 June 1996, sent by the Nigerian Minister of Foreign Affairs to his Cameroon counterpart: they are also the subject of a Nigerian counterclaim.[229]

174. For all these reasons, in addition to those matters of general principle raised in Chapter 15 above, Nigeria submits that Cameroon has not established its complaints in respect of the alleged attacks of April 1996 any more than those of February 1996. On the contrary, the weight of the evidence suggests that Nigerian forces were reacting to attacks launched on them in an attempt to disturb the territorial *status quo*.

Allegation concerning an incident of 11 December 1996

175. The second of the four allegations referred to in paragraph 11.162 of the *Reply* involves the following allegation:

> "... during the day of 11 December 1996, the Nigerian forces harassed the Cameroon positions with automatic arms and mortar fire, with these latter refraining from returning fire..."[230]

176. Neither in its "Memorandum" nor in its *Reply* does Cameroon identify the precise location where this action is alleged to have been carried out by "the Nigerian forces". The only document relied on is a "courier message" of 13 December 1996 sent by the Minister Delegate to the Presidency in Charge of Defence in Yaounde to various Cameroon Ministers.[231] The document provides hardly any details of the alleged incident, beyond the scanty information in the "Memorandum". It does, however, contain an inconsistency concerning dates: the text of the message suggests that it was sent on the day the incident occurred, but the message is dated 13 December, not 11 December. The document does not identify any sources for its allegations, and it is self-serving and of little evidential value.

Alleged incident of 31 January/1 February 1997

177. The third of the four allegations referred to at para. 11.162 of the *Reply* is said to have involved "attempted infiltrations accompanied by shelling during the night of 31 January to 1 February 1997...".[232] The allegation is also presented in the "Memorandum",[233] which, however, provides no further information. It is completely unclear where the incident is supposed to have taken place, and no direct evidence of any sort is produced. In short, Cameroon has not produced any evidence to support this allegation.

The provision of water and electricity to "localities occupied by Nigerian forces"

178. The last of the four allegations referred to at paragraph 11.162 of the *Reply* is expressed as having involved "[t]he carrying out of work to provide electricity and lay on water in the localities situated in Cameroon territory but occupied by Nigerian forces since the events of February 1996..." The "Memorandum" sets out the allegation in slightly more detail. It claims that:

> "After the inauguration of the Akwa water canalisation on 3 June by the Military

> Administrator of Cross River State ... the Governor of Akwa Ibom State initiated a similar project at Jabane (Abana) in the district of Idabato. The Minister of External Relations immediately protested against this new project... The electrification works and laying on of water nevertheless began in December 1996."[234]

179. Before examining the documents Cameroon refers to in support of these allegations, two points should be noted.

(h) Nigerian forces have not "occupied" Abana and Akwa "since the events of February 1996". Nigeria has always administered these settlements, and even Cameroon's own pleadings contradict this statement elsewhere, by asserting that these two villages were already occupied by Nigeria from the beginning of 1994.[235]

(i) In the face of Cameroon's statement that the water project in Abana began in December 1996, it is not at all clear in why the "initiation" of the project was the subject of a Note dated three months earlier.

180. Cameroon refers to three annexes in support of its allegations.[236] It is not necessary to engage in a detailed analysis of the inadequacy of the documents in question, since the allegation could not, on any view, constitute a breach of the Court's Order. It is sufficient to draw attention to the following points:

> (j) Some of the allegations contained in the "Memorandum" are not referred to in any of the documents: for example, the documents make no mention of statements attributed by Cameroon to the Military Administrator of Cross River State.
>
> (k) Although Cameroon states that electrification and water works began in Abana in December 1996, the documents appearing at Annexes MC/P 38 and MC/P 40 suggest that a water project began on 25 July 1996, and that the electrification of Abana had already taken place as at that date.
>
> (l) It is not at all clear why, having sent a Note Verbale to the Nigerian Embassy on 12 September 1996 concerning the provision of these utilities in Abana (Annex MC/P 40), the Cameroon Ministry of External Relations sent another Note on 12 December 1996, which simply repeats the same allegation, in even less detail.[237]

181. In any event, the provision of social amenities and utilities is a clear governmental responsibility to the local population. The provision of basic facilities to the Bakassi Peninsula has been carried out in order to ensure the health and welfare of the Nigerians living there under Nigerian administration. Cameroon fails to explain how the extension of additional civil facilities to Nigerians living on the Peninsula contravenes the Court's Order of 15 March 1996. It involves no action by Nigerian armed forces, and therefore does not contravene paragraphs (2) or (3) of the Order. It is irrelevant in terms of

the evidentiary position before the Court and therefore could not contravene paragraph (4). It does not prejudice the rights of either party in respect of the underlying dispute, or extend the dispute itself. A dispute about sovereignty over an area is not extended or aggravated because of a modest development of civilian facilities in that area. If Cameroon chooses to see in the provision of water and power an aggravation of the dispute, this can only be because it has no interest in the welfare of the residents (to whom it has never provided such services at any time of its alleged "administration").[238] Nigeria's conduct therefore does not contravene paragraph (1). In Nigeria's view, it was not the intention of the Court in its Order of 15 March 1996 to prohibit continued civil administration of areas already occupied by Nigeria, or the provision of basic facilities to the substantial Nigerian population resident there.[239] If Cameroon took the other view it was at all times open to Cameroon to go back to the Court for clarification of the existing Order or to seek an express extension to cover acts of ordinary civil administration.

(ii) New allegations made by Cameroon concerning the Lake Chad area

182. Nigeria turns next to the new allegations made in Cameroon's Reply concerning the Lake Chad area.

Alleged incidents involving flags

183. Cameroon refers to "the removal of Cameroonian flags and their replacement with Nigerian flags" and purports to give examples of occasions when "incidents of this kind" took place as long ago as 1984 and 1987.[240] Of course, under modern international law, sovereignty cannot be acquired merely by the flying of a flag, or lost merely by the removal of one. The relative insignificance of tit-for-tat incidents involving flags has already been demonstrated:[241] what is said there applies *a fortiori* in the present context.

184. It is apparent that the first incident alleged by Cameroon[242] is the same as that which it advanced as item 3 on page 198 of Annex OC 1. This allegation has been dealt with in Nigeria's *Counter-Memorial*[243] and above at paragraphs 96 and 97 there is nothing to add.

185. Two other allegations by Cameroon concern the village of "Faransa", and two concern "Ndiguili" and Sagir respectively. Despite Nigeria's observation to this effect in its *Counter-Memorial*,[244] Cameroon has still failed to identify the precise location of "Faransa". Likewise, Cameroon had failed to identify the precise location of "Ndiguili" on any of its maps. However, it is now apparent that "Faransa" and "Ndiguili" are the names given by Cameroon to the Nigerian settlements of Kirta Wulgo and Doron Mallam (also known as Doro Kirta),[245] two settlements which Cameroon admits are in Nigeria, not Cameroon.[246] Cameroon also admits that Sagir is in Nigeria.[247] That is, in and of itself, enough to dispose of these particular allegations, quite apart from their staleness and triviality in the framework of the law of State responsibility.

186. Cameroon refers to five annexes in support of its several allegations:

(m) Annex RC 163 consists of a telegraphic message sent by "Chef Pamint" on 18 June 1987. Although it does contain references to certain alleged incidents involving flags, it gives no indication of the source of the information it contains. It may be noted that the author of the message apparently attached less significance to the event in 1987 than Cameroon does in 2000; the second line of the message indicates that there was "nothing to report" concerning Nigeria ("Nigeria - RAS [= rien à signaler]"). An event with respect to which there was "nothing to report" at the time is turned into a "case before the Court" 13 years later.[248]

(n) Annex RC 165 is a document dated 2 July 1987. Cameroon claims that the document originated with the "chef de district de Hile Alifa". The stamp indicating the author of the document is barely legible, but it does not appear to feature the title "chef de district", and the only place name which seems to be legible is "Logone". Once again, there is no indication of the precise identity of the source of the information.

(o) The document at Appendix 2 of Annex OC 1 has already been analysed.[249] In the present context, it should be noted that it does not specify the date upon which any of the incidents are said to have occurred. The author, based in Kousseri (located approximately 90 kilometres from Lake Chad), also does not indicate the source of the information.

(p) Although it apparently refers to incidents alleged to have occurred in November 1987, the document appearing at Annex RC 231 was compiled in 1999, nearly 12 years later. There is no indication of who the author of the document is, let alone the sources of information on which the allegations are based.

(q) Although the document at Annex RC 166 refers to certain flags allegedly flying in nine different villages, the message does not give any indication of who is supposed to have raised the flags, and it does not suggest that they were raised by Nigerian soldiers. If anything it infers that the flags were raised by the local Nigerian people ("... les drapeaux Nigerians qui y sont hissés ... conformement aux souhaits des populations ...").

187. For the reasons already given, in Nigeria's view there is nothing to be gained in the context of State responsibility by a forensic inquiry into who raised which flag where. In territorial disputes it is usual for each side to fly its flag in respect of the territory it occupies. In armed conflict (and without prejudice to questions of sovereignty) the forces of a State are enjoined to fly their flag - "a fixed distinctive emblem recognizable at a distance".[250] It would be odd if it was unlawful for a peaceful civilian administration (let alone a civilian population owing allegiance to a particular party) to fly a flag, when international law requires the armed forces of a State engaged in actual conflict over disputed territory to do so. Quite apart from any questions of proof, of attribution and of lapse of time, these allegations in themselves

cannot sustain a claim of State responsibility.

Alleged incident of 28 November 1984

188. In its *Reply*, Cameroon also alleges that "on 28 November 1984, five Cameroonian customs officers were arrested and taken to Gambarou in Nigeria."[251] Cameroon does not indicate where the arrest is supposed to have taken place, nor the person or persons who are supposed to have carried out the arrest, nor the basis for the arrest.

189. In support of this allegation, Cameroon refers to a single document in its *Memorial*.[252] The wording of that document suggests that rather than being arrested and taken to Gamboru - as claimed in the *Reply* - the customs officers were already in Gamboru, a Nigerian town located more than 10 kilometres south of Lake Chad, when they were arrested. In any event, this document is merely a list of allegations dated 24 May 1994 which was apparently created for the purposes of the present proceedings. It does not attach any of the documents upon which the allegations are supposedly based, and it is thus not primary evidence of any fact.

190. Even if it were, a claim made 16 years after the event in relation to an isolated and ephemeral incident[253] comes far too late to warrant a claim of responsibility at the international level.

Alleged incident of 21 March 1985

191. Then Cameroon refers to "[t]he arbitrary arrest of Mohamed Djida by Nigerian soldiers on 21 March 1985 on the island of Faransa...".[254]

192. As mentioned above, it is apparent that "Faransa" is the name given by Cameroon to the Nigerian settlement of Kirta Wulgo, a settlement which Cameroon admits is in Nigeria, not Cameroon.[255] Any arrest by Nigerian soldiers which may have taken place in that settlement would *prima facie* have involved the soldiers carrying out their normal duties.

193. In support of its allegation, Cameroon relies on a note of a meeting at which Mr Djida gave an account of his arrest, which Cameroon characterises as "arbitrary".[0] However Mr Djida himself is said to have admitted that prior to his arrest he raised a Cameroon flag in Kirta Wulgo (Faransa), a settlement which Cameroon agrees to be Nigerian. The detention and questioning of the person responsible for this act would have been a normal part of investigations by Nigerian security forces. Moreover not only did Mr Djida raise a Cameroon flag in the Nigerian village of Kirta Wulgo; he did so on the instructions of the Sub-Prefect of Makary, a Cameroon Government official. In addition, shortly before this incident another Cameroon Government official, the District Chief of Hilé-Alifa, personally raised the Cameroon flag at Kirta Wulgo.

194. Nigeria has no intention of bringing still further counterclaims with respect to these or other occasions on which its flag was taken down by or on the orders of one or another Cameroon official, even when this occurred on territory indisputably Nigerian. The Court has enough to occupy it with respect to the substantial matters in dispute without bothering with slights of this kind, which are matters for local action. This does not of course justify the police or other authorities in any mistreatment of detainees, for which there are remedies both in national and international law.[1] But an allegation made in April 2000 about the individual treatment of a detainee in 1985, which had never previously been the subject of complaint at the international level, or of any previous attempt to invoke any remedies at any level, is wholly inadmissible. There is no evidentiary or other basis on which the Court can now assess the events alleged in Annex RC 121.

Additional generalised allegation of mistreatment of Cameroon farmers

195. Cameroon also makes the generalised allegation that "members of the Nigerian army constantly commit acts of violence against the poor Cameroonian farmers in the occupied area of Lake Chad".[2] However, Cameroon has not provided any information concerning the dates, location or circumstances of these alleged "acts of violence". Nor does the document quoted shed much light on this allegation; after reciting a litany of real or imagined woes, it concludes with the cheerful remark: "In spite of all the preceding, calm reigns over the whole Department of Logone and Chari."

Allegations concerning the arrest of certain village chiefs

196. Cameroon also refers to "the deposition, even arrest, of several Cameroonian traditional chiefs" and makes the following allegations:

> "... on 8 January 1988, eight village chiefs - including those of Katti Kime I, Gorea Changi, Naga, Tchika and Sagir - were arrested, taken to Wulgo in Nigeria and then released. On 16 January 1988, the two village chiefs of Naga and Katti Kime II were destituted by a hundred Nigerian police officers... in 1999, the former chiefs of Naga, Tchika and Gorea Changi were taken in for questioning and held..."[3]

197. The only document relied upon by Cameroon in respect of the first two of these allegations is the inventory of 1999, made for the purposes of the present case.[4] That document was compiled 11 years after the dates of the two alleged incidents, of which no contemporary evidence is provided. There is no indication of who the author of the document is, or of the sources of information on which the allegations are based.

198. In support of its third allegation, Cameroon relies on several documents dated August 1999.[5] These documents originated either in Kousseri or Maroua, located approximately 90 and 200 kilometres respectively from Lake Chad. Again, they do not identify the original source of information upon which the allegation is based. Except for the statement that certain former chiefs were arrested and interviewed

on some date after 7 August 1999, they are vague and general, and are not a sufficient basis for any claim of State responsibility.

199. So far as issues of State responsibility are concerned, it is relevant to note (a) that there is no record of any protest being made to Nigeria about any of these incidents, and (b) for the most part they are said to have occurred more than 10 years ago.

Allegation of a "racket" involving maize

200. Cameroon states that "several reports also testify to the regular practice of a veritable racket in the region".[6] Apparently the "racket" takes, or rather took, the form of "the extortion of bags of corn in April 1994". Cameroon does not, however, indicate who is supposed to have carried out this alleged extortion, nor does it provide information on the exact date or location of this alleged incident.

201. Only one of the three annexes referred to relates to any incident which may have occurred "in April 1994": this is an inventory of incidents since 1980,[7] which contains a brief entry to the effect that during that month, certain Cameroonians in the village of Hilé-Alifa 2 had 14 sacks of maize extorted from them and were the victims of physical violence "by some Nigerians".[8] This is on the face of it inadequate as a basis for a claim of State responsibility, regrettable though the incident must have been to the owners of the maize.[9] In particular, (a) there is no indication of a protest; (b) the incident is in itself trivial; and (c) there is no basis for suggesting that the "racket", if there was one, is attributable to Nigeria or that Nigeria committed any internationally wrongful act in failing to prevent it.

(iii) New allegations made by Cameroon concerning the land boundary between Lake Chad and Bakassi

202. In its *Reply*, Cameroon refers to four protest notes involving incidents along the boundary.[10] Three of these relate to incidents already dealt with in the *Counter-Memorial*,[11] including one concerning the village of Tipsan.[12] Only one relates to a "new" incident.

Alleged incursion at Djibrilli

203. Cameroon refers to a "protest of 16 March 1990 regarding the incursion of three Nigerian police officers at Djibrilli (Koze)."[13] The document in question is a Note Verbale of 16 March 1990 sent by the Cameroon Ministry of External Relations to the Nigerian Embassy in Yaounde. It claims that certain policemen from "Arbaku", Borno State entered Djibrilli in order to "kidnap" a Mr. Boukar. Cameroon has not provided details of the circumstances, such as whether Mr. Boukar was being accused of any offence by these policemen. Apparently the attempted arrest (if this is what it was) was unsuccessful and one of the policemen was wounded in the resulting affray.

204. At least two details of this minor incident are, however, puzzling.

> (r) The only evidence produced in support of this allegation is the Note, which was written nearly five months after the incident is alleged to have taken place, and which does not indicate the sources upon which it is based.
>
> (s) Although Cameroon refers to the Note as a "protest", the Note itself seems not to be raising any issue in terms of State responsibility but to be seeking (quite sensibly) to avoid similar incidents for the future. Quite why Cameroon thought it necessary to raise the issue in the framework of a chapter on State responsibility is unclear.

Removal of a pile of stones alleged to constitute a boundary marker near Tipsan

205. Nigeria has already dealt definitively with the alleged "dispute" over Tipsan, and with the various incidents raised by Cameroon in that context.[14] One additional point in the *Reply* however, warrants brief mention. Cameroon refers to "a series of boundary markers, made up of piles of stones" which make it possible "to identify the boundary line".[15] It quotes an information report to the effect that:

> "on 9 May 1998, an informer told us that the Lamido of TONGO (Nigeria) had sent his people some time in January 1998 to disperse the piles of stones put down by the colonisers to mark the boundary (...)."[16]

Neither the text of the *Reply*, nor the documents cited at Annexes RC 226 and RC 227, indicate the precise location of these piles of stones. From the context, it may be presumed that these piles of stones are (or were) located somewhere in the vicinity of Tipsan. If so, there is no basis for suggesting that they were placed there by the colonial powers to mark the boundary, at least not as part of a joint exercise between representatives of the United Kingdom and France. The point has already been explained[17] and appears to involve yet more confusion on the part of Cameroon as to the situation of Tipsan.

206. In the circumstances, it is unnecessary to consider other questions that would arise from this event, such as who owned the pile of stones, on whose land they were located, or on what basis the actions of the retainers of the Lamido of Tongo could possibly be attributed to the Nigerian State.

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1 Some of the alleged incidents in respect of which there has been no response were related to other incidents mentioned earlier.

2 RC paragraph 11.33: "Le Cameroun reprendra donc ci-après les faits qui lui paraissent, à ce stade, de nature à illustrer l'engagement de la responsabilité internationale du Nigéria ...".

3 See NC-M para. 24.62.

4 RC para. 11.39.

5 RC para. 11.37: "certains des arraisonnements ont effectivement pu se produire en haute mer...".

6 RC para. 11.36; Annex RC 21.

7 RC para. 11.38.

8 NC-M para. 24.191.

9 RC para. 11.41.

10 RC para. 11.42.

11 RC para. 11.43.

12 RC para.11.44.

13 RC para. 11.46.

14 RC para. 11.44: "Le Nigéria dit douter de la réalité même de ces faits."

15 RC para. 11.44: "On peut cependant regretter qu'il n'ait pas fondé son argumentation sur les recherches qu'il aurait pu mener dans ses propres archives."

16 NC-M para. 24.190.

17 NC-M para. 24.189.

18 Annex RC 57.

19 Annex RC 56.

20 Annex RC 58.

21 Annex RC 56, para. 4.

22 The words in square brackets reflect the French text of MC para. 6.56, but those words do not appear in the official English translation of Cameroon's *Memorial.* This explains Nigeria's use of the term "Idabato", criticised by Cameroon (RC para. 11.49).

23 MC para. 6.56.

24 RC para. 11.57.

25 Paras. 24.128-24.133.

26 NC-M paras. 24.131-24.132.

27 NC-M para. 24.130.

28 RC para. 11.53.

29 RC para. 11.54.

30 RC para. 11.55.

31 RC para. 11.56.

32 RC para. 11.52: "... tout au long de l'année 1981, à Jabane, dans le district d'Idabato et, plus généralement, dans la presqu'île de Bakassi."

33 NC-M para. 24.66.

34 Annex NC-M 344.

35 Annex NC-M 343.

36 Annex NC-M 346.

37 President Shagari's letter referred to the "Akwa yaji River": it is the same river, as he recognised in his reply to President Ahidjo's letter where he referred to the "Akwa Yafe River".

38 Annex NC-M 344.

39 RC para. 11.62: "de simples affirmations."

40 Annex MC 260.

41 Annex MC 262.

42 Annex RC 63.

43 Annex RC 241; see also Annex MC 260.

44 NC-M Chapter 11.

45 RC paras. 11.64-11.66.

46 Annex NC-M 346.

47 RC para. 11.70.

48 RC para. 11.75.

49 The passage quoted sets out in full some words and symbols which are abbreviated in the military message.

50 RC para. 11.80.

51 NC-M paras. 24.103-24.108.

52 RC para. 11.78.

53 MC para. 6.50.

54 NC-M para. 24.106, and Fig. 24.2 facing p. 672.

55 RC para. 11.79.

56 RC paras. 11.82 and 11.100.

57 NC-M paras. 24.109-24.117.

58 RC para. 11.82.

59 RC paras. 11.83-11.93.

60 RC paras. 11.94-11.100.

61 RC para. 11.84.

62 NC-M paras. 24.110-24.113.

63 RC para. 11.88.

64 Para. 11.101 *et seq.*

65 RC para. 11.101.

66 Annex RC 98.

67 RC para. 11.106.

68 Annex RC 189.

69 RC para. 11.109.

70 Annex RC 189.

71 NC-M paras. 24.154-24.162.

72 RC para. 11.113.

73 NC-M para. 24.158.

74 RC para. 11.119.

75 NC-M paras. 24.175-24.179.

76 RC para. 11.120.

77 NC-M para. 24.178.

78 NC-M paras. 24.198-24.215.

79 NC-M paras. 24.220-24.221.

80 Annex MC 298, and RC paras. 11.128-11.129; NC-M paras. 24.214-24.215 and 24.219.

81 NC-M para. 24.223.

82 RC paras. 11.125-11.127

83 MC para. 6.74.

84 NC-M para. 24.217.

85 NC-M para. 24.538.

86 NC-M paras. 24.535-24.538.

87 NC-M paras. 24.123-24.127.

88 NC-M paras. 24.124(2) and (3).

89 RC para. 11.118.

90 RC para. 11.136.

91 NC-M para. 24.94, quoted in RC para. 11.137.

92 NC-M para. 24.96, quoted in RC para. 11.137.

93 RC para. 11.138: "... l'occupation soudaine de certaines parties de la presqu'île de Bakassi par les forces militaires nigérianes, et leur maintien sur les lieux de façon constante depuis le début de l'année 1994."

94 RC para. 11.139: "... que l'armée nigériane a pris le contrôle du sud-ouest de la péninsule de Bakassi à la fin de 1993, alors que, jusque-là, elle n'y détenait aucune position."

95 Above, para. 14.13.

96 Annex NC-M 347; and above, paras. 3.132-3.135.

97 Annex NC-M 347.

98 NC-M paras. 24.242-24.256 and 24.314-24.347.

99 RC para. 11.177.

100 NC-M paras. 24.326-24.332.

101 RC para. 11.192: "souligne".

102 RC para. 11.178: "indiquant la localisation des villages litigieux."

103 This is confirmed, for example, by p. 2368 of MC Annex 283.

104 RC para. 3.87.

105 NC-M para. 24.314-24.319.

106 RC paras. 11.186-11.188.

107 Annex RC 173.

108 *ibid.,* p. 1428: "seulement vérifier si effectivement nous étions de la PAMINT".

109 *ibid.,* pp. 1428-1429: "un pôt (festin) de reconciliation en notre honneur et tous ensemble avec les soldats Nigérians, nous avons lu."

110 *ibid.,* p. 1430: "Malgré tout ce chambardement, nous n'avons enregistré aucune menace réelle, ni aucune insulte digne de ce nom et à la fin tout le monde s'est exúsé ...".

111 *ibid.,* p. 1429: "qu'il ne comprend pas pourquoi les éléments Nigérians sont toujours arrêtés par les Camerounais."

112 *ibid.:* "03 jours avant les gendarmes Camerounais auraient été appréhendés à NAGA entrain d'exercer des exactions les populations."

113 Annex RC 164.

114 *ibid.,* para. 39, at p.1339: "...deux gendarmes de la brigade de Mora et six éléments de l'OPS Chari ont été appréhendés à Banki côté nigérian par les éléments de la patrouille de ce pays. Ils ont été relaxés (*sic*) le lendemain."

115 *ibid.,* Section V, at p. 1339, emphasis added: "Malgré quelques incidents observés tout le long de la frontière Cameroun-Nigéria, La 3e Région Militaire continue de vivre *son calme habituel.*"

116 Annex RC 162, at p.1328: "Nous gardons le drapeau Nigérian ici."

117 NC-M para. 24.247.

118 NC-M para. 24.256.

119 RC para. 11.199: "*brièvement*, un résumé des faits."

120 NC-M paras. 24.252-24.253.

121 RC para. 11.200.

122 NC-M para. 24.252.

123 NC-M para. 24.255.

124 See NC-M para. 24.334(2) and Fig. 24.6.

125 RC para. 11.200.

126 NC-M paras. 24.268-24.272.

127 RC para. 11.240: "sans conséquence juridique".

128 NC-M paras. 24.270(5) and 24.271.

129 NC-M para. 24.271.

130 RC para. 11.241: "dès son mémoire, produit en 1995, le Cameroun s'élevait officiellement contre l'enlèvement et la séquestration de son ressortissant."

131 RC para. 11.242.

132 NC-M paras. 24.273-24.282.

133 NC-M para. 24.282.

134 NC-M para, 24.280.

135 RC paras. 11.243-11.244. "Le Nigéria présente ses objections habituelles sur la valeur probante des documents produits par le Cameroun, auxquelles il n'est pas nécessaire de répondre à nouveau."

136 See above, paras. 16.11 *et seq.*

137 I.C.J. Reports 1999 p. 38 para. 15, reiterating what the Court said in its Preliminary Objections judgment of 11 June 1998, I.C.J. Reports at p. 319 para. 100.

138 Nigeria does not propose to deal individually with the allegations contained in Cameroon's "Memorandum on Procedure", unless these are specifically cited in Cameroon's Reply, whether at para. 11.162 or elsewhere. If, despite its disavowals, Cameroon seeks to rely on these at the merits stage as a basis for claims of State responsibility, Nigeria reserves all procedural rights it may have, as referred to by the Court in its judgment of 25 March 1999: I.C.J. Reports 1999, p. 38 para. 15.

139 RC, para. 11.38: "dans une pêcherie dénomée Okomkiet, qui figure sous le nom "Big Ekom" sur les cartes camerounaises de la presqu'île de Bakassi".

140 See NC-M, paras. 24.52-24.54; above, para. 15.83 *et seq.*

141 Annex RC 15.

142 See NC-M, paras. 10.162 *et seq*. There is no evidence that the inhabitants use the Cameroon name.

143 RC, para. 11.54.

144 Annex RC 59.

145 Annex RC 61 is dated 20 February 1981. It refers to a message of 18 February, which refers to a message of 16 February, which apparently refers to a radio message of 15 February, the day in question. The document of 20 February thus appears to be a fourth-hand account, though this is not entirely clear; it might be only third-hand.

146 The settlements are referred to in the telex by their Nigerian names: *cf.* NC-M, paras. 10.162 *et seq*.

147 RC, para. 11.55: "les militaires nigérians ont poussé leurs infiltrations jusqu'à Kombo Itindi, et dans les installations pétrolières camerounaises." The note is at Annex RC 62.

148 See above, para. 3.264 *et seq.*

149 *cf.* Annex MC 314.

150 RC, para. 11.103, citing Annex RC 101: "un policier nigérian armé s'est introduit, sans autre façon, dans notre Pays pour procéder à l'arrestation d'un dénommé Christopher SOKARI, dans la pêcherie de TINKORO, district de KOMBO ITINDI le 15 mai 1984."

151 It is shown on Map 27 of RC, *Atlas*.

152 Annex RC 101.

153 See Fig. 16.2.

154 RC, para. 11.102.

155 Annex RC 100.

156 See NC-M, para.10.41 and Annex NC-M 153.

157 RC, para. 11.90, referring to Annex RC 106.

158 There are 3 Cameroonian villages called respectively Ine Ngosso I, II and III, along the Ngosso River which flows to the east of Erong Island (Cameroon).

159 Annex RC 106.

160 RC, para. 11.90 refers also to Annex RC 107, another internal document prepared by the Cameroon Ministry of Foreign Affairs, and dated 30 November 2000, i.e. two days after the internal Note at Annex RC 106. It appears to refer to the fourth of the allegations contained in para. 11.90. However, it does not assist in identifying the exact location of the incident, apparently referring to the same telex of 12 November 1984 but without giving any further indication of the source of the information contained in that telex. It does however give some more information about the incident, which apparently concerned the detention of three canoes carrying goods from Oron in Nigeria to Ekondo-Titi in Cameroon: the passengers were both Nigerian and Cameroonian, and were detained for questioning at Calabar. Apart from the vague allegation that the incident occurred "aux environs du village de Kumbo", the incident appears to have nothing whatever to do with Bakassi. The account given is consistent with lawful customs or police action by Nigeria, quite apart from any question about sovereignty over Bakassi.

161 RC, para. 11.91, referring to Annex RC 113: "...présence le 14 février 1985 a Navanga II dans le Rio del Rey stop d'un Plascoa de la Marine de guerre nigériane ayant à son bord 4 marins...".

162 See NC-M, *Atlas*, Vol. I, Map 5.

163 RC, para. 11.104, citing Annex RC 129: "Le 15 juillet , deux soldats nigérians armés se sont introduits en territoire Camerounais et ont arrêté une ménagère nigériane, Madame BOUBOU qui résidait à AFAGBA II, Sous-Préfecture de ISANGELE, dans le Département du Ndian"

164 The heading at RC, p. 517 suggests that this allegation is supposed to relate to an "incursion ... à Jabane".

165 RC, para. 11.98, citing Annex RC 137: "Un chalutier de la Société Camerounaise CHALUTCAM a été arraisonné par la marine nigériane dans les eaux territoriales camerounaises le 19 février 1986 à 10H30 (rivière CALABAR, à 5 miles de la pointe SANDY et à 1 mile au sud approximativement à 8'25 longitude EST et 4'33 latitude nord. Bien plus, des militaires nigérians ont fait intrusion dans le chalutier et ont forcé l'équipage à les suivre à Calabar."

166 See MC para. 5.35. Even if the longitude co-ordinate given in the Note had been 8_ 25' E and not 8_ 23' E, the point identified would still have been located fractionally to the west of point 10, which is at longitude 8_ 25' 08" E.

167 RC, para. 11.99, citing Annex RC 145: "Dans la matinée du 19 février 1986 à 10H30, le Chalutier camerounais le 'Mungo' pêchant en pleines eaux territoriales camerounaises (latitude 4°31 Nord et longitude 8,28 E, à 1 mille dans le Sud du piquet ELF AONT et à 2,8 milles de la côte Pointe Est Sandy) a été assailli et arraisonné par des militaires nigérians armés. Sous les injures, les imprécations et les menaces, le Chalutier camerounais et tout son équipage ont été conduits sous escorte jusqu'à Calabar."

168 See above, para. 137 *et seq.*

169 Cameroon apparently believes they are separate incidents: RC, para. 11.99.

170 RC, para. 11.105, citing Annex RC 153.

171 RC, para. 11.107, citing Annex RC 187: "Occupation pêcherie Jabane dans district Idabato par Marine nigériane depuis 02.10.90 a pris fin 7.10.90..."

"17.3.90 stop tentative capture sous-préfet Isangele au large Rio Del Rey par une patrouille 'water Police' nigériane..."

"12 au 13.8.90 stop occupation Jabane par troupe nigériane dans 6 embarcations stop menaces et pillage stop..."

"2 au 7.10.90 stop nouvelle occupation par éléments marine conduit par un officier...".

172 This allegation appears to be related to the allegations made in MC, paras. 6.72-6.74, which are dealt with at NC-M, paras. 24.194 *et seq.*; see also above, paras. 76 to 81. The date given here is yet another example of the inconsistency of Cameroon evidence in relation to this incident: see NC-M, para. 24.221.

173 RC, para. 11.110, citing Annex RC 188: "tenue réunion à Jabane le 17/11/90 par 13 (...) marines nigérianes et police ainsi que certains civils avec population Jabane et Kombo Amunja..."

174 See Fig. 16.2.

175 RC, para. 11.111.

176 Annex RC 190.

177 Annex RC 194.

178 RC, paras. 11.144-11.161.

179 RC, para. 11.144: "le Nigéria a lancé, dans la journée du 3 février 1996, des attaques à l'encontre des positions militaires camerounaises le long de ce qui était à l'époque le ligne de cessez-le-feu dans le presqu'île de Bakassi."

180 This was demonstrated by Nigeria at the oral hearing: see CR 96/4, pp. 88-89.

181 The Court is respectfully referred to the transcript: CR 96/4, p. 81.

182 RC, para. 11.146: présent sur les lieux".

183 Annex RC 216.

184 RC, para. 11.146: "mouvements aériens inhabituels".

185 RC, para. 11.147, citing Annex RC 203.

186 RC, para. 11.148, citing Annex RC 204.

187 See Fig. 16.2.

188 RC, para. 11.147, citing Annex RC 203

189 Annex RC 204.

190 See CR 96/4, pp. 79-89 (Sir Arthur Watts).

191 See Fig. 16.4.

192 For this and subsequent messages which are quoted in this Appendix, square brackets have been used to indicate words which have been abbreviated. As explained at the oral hearing (CR 96/4, p.83), the abbreviation "PD" in these messages means "period" or "full stop", and "CMM" means "comma". The date and time reference of this message appears as "031200A FEB 96". The times referred to in Nigerian military correspondence are generally placed inside the relevant date, between the day and month.

193 RC, para. 11.159: "en signe de détente".

194 Something which Cameroon has not produced in relation to this incident in four years of pleading.

195 NC-M, paras. 25.14 NC-M 25.15. Other accounts put it as slightly longer: CR 96/4, p.82.

196 RC, para. 11.160.

197 See e.g. Annex NC-M 365 and Annexes NR 188 and NR 191. In the context of any conflict, the word "enemy" or the abbreviation "en" is often used to signify the military of other States, a usage adopted also by Cameroon.

198 See NC-M, paras. 25.14 to 25.17 and the documents there referred to.

199 See *ibid.* and below, Appendix to Chapter 18.

200 RC, paras. 11.156 and 11.157, citing Annex RC 218.

201 RC, para. 11.156, citing Annex RC 218 at p. 3.

202 RC, paras. 11.149-11.150.

203 Annex RC 208.

204 See Fig. 16.2.

205 RC, paras. 11.153: "...à la fin du mois de février 1996, tombées aux mains des militaires nigérians".

206 Annex RC 211.

207 CR 96/4 p. 87.

208 Annex RC 212.

209 Annex OC 26.

210 Annex NC-M 360.

211 See Fig. 16.4.

212 See CR 96/4 pp. 89 and 90; NC-M, paras. 25.16-25.17; Annexes NC-M 360 and NC-M 361.

213 I.C.J. Reports 1996 p. 13 at p. 22 (para. 38).

214 Above, para. 159.

215 Above, para. 161.

216 RC, para. 11.162.

217 See above, para. 110, last footnote and the proviso thereto.

218 "Les attaques militaires lancées par les troupes nigérianes armées de mitrailleuses lourdes et de mortiers sur les positions camerounaises à Inuamba et Benkoro, au sud de la presqu'île de Bakassi, les 21, 22, 23, 24 et 25 avril 1996...".

219 "Memorandum on Procedure", Annex RC 1, paras. 4, 8 and 9.

220 Annex MC/P 10.

221 See Fig. 16.2.

222 Annex MC/P 11.

223 Annex MC/P 12.

224 Annexes MC/P 14 and MC/P 17.

225 Annex MC/P 14.

226 RC, para. 11.153: "aux mains".

227 Annex MC/P 17.

228 MC/P 18 and MC/P 20.

229 See NC-M, para. 25.17; Annex NC-M 361.

230 "Memorandum on Procedure", para. 5: "... dans la journée du 11 décembre 1996, les forces nigérianes ont harcelé les positions camerounaises à l'arme automatique et au mortier, ces dernières s'abstenant de riposter...".

231 Annex MC/P 53.

232 "... les tentatives d'infiltration accompagnées de pilonnages dans la nuit du 31 janvier au 1er février 1997".

233 "Memorandum on Procedure", para. 5.

234 "Memorandum on Procedure", para. 10: "Après l'inauguration de l'adduction d'Akwa, le 3 juin, par l'Administrateur militaire de l'Etat de Cross River..., c'est le Gouverneur de l'Etat d'Akwa Ibom qui a initié un projet similaire à Jabane (Abana), dans l'arrondissement d'Idabato. Le Ministre des Relations extérieures a immédiatement protesté contre ce nouveau projet... Les travaux d'électrification et d'adduction d'eau ont néanmoins été inaugurés au mois de décembre 1996."

235 e.g. MC, paras. 6.30 *et seq.*; RC, para. 11.156.

236 "Memorandum on Procedure", para. 10.

237 Annex MC/P 52.

238 Cameroon's disregard for normal civil administration can also be seen from its Note Verbale of 12 September 1996 (MC/P 40), in which it appears to be complaining about the fact that certain Nigerian officials "invited the population of the area to respect the law".

239 There would have been good grounds for opposing an express order of this kind, had it been sought under Article 41 of the Statute. In particular such an Order (a) would have been prejudicial to the civilian population over a period of some years; (b) would not have been necessary to preserve the subject matter of the dispute; (c) would have affected the status quo to the prejudice of one of the Parties and (d) might have been seen to have

involved the prejudgment of the case. In fact in the oral argument leading to the Order of 15 March 1996, the question of civilian administration was not touched on.

240 RC, para. 11.191: "l'enlèvement des drapeaux camerounais et leur remplacement par les drapeaux nigérians."; "de tels incidents".

241 See above, para. 100.

242 RC, para. 11.191 ("Faransa", 19 December 1984).

243 NC-M, paras. 24.326-24.332.

244 NC-M, para. 24.327.

245 This confirmed, for example, by Annex MC 283, p. 2368 (Faransa) and Annex RC 165, p. 1343 (Ndiguili).

246 RC, para. 3.87.

247 *ibid.*

248 It should be stressed again that it is Cameroon which raises these incidents under the rubric of State responsibility.

249 NC-M, para. 24.322.

250 See, e.g., Hague Regulations respecting the Laws and Customs of War on Land, 18 October 1907, Art. 1(2); Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, Art. 13(2)(b).

251 RC, para. 11.197: "le 28 novembre 1984, cinq douaniers camerounais ont été arrêtés et emmenés à Gambarou au Nigéria."

252 Annex MC 363, item 12.

253 Cameroon does not suggest that the officers were not promptly released, or that they were harmed in any way.

254 RC, para. 11.194: "L'arrestation arbitraire de Mohamed Djida par les militaires nigérians, le 21 mars 1985 sur l'île de Faransa...".

255 See above, paras. 96(2) and 185. For the status of Kirta Wulgo see RC, para. 3.87.

0 RC, para. 11.194, referring to Annex RC 121.

1 Subject to the exhaustion of local remedies and to other applicable requirements of international law for the admissibility of claims.

2 RC, para. 11.194, referring to Annex RC 240: "les éléments de l'armée nigériane ne cessent de commettre des exactions sur les pauvres agriculteurs camerounais dans la zone occupée du Lac Tchad."

3 RC, para. 11.196: "le 8 janvier 1988, huit chefs de villages - dont ceux de Katti Kime I, Gorea Changi, Naga, Tchika et Sagir - ont été arrêtés, conduits à Woulgo au Nigéria, puis relaxés. Le 16 janvier 1988, les deux chefs de villages de Naga et Katti Kime II sont destitués par cent policiers nigérians... en 1999, les anciens chefs de Naga, Tchika et Gorea Changi ont été interpellés et séquestrés."

4 Annex RC 231.

5 Annexes RC 238 and RC 240.

6 RC, para. 11.195: "Plusieurs rapports attestent également de la pratique régulière d'un véritable racket dans la région"; "...l'extorsion de sacs de maïs en avril 1994...".

7 As to which, see also paras. 186(d) and 197 above.

8 Annex RC 231, p. 1844.

9 Of the other two documents referred to, Annex MC 363, dated 24 May 1994, is a list of allegations created for the purposes of the present proceedings (as noted in para. 189 above). It is not itself evidence of anything. As to Annex RC 240, a letter of 17 August 1998, this does not refer to anything which could be termed a "racket". The obligation for residents of Nigerian villages to pay tributes to traditional chiefs (to which Cameroon is presumably referring) is common to the region and to both sides of the border, and has given rise to incidents on both sides. It is, however, a part of the established social fabric and does not of itself involve conduct attributable to Nigeria as a State.

10 RC, para. 11.216.

11 NC-M paras. 24.260-24.267, 24.425-24.429 and 24.464-24.468.

12 As to which, see also above, para. 16.47 *et seq.*

13 RC, para. 11.216, referring to Annex RC 183: "protestation du 16 mars 1990 à propos de l'incursion de trois policiers nigérians à Djibrilli (Koze)".

14 See above, para. 16.47 *et seq.*

15 RC, para. 11.235: "une série de repères frontaliers, formes d'amas de pierres"; "de vérifier le tracé de la frontière".

16 Annex RC 226. See also Annex RC 227: "Le 09 mai 1998, un informateur nous a fait savoir que le Lamido de TONGO (Nigéria) aurait envoyé ses gens courant mois Janvier 1998, disperser les tas de cailloux entreposés par les colonisateurs pour matérialiser la frontière...".

17 See above, para. 7.173.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 17

CONCLUSIONS

Conclusions on State Responsibility

17.1 For the reasons of principle given in Chapter 15, as well as for the detailed reasons set out in Chapter 16 and in the Appendix to that Chapter in relation to alleged individual incidents, Cameroon's claims that Nigeria bears international responsibility to Cameroon for various alleged violations of international obligations owed to Cameroon are without justification, are rejected and should be dismissed.

17.2 At the level of individual incidents, it is significant how many of Cameroon's allegations are affected by some or all of the following deficiencies:

(a) having made the allegations in earlier pleadings, Cameroon has expressly or tacitly abandoned them;[1]

(b) they relate to locations which are either unspecified, uncertain or mislocated;

(c) they concern localities which are not the subject of any dispute, and thus have nothing to do with the boundary dispute, or series of boundary disputes, that underlies the present case;

(d) they are unsupported by any first-hand evidence, or only supported by evidence that was specifically prepared for the purposes of the case;

(e) they do not on the face of them involve conduct attributable to Nigeria under international law;

(f) the facts alleged are consistent with Cameroon's own responsibility, or with neither State being responsible;

(g) the incidents in question, if they occurred as alleged, were trivial, occasional and ephemeral;

(h) there is no allegation that any person or property was actually harmed or damaged in any way;

(i) they were resolved locally at the time, or subsequently by agreement between the two States;

(j) no attempt was made to exhaust local remedies in relation to the treatment of individual aliens;

(k) they were not the subject of timely, or any, protest to Nigeria;

(l) they are stale and thus time-barred.

17.3 Faced with this litany of deficiencies, the Court should dismiss these incidents as the possible basis of claims in the realm of State responsibility. It does not help Cameroon to withdraw from relying on individual incidents "as such" and to take refuge in allegations of "systematic" conduct. If there is anything these incidents were not, it is systematic: a more sporadic and occasional set of complaints along an 1800 kilometre boundary it would be difficult to imagine. Moreover, the allegation of "system" cannot discharge Cameroon from the obligation of proving individual incidents. To say that a government did something systematically or regularly requires proof that it did it on some individual occasion(s). Ten unsubstantiated allegations do not prove a system: they prove nothing. As shown in the Appendix to Chapter 16, Cameroon fails to make its individual allegations stick, and it follows that its allegations of systematic conduct must also fail.

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1 See the Appendix to Chapter 16 above, paras. 2-3.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 18

NIGERIA'S COUNTERCLAIMS

A. Nigeria's Counterclaims and their Admissibility

18.1 In its *Counter-Memorial* Nigeria brought counterclaims with respect to a range of incidents along the boundary, involving cases where Cameroon had challenged the existing position by the action of its gendarmes or otherwise, to the detriment of Nigeria and in breach of international law. Nigeria was frank in stating the position that the intermingling of claims of State responsibility and a substantial boundary dispute was not helpful. However, that view, stated already at the stage of the *Preliminary Objections*, had not deterred Cameroon from perpetuating and further multiplying its State responsibility claim. Accordingly, since "the parties are and must be in a position of equality before the Court in all respects", Nigeria brought counterclaims with respect to a range of incidents involving in principle the international responsibility of Cameroon. Nigeria also reserved the right to insist, for its own part, on the definitive specification of the land boundary, against the possibility that Cameroon might resile from its own claim to that effect.[1]

18.2 In its Order of 30 June 1999, the Court referred to the Nigerian counterclaims and noted that...

> "whereas those claims rest on facts of the same nature as the corresponding claims of Cameroon, and whereas all of those facts are alleged to have occurred along the frontier between the two States; whereas the claims in question of each of the Parties pursue the same legal aim, namely the establishment of legal responsibility and the determination of the reparation due on this account; and whereas the counter-claims of Nigeria are therefore 'directly connected with the subject-matter of the claim[s] of the other [P]arty' as required by Article 80, paragraph 1, of the Rules of Court; and whereas, in the light of the foregoing, the counter-claims submitted by Nigeria are admissible as such and form part of the present proceedings..."

18.3 In its *Counter-Memorial* Nigeria asserted, to the same extent as might be allowed to Cameroon, the right to augment and add to its counter-claims. It is true that in its *Reply*, Cameroon appears to have withdrawn its State responsibility claims with respect to individual incidents as such.[2] But as already noted, there is doubt as to what this means, and in any event Cameroon still unhelpfully seeks to

intermingle State responsibility and boundary claims in the present proceedings. Moreover Cameroon introduces a series of new assertions in its *Reply* under the rubric of State responsibility, notwithstanding its profession that it is not relying on individual incidents "in themselves".[3]

B. The Relation of Counterclaims to the Present Dispute: General remarks

18.4 In its *Reply*, Cameroon describes Nigeria's counterclaims as "designed to thwart Cameroon's request aimed at obtaining from the Court a pronouncement as to Nigeria's responsibility for the internationally unlawful acts committed by that State in its enterprise of challenging the boundary between the two countries".[4] The Court will be able to judge for itself, on the basis of Nigeria's pleadings, whether Nigeria is engaged in an "enterprise of challenging the boundary between the two countries". Coming from a State which persuaded the Court of the existence of a dispute concerning the main part of the boundary by reference to its claim over Typsan - a claim which was unjustified, which Cameroon must have known was unjustified and which it has now withdrawn[5] - this statement is not without its lighter side.

18.5 In any event, although it is true that some of Cameroon's State responsibility claims are supported by documents which show that responsibility for the incident in question rested with Cameroon itself (and these have correspondingly been made the subject of counterclaims by Nigeria), for the most part Nigeria's counterclaims concern distinct events and distinct victims. Those counterclaims have a separate existence. They are not designed to, and could not, "thwart" such State responsibility claims as Cameroon may be able to establish. In the event, if Cameroon's State responsibility claims are thwarted it is through its own conduct in failing to provide convincing evidence of the events themselves, and not by Nigeria's counterclaims.

18.6 Cameroon describes Nigeria's counterclaims as "fundamentally artificial..." and as "made, not because they are justified as a matter of fact, but on the basis of a curious conception of equality between the Parties to proceedings before the Court".[6] Again, this is whistling in the wind. Nigeria may or may not be able to establish the facts alleged in its counterclaims; it claims no different position for itself in terms of such issues as attribution[7] and the onus of proof than it requires of Cameroon.[8] All this is a matter for the Court, and generic criticisms by Cameroon, without any examination of the actual claims, are neither here nor there.

18.7 There were in fact countervailing considerations so far as Nigeria was concerned in relation to the decision to bring counterclaims. On the one hand, Nigeria has repeatedly said that Cameroon's confusion of issues of State responsibility and territorial title was unjustified and counterproductive, and that it is a distraction from the real issues.[9] Nigeria would not have brought counterclaims in the present proceedings if Cameroon had not chosen to combine allegations relating to territorial sovereignty and State responsibility in the first place. On the other hand, once Cameroon had done so, the record had to be corrected. According to Cameroon, there is a systematic Nigerian assault on the boundary as a whole

- an assault amounting to an "enterprise".[10] Consideration of the actual record, as presented in the appendices to this Chapter and to Chapter 16 and the relevant annexes, reveals nothing of the kind. Leaving to one side questions of evidence and proof, Cameroon's own allegations amount to nothing more than sporadic conduct in a variety of locations, actuated (or supposedly actuated) by a variety of local circumstances. Cameroon's assertion of what amounts to a quasi-criminal "enterprise" of a general character fails entirely, and does so quite independently of any question of the merits of particular claims or of the truth of particular incidents.

18.8 Cameroon's treatment in Chapter 12 of Nigeria's arguments based on historical consolidation and acquiescence provides a vivid example of this confusion.[11] Historical consolidation has nothing to do with State responsibility. It belongs to that separate compartment of the law concerned with title to territory. Indeed such persistent confusion may lead one to infer that the State responsibility claims are brought and maintained by Cameroon as a side-wind and for purely tactical reasons.

C. Existing and New Counterclaims

18.9 However that may be, the claims of each party have to be assessed each on their merits and on the strength of the evidence produced, and not by reference to assertions of motive. As in Chapter 16, Nigeria will not engage in the detailed work of analysis of the various claims and defences in this Chapter but rather in the appendix which follows. In that appendix, Nigeria deals firstly with the 29 individual counterclaims raised in the *Counter-Memorial*, and with the responses made to them by Cameroon in its *Reply*. As a general matter, it will be seen that Cameroon has either glossed over these counterclaims or has failed to produce any convincing evidence refuting them. In a number of cases (for example, the attacks against Bakassi settlements and civilian personnel in February-March 1996 and April 1998, and various incidents concerning Mberogo) Nigeria has presented substantial additional evidence in support.[12]

18.10 Nigeria also raises a number of further incidents involving the international responsibility of Cameroon. These further claims are particularised in the appendix to this Chapter with references to relevant documents and protests.

18.11 Finally Nigeria feels that it must draw attention to the fact that its nationals in Cameroon have been increasingly the target of harassment and extortion by Cameroon authorities, especially in the gendarmerie. For example, in a diplomatic note of 18 August 2000, Nigeria drew attention to no fewer than 84 incidents during the period September 1999-July 2000, occurring either within the South Western Province or involving Nigerian fishermen resident there. These encompassed "various incidents of harassment, assault, arrests, detention and extortion against Nigerian nationals".[13] The schedule of incidents attached to that note includes a number of incidents with serious consequences to the Nigerians involved, including numerous rapes and assaults and at least one death.

18.12 These incidents are by no means confined to the South Western Province. Nor, it should be said,

are the activities of the Cameroon gendarmerie solely focussed on Nigerians, even though they are often targeted. The Special Rapporteur on Torture of the Commission on Human Rights, in a report of 11 November 1999 on his visit to Cameroon, concluded that "torture is widespread and used indiscriminately against many people under arrest".[14] For example at the Yaoundé criminal investigation service unit, visited by the Special Rapporteur, "the vast majority of those in detention had been tortured".[15] There is an "anti-gang unit", established for three northern provinces in 1998, which acts as an execution squad, and which refused all cooperation with the Special Rapporteur.[16] Thus there is independent evidence that in Cameroon "torture is resorted to by law enforcement officials on a widespread and systematic basis".[17] This places in context the allegations of individual maltreatment and harassment of Nigerians which are made in the various documents annexed to the *Counter-Memorial* and to this *Rejoinder*.

18.13 An example of what can and does happen to Nigerians in Cameroon official custody is provided by the case of the death of Mr Edet Inyang Sunday, a Nigerian fisherman abducted by Cameroon forces from the Bakassi Peninsula on 3 November 1996. Mr. Sunday died on 4 April 1998 as a result of a bullet wound in the chest inflicted on him while in a Cameroon prison. The post mortem report, issued by a doctor at the Military Hospital at Yaoundé, records that Mr. Sunday died of "severe bronchial pneumonia sequel upon a thoracic wound caused by bullet". He had been in custody for about 18 months, although there is no indication that he was ever charged with any offence. Relevant documents, including the Nigerian diplomatic note of 18 June 1998, are annexed.[18]

D. Conclusions

18.14 Nigeria has several times made it clear that the aspects of the pleadings in the present case concerning allegations of State responsibility on both sides are of secondary importance. This is so, even though some at least of the incidents are extremely serious, and involved death or serious injury to civilians, specifically Nigerian civilians. Nonetheless the present case is a land, lacustrine and maritime boundary dispute, and to that extent issues of State responsibility are secondary.

18.15 Cameroon's attitude is far from consistent. On occasions it agrees that State responsibility is secondary or ancillary.[19] Elsewhere it appears to treat its allegations of State responsibility as central to the case, as when it says that Cameroon "intends to take advantage of the rules of international responsibility, primarily to obtain recognition by the Court that the parts of Cameroonian territory illegally occupied by Nigeria must be returned to it".[20] This is, again, a complete confusion. In most of the cases where the Court has been confronted with territorial disputes, the only issue has been that of sovereignty, and the Court's judgment (declaratory in form) as to the location of title has resolved that issue. No one has previously suggested, to Nigeria's knowledge, that the rules of international responsibility are necessary, or even useful, in order to resolve territorial disputes.[21]

18.16 In those relatively few cases in which one State has brought claims in respect of both title and

responsibility arising from a territorial dispute, the responsibility claims have usually been withdrawn.[22] In the very few cases where such claims were maintained, the Court has been disinclined to exacerbate matters by dealing with past incidents. A good example is the *Fisheries Jurisdiction case (Federal Republic of Germany v. Iceland)*, where the Court declined to make a declaratory award in respect of compensation for incidents involving damage to fishing vessels arising in the course of the dispute. The Court said that...

> "In order to award compensation the Court can only act with reference to a concrete submission as to the existence and the amount of each head of damage. Such an award must be based on precise grounds and detailed evidence concerning those acts which have been committed, taking into account all relevant facts of each incident and their consequences in the circumstances of the case. It is only after receiving evidence on these matters that the Court can satisfy itself that each concrete claim is well founded in fact and in law."[23]

In that case the dispute had arisen in 1971, so the incidents in question were recent, and they were, in principle, well attested. In the present case, by contrast, the incidents which form the basis of Cameroon's "global" responsibility claim[24] are disparate, in many cases old and stale, and poorly supported by first-hand evidence. Many of them are trivial; others were resolved at the local level. These points have already been made earlier in this *Rejoinder*, and amply illustrated.

18.17 Without in any way resiling from its claims as described in its *Counter-Memorial* and in this *Rejoinder*, Nigeria's view is that it would be appropriate to the efficient management of the present case for each side to withdraw its claims in the field of State responsibility, without prejudice to the legal rights of the individuals involved and to their resolution through other forums. It is, however, not enough for Cameroon

to withdraw from its earlier reliance on the individual incidents it alleges "as such"; if withdrawal there is to be, it must be complete on each side and extend to all areas of the boundary. It is on that basis that Nigeria maintains its claim in the first instance for declaratory relief in respect of each of the counterclaims specified in its pleadings, with damages, if not agreed between the parties, to be quantified by the Court in a later phase of the proceedings.

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1 See NC-M, paras. 23.01-23.05.

2 *cf.* RC para 11.33, and see the discussion above, paras. 16.11-16.33.

3 See above, paras. 16.20-16.32.

4 RC, para. 12.01.

5 See above, paras. 7.169-7.181, 16.47-16.54.

6 RC, para. 12.03.

7 On the requirement of attribution see above, paras. 15.8-15-12.

8 On the burden of proof see above, para. 15.69 *et seq*.

9 See, *inter alia*, para. 15.2 above.

10 RC, para. 12.01.

11 RC, paras. 12.07-12.10.

12 See below, Appendix to this Chapter, paras. 13, 14, 24 and annexes referred to.

13 Annex NR 199.

14 Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission of Human Rights resolution 1998/38, Visit by the Special Rapporteur to Cameroon, E/CN.4/2000/9/Add. 2, 11 November 1999, para. 5.

15 *ibid.*, para. 12.

16 *ibid.*, paras. 21-23, and see also Amnesty International, "Cameroon: Extrajudicial Executions in North and Far-North Provinces" (December 1998).

17 E/CN.4/2000/9/Add. 2, 11 November 1999, para. 68.

18 Annexes NR 200 and NR 201.

19 RC, para. 10.01 ("The present case primarily concerns a boundary dispute...").

20 RC, para. 10.02.

21 Cameroon goes on to imply that territorial disputes are to be settled not only by the return of territory but by "reparations for the illegal occupation": RC, para. 10.02.

22 As in the *Anglo-Norwegian Fisheries* case, ICJ Reports 1951 p. 116 and the *Fisheries Jurisdiction case (United Kingdom v. Iceland)*, ICJ Reports 1974 p. 3. These cases involved issues of maritime delimitation where incidents occurred on the high seas, or in areas which were putatively areas of high seas.

23 ICJ Reports 1974 p. 175 at p. 204 (para. 76).

24 Cameroon has, or seems to have, withdrawn its claim to State responsibility based on individual incidents: see above, para. 16.11 *et seq.*

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 18

APPENDIX

Counterclaims in respect of Specific Incidents

A. The Purpose of this Appendix

1. As explained in Chapter 18, the purpose of this Appendix is to deal in more detail with Cameroon's remarks on the counterclaims, as set out in Chapter 12 of its *Reply*, and to specify a number of additional counterclaims which (a) fall within the scope of the present case and (b) either concern events which have occurred since the submission of the submission of the *Counter-Memorial* (or matter referred to for the first time in Cameroun's Reply (or matters referred to for the first time in Cameroon's *Reply*), or relate to continuing breaches of international law by Cameroon as at the time of conclusion of this *Rejoinder*.

B. Cameroon's Responses to the Specific Incidents dealt with in Nigeria's *Counter-Memorial*

(a) The situation in and around the Bakassi Peninsula

CC1. Earlier incidents on or around the Peninsula

2. Cameroon's attack on Ufok Akpa Ikong was dealt with briefly in the *Counter-Memorial*, referring to a Nigerian protest note of 31 March 1977.[1] The reference to "Ufok Akpa Ikong" may be understood as a reference to Ine Akpa Ikang, a village in the northwest of Bakassi. Cameroon implies that this incident is consistent with operations normally carried out by Cameroon's policemen in its territory, to maintain public order. Quite apart from the questions that this begs concerning sovereignty over Bakassi, the fact that Cameroon considers setting a fishing village on fire to be consistent with an "operation to maintain order" is rather worrying.

3. In reply to certain incidents of 1970 and 1982,[2] it seems that, once again, Cameroon's only line of defence is to claim that the incidents took place in Bakassi, and to suggest that the incidents were part of the normal operations of the Cameroon *gendarmerie*. Once again, leaving the sovereignty issue to one side, Nigeria is at a loss to understand how the operations of Cameroonian officials come to include the beating of individuals (particularly Nigerians), the setting of houses on fire and the plundering of property.

CC2. Armed tax drive and associated brutality at Ntokoba

4. In respect of the tax collection carried out in Ntokoba (sometimes spelled Ntakaba) by seven armed Cameroonian police officers at 10.15 hours on 24 September 1991,[3] Cameroon criticises Nigeria for not "indicating the exact location" where this incident took place.[4] In fact Nigeria did so: Ntokoba appears in the list of Bakassi settlements appearing in Chapter 3 of the *Counter-Memorial*, where the village's geographical coordinates are indicated.[5] The village also appears on Maps 4 and 5 of the *Counter-Memorial Atlas.*

5. Cameroon claims that the incident complained of constitutes "the normal exercise by Cameroon of its sovereign power to collect tax in its territory".[6] But (quite apart from the underlying issue of sovereignty over the Bakassi peninsula) it is alarming that Cameroon considers that handing out severe beatings to individuals, particularly to those who are at least "partly of Nigerian origin", constitutes "the normal exercise" of its powers to collect tax. Moreover, as the document referred to by Nigeria testifies,[7] at the time of the incident, the village of Ntokoba was under the administrative control of Odukpani Local Government Area of Nigeria (as it is at the present time under the control of its successor, Bakassi Local Government Area). Cameroon appears to acknowledge this Nigerian control by suggesting that the inhabitants of Ntokoba would have had cause to present arguments "before the Nigerian tax authorities".[8]

CC3. Harassment at Abana

6. According to Cameroon, the events of 26 February 1993, referred to in the Nigerian Note of 26 April 1993,[9] were just another "normal operation to maintain order by the Cameroonian gendarmerie".[10] Quite apart from Cameroon's failure to shed any light on what was, by its own tacit admission, a major police operation (and which was no doubt correspondingly well recorded on its side), there is again a question here about what amounts to "normal" policing so far as Cameroon is concerned.

CC4. Attack on Nigerian boats

7. Cameroon refers to the attack by its military helicopters and naval vessels on Nigerian merchant boats at about 0800 hours on 27 June 1993, which resulted in the sinking of 23 of the boats.[11] It notes that there was an "astonishing disproportion between the resources ... mobilised by the Cameroonian army and their target". Nigeria agrees with this observation: the fact that the Cameroon military was targeting unarmed merchant vessels, and that so many were sunk, strongly suggests that there could have been no legitimate reason for this exercise of force.

8. Cameroon also argues that this incident somehow "confirms the fact that from 1992 Nigeria had embarked on a course to conquer the Bakassi Peninsula".[12] But it is difficult to understand exactly how

the sinking of merchant boats by Cameroon's armed forces can be construed as an act of conquest by Nigeria. Nor is there any evidence at all for Cameroon's assertion that, if the incident happened, it "would instead constitute a test of Cameroon's defences by the Nigerian army".[13] Since the available evidence suggests that the boats were civilian vessels in civilian use, there is no basis for the suggestion of a test of Cameroon's defences.

9. Finally, Cameroon's observation[14] that the Nigerian Protest Note specified the number of Nigerian merchant boats sunk, but not the number of Cameroonian helicopters involved in the attack, is insensitive. Those present were no doubt preoccupied with trying to save themselves from this attack. On the other hand, the number of vessels lost would have been easily established by the Nigerian authorities, in subsequently interviewing the Nigerian merchants, whose livelihoods were severely affected by the sinking of their boats.

CC5-17. Miscellaneous attacks on Nigerian villages and their inhabitants (1994-1999), including the market attack of 3 February 1996

10. Cameroon purports to respond summarily and in a single paragraph[15] to the series of incidents between January 1994 and February 1999 cited by Nigeria.[16] In its cursory treatment of these incidents, Cameroon does not deny that they took place. The only defence which Camerooon appears to advance in respect of all of these incidents is the claim that the Cameroonian attacks were "military operations in an area of armed conflict in which the intensity of fighting reached extremely high levels at certain periods".[17] But quite apart from the fact that the reference to the "intensity of fighting" begs the question of who was responsible for the fighting concerned, Cameroon has not demonstrated that the numerous attacks that it carried out during this period were in the course of "intense fighting" which was already in progress. Indeed, it is clear from the context of these incidents that they were for the most part if not entirely attacks on civilian targets (villages and individual fishermen etc.), carried out by Cameroon without warning.

11. Evidently the Nigerian civilians attacked could not have been involved in the "intense fighting" to which Cameroon refers. In particular, reference is made to Cameroon's attack of 3 February 1996, which has already been discussed in some detail in this *Rejoinder*.[18] Reports from Nigerian forces in the field[19] confirm that the Cameroon attack was sudden and unprovoked. In addition, the attacks which took place after 15 March 1996 were breaches of the Court's Order of that date.

12. Cameroon finds it "astonishing" that "Nigeria, whose troops occupy a large part of the Bakassi Peninsula ... seeks to pin responsibility on Cameroon for events which allegedly took place in the area controlled by its troops".[20] Nigeria does not intend to trade epithets, but it is not at all astonishing to suggest that substantial civilian casualties in areas under Nigerian control should have been caused by Cameroon. The well-attested events of 3 February (and Camerooon's unconvincing explanations of them) are of particular relevance here: Cameroon is certainly responsible for the consequences of its

attack on a Nigerian village and its civilian population.[21]

13. As to the incidents of 6, 18 and 20 April 1998, Nigeria annexed to its *Counter-Memorial* the relevant Nigerian diplomatic note.[22] It also annexed statements made by a number of the victims of those attacks. Nigeria now annexes further documents relating to these three incidents,[23] which include additional statements made by victims of the attacks, as well as by the Regimental Medical Officer in East Atabong.[24] Those statements largely speak for themselves, but the following points may be made:

· The victims were predominantly civilians, including women and children;

· They had suffered gunshot and other percussion wounds;

· There were a number of deaths;

· There is no indication of any Nigerian military operations that would have occasioned Cameroon responses and merely incidental casualties - in other words, the accounts are consistent with assaults initiated by Cameroon.

· These incidents were characteristic of the behaviour of Cameroonian gendarmes and others, shooting first and asking questions afterwards, if at all.

· First aid and assistance was offered by Nigerian personnel on Bakassi and in no case by Cameroon personnel.

14. There was a pattern of attacks by Cameroon on Nigerian civilians during this period, in addition to the incidents of 6, 18 and 20 April 1998. Documents relating to some of these incidents, including witness statements, are annexed.[25]

(b) Incidents in Lake Chad (CC18-20)

15. In its *Counter-Memorial*,[26] Nigeria presented a series of counterclaims in respect of incidents which took place in Lake Chad, at the settlement of Kirta Wulgo, and for which Cameroon bears responsibility.[27] In its *Reply*, Cameroon does not actually deny that these incidents took place.[28] Indeed, by referring to the incidents cited by Nigeria without qualification,[29] Cameroon virtually admits the facts. Instead, Cameroon argues that "the location of incidents is... an essential prerequisite for the attribution of responsibilities under international law" and claims that it is impossible to determine whether the villages in question are situated in Nigeria.[30] This defence fails, for a number of reasons. First, while location is always relevant to State responsibility it is not decisive: a State may be responsible for conduct on territory which is part of another State, or is otherwise not subject to its

control, and correspondingly it may not be responsible for conduct which does take place on its territory. Secondly, Nigeria provided maps and precise co-ordinates of the localities in question,[31] so that Cameroon's professed uncertainty is unconvincing. But above all, Cameroon ignores the point that all the incidents raised by Nigeria as counterclaims took place in the village of Kirta Wulgo, a settlement which (as Nigeria has already pointed out[32]) falls within Nigeria even on the basis of the unratified IGN demarcation. Indeed, Cameroon confirms that Kirta Wulgo is a Nigerian village.[33] Kirta Wulgo has always been under undisputed Nigerian sovereignty, and in the circumstances Cameroon must be held internationally responsible for the actions of its soldiers, police and other officials in and against that village, as detailed in Nigeria's *Counter-Memorial*.

(c) The land boundary between Lake Chad and Bakassi

16. Cameroon asserts that the land boundary, having regard to its length and other characteristics, "could not be incident free".[34] That is no doubt true: it has not been incident-free. No doubt Cameroon is entitled, for its own part, to select those bits of the boundary (*all* of which it declared to be in dispute) which it wishes to be subject to claims of State responsibility. Indeed it confirms that it has done so.[35] But it cannot require Nigeria to accept a similar selective approach to boundary incidents, and in its Order of 30 June 1999 the Court accepted Nigeria's counterclaims as admissible without limit as to their location. So far as concerns the land boundary between Lake Chad and Bakassi, it may be disarming to assert that this boundary "could not be incident free", but it is also irrelevant. If State responsibility is to be brought into the case, it is just as much a possibility for the land boundary between Lake Chad and Bakassi as it is for those areas themselves.

CC21. Incidents at Tipsan

17. In its response to Nigeria's counterclaims concerning Tipsan,[36] Cameroon does not deny that the incidents in question actually took place. Instead it asserts:

> (a) that Nigeria merely cites documents in which Cameroon has indicated that Tipsan is situated in Cameroonian territory, without showing how this constitutes an internationally unlawful act; and
>
> (b) that Tipsan is in any event in Cameroon's territory.[37]

18. Cameroon's first assertion clearly does not apply to the events described in paragraphs 25.44 and 25.45 of Nigeria's *Counter-Memorial*. These involved Cameroonian officials ordering the village head and inhabitants of Tipsan to leave the village and not to allow the exercise of Nigerian sovereignty there. Nigeria agrees that the mere assertion of a *bona fide* territorial claim (whether or not it is eventually upheld) is not as such and without more a basis for State responsibility.[38] But it is one thing to make a claim to an area of territory and quite another to seek to expel its inhabitants: the conduct described in

paragraphs 25.44-25.45 of the *Counter-Memorial* obviously involves acts which incur Cameroon's international responsibility, and indeed the arbitrary expulsion of a civilian population would do so even if the claim to Tipsan was well-founded. As to Cameroon's second assertion (paragraph 17, above), this has been fully discussed already. The events and documents described in paragraphs 25.46 to 25.49 of the *Counter-Memorial* were included in the Counterclaims to show that Cameroon had repeatedly laid claim to Tipsan. Nigeria has shown that Cameroon's claim to Tipsan is unreal and wholly lacking in substance.[39] In the circumstances, the acts and claims of Cameroon relating to Tipsan are a suffficient basis for State responsibility.

CC22. Confiscation of land and other incidents of harassment, supported by Cameroon gendarmes, at Maduguva

19. In its *Counter-Memorial*, Nigeria noted the problems that had arisen at Maduguva, and the threat presented to Nigerians and their lands around the villages of Guri, Maduguva and Gaddamayo.[40] The position so far as concerns territorial sovereignty and the location of the boundary in this area is clear enough and has been fully dealt with elsewhere.[41] Nigeria noted, by way of background, the existence of a local agreement concerning the disputed area; this was explicitly done not by way of a claim to responsibility but in order to put in context subsequent acts by Cameroon officials supporting the land claims and exactions of the Lamido of Burha.[42] Here as elsewhere, Nigeria has been entirely consistent with its own position on State responsibility. It does not say that the conduct of the Lamido of Burha is as such attributable to Cameroon, nor that an unresolved claim to land across the boundary (e.g. a claim based on local custom or tradition) is as such a basis for state responsibility. What it did say, with perfect clarity, was that "[t]o the extent that the events recounted... involve support by Cameroon officials and gendarmes for the land claims of the Lamido of Burha", this involves the international responsibility of Cameroon.[43] In particular this is the case where gendarmes or other local officials have assisted the Lamido, for example, in enforcing claims to land or produce against Nigerian villagers, or by expelling them from the disputed lands in Nigeria. Cameroon evidently has difficulty in understanding this consistent position. In its Reply, it does not specifically deny any of the incidents alleged by Nigeria, but it asserts that acts carried out by or on behalf of the Chief of Burha are not acts for which Cameroon can be held responsible.[44] Nigeria so far agrees, but this was not the basis on which it had made the counterclaim, as the passage above clearly shows.[45]

CC.23 Incidents involving Cameroon gendarmes at Tosso and Mberogo

20. Nigeria's counterclaim involves assaults by gendarmes in the locality of Mberogo, especially in 1994 and 1995.[46] In its *Reply*, Cameroon largely confines its response to suggesting that there is some confusion concerning the existence of villages with similar names on either side of the international boundary.[47] The position so far as concerns territorial sovereignty has already been discussed in detail; from that discussion it is clear that, although there are several villages by the name of Tosso, Cameroon's "confusion" at these different localities is as convenient as it is unconvincing.[48]

21. In the case of the incidents of May 1976,[49] Cameroon claims that there is a Cameroonian village called Tosso, which is located in the vicinity of Mount Tosso.[50] This claim has already been dealt with. It is very doubtful if there is a village of *any* name in the location specified by Cameroon on its Map, R27.[51] Even if this village does exist, it clearly has no relevance to the allegations concerning the incidents of May 1976 which took place in Bissaula and elsewhere. It also has no bearing upon the claim concerning the incident which took place in Tosso, as it is obvious that it concerns the Nigerian village of Tosso. The Nigerian village (unlike its mysterious Cameroonian counterpart) was and is well-established and well known locally. It is true, as Cameroon points out, that the Nigerian Tosso is "a good distance away from the boundary", but this merely makes the fact of the incursion clearer.

22. As to the various claims advanced in relation to the incidents in Mberogo, Cameroon's only line of defence, again, appears to be that there exists a Cameroonian village in the vicinity known as "Mbelogo" which is "clearly ... not the same village" as Mberogo, and to imply that Nigeria has confused the two locations in respect of every single one of these incidents.[52] This may be called the "twin cities" defence, and in Cameroon's *Reply* it performs the same forensic function as an alibi in a criminal case. Unfortunately (as with some alibis) Cameroon has to rely on it repeatedly.

23. The question is not whether we believe in "Mbelogo", but in relation to which village the incidents complained of occurred. And here, with the exception of the claim relating to the incident of 26 September 1994, all of Nigeria's claims are based on Nigerian documents which clearly refer to the Nigerian village of Mberogo.

24. As regards the incident of 26 September 1994,[53] it is true that the documents relied upon by Nigeria in the *Counter-Memorial* are Cameroon documents which refer to the location of the incident by the name "Mbelogo". However, any doubts as to whether the incident took place in the Nigerian village of Mberogo are removed after a consideration of certain additional documents relating to this incident which are now annexed. These documents refer to the location of the incident as Mberogo. They include:

> (a) The witness statement of Adamu Dauda, the Nigerian Immigration Officer who was attacked in the incident.[54] His statement of 26 September 1994, the day of the incident, confirms the details of the attack by the Cameroon Gendarmes, which included hitting the two Nigerian officials concerned with rifles and sticks whilst they lay on the ground, defenceless.
>
> (b) A report on the incident dated 30 September 1994, which was prepared at the Mubi/ Tosso Police Post.[55]
>
> (c) A report on the interrogation of Ngomdandi Manretoing and Massango Paul, the two

Cameroonian gendarmes who carried out the attack.[56]

(d) The official summary of the incident, dated 6 July 1995, prepared by the Commissioner of Police of Taraba State for the Military Administrator, and based on the earlier reports and other information.[57]

25. Unfortunately, in the period since the completion of the *Counter-Memorial* incidents have continued to occur at Mberogo. These were the subject of a diplomatic note of 20 September 2000 by the Nigerian Ministry of Foreign Affairs.[58] These involved new Cameroon incursions into Mberogo at frequent intervals between 1998 and 2000: these are summarized below, with references to relevant documents.[59] These exactions are part of a pattern of behaviour which plainly attracts Cameroon's international responsibility, the more so since there can be no doubt in this case that it is the Nigerian village of Mberogo which is involved, and not some eponymous Cameroonian surrogate.

CC24. Incident involving Cameroon incursions at Okwa from Matene

26. This incident involved an attack on Okwa village on 29 July 1986, during which 80 Nigerian huts were burnt and four Nigerians kidnapped.[60] Cameroon's reply to this incident[61] consists of two parts. The first part revolves around Cameroon's assertion that the incident was "linked to the destruction, by the Nigerian inhabitants of the village of Okwa, of boundary pillar 103 marking the border...". Cameroon seems to be attempting to excuse itself of responsibility by claiming that this "act of vandalism" "provoked" the July 1986 incident. However, a brief glance at the document relied upon by Cameroon[62] reveals that the document is an internal Cameroonian reconnaissance report dated 10 January 1997 concerned with events which had recently taken place. Nigeria is unclear how the mere alleged removal of a boundary pillar - referred to in a 1997 report - could have "provoked" a Cameroonian attack 11 years earlier, which involved the burning of Nigerian houses and the kidnapping of Nigerians.

27. The second part involves reliance on a passage from the Court's judgment in the *Namibia/Botswana* case, which concerned not State responsibility but the consequences for territorial title of certain acts of occupation performed by members of the Masubia tribe; the Court noted that these acts had not been shown to have been performed "*à titre de souverain*".[63] Cameroon asserts that "because these events are commonplace by reason of Nigeria's challenge to the boundary... Cameroon referred the matter to the Court for the purpose of confirming the boundary".[64] As already pointed out,[65] Cameroon systematically confuses issues of the proof of territorial title and issues of State responsibility, and this is another example. No issue of State responsibility arose in the *Namibia/Botswana* case, and the Court applied that part of international law relevant to territorial title. The purpose of a claim of State responsibility is not to confirm a boundary but to seek reparation for internationally wrongful acts.

CC25-29. Additional incidents along the land boundary

28. In its *Counter-Memorial*, Nigeria related a series of events involving incursions or attacks on Nigerians, their houses or property along the boundary, based on a series of Nigerian diplomatic notes.[66] Some of these incidents concerned Bakassi and have already been dealt with.[67] As to the others,[68] Cameroon has little or nothing to say. In particular its weak response to the allegation of an incursion at Karanchi may be noted.[69] Cameroon here effectively concedes that its gendarmes were on the wrong side of the boundary.

C. Additional Counterclaims

29. In addition, Cameroon having raised under the rubric of State responsibility a series of further allegations,[70] Nigeria does likewise, although Nigeria will limit its new claims to (a) matters referred to for the first time in Cameroon's *Reply* or (b) events which have occurred since the submission of its *Counter-Memorial* or which involve violations of a continuing character.

(a) The situation in and around the Bakassi Peninsula

30. The situation in and around the Bakassi Peninsula over the past several years has been characterised by Nigerian civil administration interrupted and affected by a series of attacks and assaults from Cameroon forces. These attacks and assaults have been quite frequent, and though they have been repulsed, they have involved considerable loss of life and damage, in particular so far as Nigerian civilians are concerned.

CC30. Additional incidents affecting Nigerian civilians in and around the Bakassi Peninsula

31. Additional incidents since the completion of the *Counter-Memorial* include the following:

> (a) Unlawful detention and torture of Mr. Thompson Effiong. In 1999 Mr. Effiong was taken by Cameroon gendarmes from the Bakassi peninsula and held in two different localities for 6 months before his release. He was beaten about the head and subsequently maltreated in prison. His statement of 11 November 2000 is annexed.[71]
>
> (b) Death of Mr. Ekpobari Siraka. On 30 December 1999, a Nigerian fisherman, Mr. Ekpobari Siraka, was killed as a result of firing by Cameroon soldiers. A report and photograph are annexed.[72]
>
> (c) Unlawful detention and treatment of Mr. Edem Daniel. On Sunday, 13 February 2000 Mr Edem Daniel and his son were seized, the son being wounded. Subsequently Mr. Daniel was detained for more than 3 months. His statement is annexed.[73]

(d) Detention and seizure of property of Mr Obong Edet Eyo. Mr. Obong Edet Eyo was arrested by Cameroon gendarmes while fishing; his boat and tackle were seized and he was detained for 2 months before his release. His statement is annexed.[74]

(e) Death of Mr. Okon Asuquo as a result of ramming by Cameroon speed boat. In October 2000, a fishing boat belonging to Mr Effiong Etim Effiong of Abana was rammed at night, on the Rio del Rey, by a Cameroon speedboat driven by gendarmes. The boat was sunk and one of the crew, Mr. Okon Asuquo, was killed. Mr. Effiong's statement is annexed.[75]

A number of other statements report incidents of this kind, involving Cameroon officials (gendarmes and others).[76]

(b) Incidents in Lake Chad

CC31. Additional incidents at Kirta Wulgo ("Faransa")

32. In its *Reply*, Cameroon refers to a number of further documents concerning the village it refers to as "Faransa", the proper name of which is Kirta Wulgo.[77] The documents report on the appointment of a village head at "Faransa", a village which Cameroon elsewhere accepts is Nigerian.[78] They also reveal that two Cameroonian officials, the Deputy Prefect of Makary and the District Head of Hilé-Alifa, paid an unauthorised visit to Kirta Wulgo and purported to exercise authority there. These documents evidence incidents which involve the international responsibility of Cameroon rather than Nigeria.

(c) The land boundary between Lake Chad and Bakassi

CC32. Further incidents at Tosso and Mberogo

33. The situation at Mberogo has already been referred to,[79] and continues to cause difficulties. Members of the Nigerian legal team visited the village in March 2000. They were told that Cameroon gendarmes visit the village on most market days in order to harass and extort money from the villagers. Thus:

(i) On Sunday 20 February 2000, the day after a visit by Nigerian State Surveyors, the Ward Head of the area, Daniel Ngong, was stopped by Cameroon gendarmes and asked why he claimed the village for Nigeria. The Ward Head explained that it was a Nigerian village. The gendarmes, knowing who the Ward Head was, arrested him and two others (Benjamin Kuzang and Joseph Ntam Sa'ah): all three were taken to Furu-awa in Cameroon. Kuzang and Ntam Sa'ah were locked up overnight and then released unharmed after being questioned. The Ward Head was kept under house arrest for 2 weeks in Furu-

awa and was interrogated a number of times. He was eventually released on Sunday 5 March 2000. This was not the first time that the Ward Head of Mberogo has been arrested by Cameroonian gendarmes for denying the existence of Cameroonian sovereignty over Mberogo: a similar incident took place on 30 May 1998.

(ii) On Tuesday 29 February 2000 Cameroonian Gendarmes came to the house of three brothers (Bawa Ali, Ndokari Ali and Sali Ali), situated by the Gamana River in Mberogo. The brothers were arrested and taken to Furu-awa, where they were made to pay 500 Naira each and had their guns confiscated.

(iii) On Thursday 16 March 2000 (Thursday being market day), gendarmes came to the village, arrested a woman and extorted 100 Naira from her before letting her go.

Documents relating to these events, ranging from a letter of the Chief District Scribe through to the Nigerian protest note to Cameroon of 20 September 2000, are annexed.[80]

CC33. Cameroon encroachment at Turu

34. The position of the boundary at Turu has already been described[81] and depicted.[82] It is clear that there is a substantial Cameroon encroachment over the boundary, which follows a clearly defined watershed. The Cameroonian authorities now claim that this is Cameroon land, and they insist on collecting taxes there. The extent of the Cameroon encroachment is substantial.

(d) Conclusion

35. Nigeria claims, in the first instance, a declaration that Cameroon is internationally responsible with respect to each of these events, with damages (if not agreed between the parties) to be determined by the Court in a further phase of the proceedings.

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1 NC-M, para. 25.9, citing Annex NC-M 354.

2 See NC-M, para. 25.68, referring to a Note of 18 January 1971 (Annex NC-M 400); para. 25.70, referring to a situation report of 11 January 1982 (Annex NC-M 402); para. 25.71, referring to an internal note of 20 December 1982 (Annex NC-M 403).

3 NC-M, para. 25.10 and Annex NC-M 355.

4 RC, para. 12.17.

5 NC-M, p. 43. Evidently Cameroon failed to notice Ntokoba's inclusion in that list, despite having apparently studied the list carefully for the purposes of the preceding paragraph of the *Reply*: RC, para. 12.16.

6 RC, para. 12.17.

7 Annex NC-M 355.

8 RC, para. 12.17.

9 NC-M, para 25.11 & Annex NC-M Annex 356.

10 RC, para. 12.18.

11 RC, para. 12.19. For this incident see NC-M, para. 25.12 and Annex NC-M 357.

12 RC, para. 12.19.

13 RC, para. 12.20.

14 RC, para. 12.19.

15 RC, para. 12.21.

16 See NC-M, paras. 25.13-25.25. For convenience these incidents may be numbered as follows:

	Incident	**Reference**	**Annex(es)**
CC5	Attack on fishing ports, 17-18 January 1994	NC-M, para. 25.13	NC-M 349
CC6	Attack on Ine Ekpo, 28 February 1994	NC-M, para. 25.76	NC-M 408
CC7	Shooting of Nigerian soldier, 2 May 1994	NC-M, para. 25.77	NC-M 409
CC8	Attacks on boats and fishermen, West Atabong, 24/27 July 1995	NC-M, para. 25.78	NC-M 410
CC9	Incident of 3 February 1996	NC-M, paras. 25.14-25.17	NC-M 358, 359, 360, 361
CC10	Further attacks on Nigerian positions, 17-19 February 1996	NC-M, para. 25.17	NC-M 361
CC11	Further attacks on fishermen & traders, November-December 1996	NC-M, para. 25.18	NC-M 362

CC12	Miscellaneous attacks, February-March 1998	NC-M, para. 25.24	NC-M 371-373
CC13	Helicopter attacks on Archibong, Abana etc, 19 March 1998	NC-M, para. 25.20	NC-M 363
CC14	Attacks on Nigerian civilians, 6 April 1998	NC-M, para. 25.21, 25.22, 25.23	NC-M 364-369
CC15	Attacks on Nigerian civilians, 18 April 1998	NC-M, para. 25.21	NC-M 364
CC16	Attacks on Nigerian civilians, 20 April 1998	NC-M, para. 25.21, 25.24	NC-M 364, 370
CC17	Attack on Nigerian fishermen, 25 February 1999	NC-M, para. 25.25	NC-M 374

17 RC, para. 12.21.

18 See above, paras. 151-169 of the Appendix to Chapter 16.

19 See Annexes NR 196 to NR 198.

20 RC, para. 12.21.

21 Nigeria cited the remarks of its Head of State (NC-M, para. 25.15) not in order to found a separate counterclaim, as Cameroon rather artificially suggests (RC, para. 12.22), but in order to confirm the seriousness with which Nigeria viewed, and still views, that unprovoked Cameroonian attack. It is clear from the context and the document exhibited as Annex NC-M 359 that the incident being referred to is precisely the attack of 3 February 1996.

22 NC-M, para. 25.21, referring to Annex NC-M 364.

23 See Annexes NR 202 to NR 205.

24 Annex NR 205.

25 Annex NR 206.

26 NC-M, paras. 25.27-25.39.

27 For convenience these incidents may be numbered as follows:

	Incident	**Reference**	**Annex(es)**

CC18	Appointment of Bulama and associated exactions, Kirta Wulgo, March 1985	NC-M, para. 25.29-25.32	NC-M 375, 376
CC19	Extortion of payments, Kirta Wulgo, June 1986	NC-M, paras. 25.33-34	NC-M 377, 378
CC20	Temporary occupation of Kirta Wulgo and associated exactions, May 1987	NC-M, para. 25.35-25.38	NC-M 379-382

28 RC, paras. 12.25-12.28.

29 RC, para. 12.28.

30 RC, para. 12.25.

31 NC-M, para. 14.5 and *Atlas*, Map 42.

32 NC-M, para. 25.28.

33 See RC, para. 3.87 and the Appendix to Chapter 3 of the *Reply*.

34 RC, para. 12.29.

35 See RC, para. 12.29 and see further above, paras. 16.26-16.27.

36 NC-M paras. 25.43-25.49.

37 RC, para. 12.32.

38 See above, paras. 15.20-15.21.

39 See above, paras. 7.169-7.181.

40 See NC-M, paras. 25.50 to 25.57

41 See above, paras. 7.137-7.144 and Fig. 7.29.

42 NC-M, para. 25.51.

43 NC-M, para. 25.57.

44 RC, paras. 12.33-12.34.

45 Concerning the actions of certain Cameroon soldiers at Gaddamayo (NC-M, para. 25.53) Cameroon complains that Nigeria has not provided certain information. As to the date of the incidents, it is clear from paragraph 6 of the letter dated 23 April 1986 from the Mubi Directorate of Internal Security (Annex NC-M 391) that these infiltrations were occurring regularly as at that date: there is thus no single date associated with this counterclaim. Likewise, the number of Cameroonian soldiers involved and the identity of the Nigerian victims depended on the particular incident.

46 NC-M, paras. 25.58-25.63.

47 RC, paras. 12.35-12.38.

48 See above, paras. 7.197-7.204.

49 NC-M, para. 25.59.

50 RC, para. 12.36.

51 RC, p. 581. See above, para. 7.200 for a description of the site of this asserted Tosso.

52 Cameroon implies (RC, para. 12.37) that Nigeria endorses the existence of "Mbelogo" in NC-M, *Atlas*, Map 75. But a glance at the the map in question confirms that it merely indicates the approximate position of the "location of Mbelogo alleged by Cameroon", based on a map contained in Cameroon's pleadings on which the name "Mbelogo" has been superimposed (see p. 331 of Annex OC 1). This is the only map Nigeria has seen which indicates the position of a Cameroonian village called "Mbelogo".

53 Referred to in NC-M, para. 25.61.

54 Annex NR 207.

55 Annex NR 208.

56 Annex NR 209.

57 Annex NR 210.

58 See para. 33 and Annex NR 220 below.

59 *ibid*.

60 NC-M, paras. 25.64-25.65.

61 RC, paras. 12.39-12.41.

62 Annex RC 1, p. 309

63 I.C.J. Judgment, 13 December 1999, para. 98.

64 RC, para. 12.41.

65 Above, para. 18.7 *et seq.*

66 NC-M, paras. 25.67-25.79.

67 Above, para. 3.

68 For convenience the non-Bakassi incidents may be numbered as follows:

	Incident	**Reference**	**Annex(es)**
CC25	Incursions at Mayo Gertugal and associated exactions, 1975	NC-M, para. 25.69	NC-M 401
CC26	Extortion of payments, Bua Village, October 1984	NC-M, paras. 25.72	NC-M 404
CC27	Tax collection and other claims at Mubi-Tosso, October 1984 and subsequently	NC-M, para. 25.73	NC-M 405
CC28	House to house search by gendarmes at Kuma, 18 June 1985	NC-M, para. 25.74	NC-M 406
CC29	Incursion at Karanchi, 8 February 1990	NC-M, para. 25.75	NC-M 407

69 RC, para. 12.51, responding to NC-M, para. 25.75.

70 See above, Appendix to Chapter 16, paras. 110-206 where these are discussed and refuted.

71 See Annex NR 211.

72 See Annex NR 212.

73 See Annex NR 213.

74 See Annex NR 214.

75 See Annex NR 215.

76 See Annex NR 216.

77 RC, para. 11.196, referring *inter alia* to Annexes RC 110 and RC 111.

78 See e.g. RC, para. 3.87, and on the indisputable Nigerian sovereignty over Kirta Wulgo see further above, Appendix to Chapter 16, paras. 96-97.

79 See above, paras. 20-25.

80 See Annexes NR 217 to NR 220.

81 See above, paras. 7.132-7.136.

82 See above, Fig. 7.28, referred to at para. 7.133.

PART V

STATE RESPONSIBILITY AND COUNTERCLAIMS

CHAPTER 19

CONCLUSIONS AND SUBMISSIONS

CONCLUSIONS AND SUBMISSIONS

19.1 Before reciting Nigeria's submissions, certain remarks are called for by way of conclusion to this *Rejoinder*

The conduct of the case

19.2 In its pleadings and other documentation, Cameroon has engaged in extended criticism of Nigeria's conduct of the case, effectively alleging - in various terms and in various contexts - that the conduct of Nigeria's case has been an abuse of process, and even that Nigeria should be treated as a party which has failed to defend itself.[1] So far as such allegations are actually relevant to the case, the matter is one for the Court to judge in light of the pleadings. For its part, Nigeria has sought to disclose relevant information to the Court and to present the case to the best of its ability, respectful of the Court and at the same time seeking to vindicate its rights and those of its citizens.

19.3 Without going into detail, it is relevant to mention that the conduct of the case by Cameroon has not been such as to assist either the Court or the Parties in relation to a case which - entirely at the instigation of Cameroon - covers a vast area of terrain and a very large number of legal issues, involving land, lacustrine and maritime sovereignty as well as sundry allegations of State responsibility. Cameroon's conduct of the case has been distinguished, *inter alia*, by the following procedural and substantive features: (1) the production of additional irregular pleadings;[2] (2) the withdrawal of major submissions (e.g. as to questions of State responsibility for individual incidents[3]); (3) the abandonment of positions on which the Court, at Cameroon's instigation, had previously acted to Nigeria's detriment (e.g. the existence of a dispute over Typsan[4]) and (4) the attempt to resile from the effects of its own way of putting the case (e.g., as to "definitively specifying" the course of the land boundary[5]). Nigeria has expressed its positions, in careful and measured terms, on each of these points and will not repeat them here.

The Court's Interim Measures Order

19.4 Cameroon has also complained repeatedly as to breaches by Nigeria of the Court's Order of 15

March 1996 on Provisional Measures. It has however done nothing to follow up those complaints, for example by approaching the Court to clarify the scope of the Provisional Measures. In this *Rejoinder*, Nigeria has responded to the various Cameroon complaints, and has shown them to be unfounded. To the contrary, the incidents involving the civilian population in the Nigerian villages on the Bakassi Peninsula, recounted in the Appendix to Chapter 18 and related annexes, strongly suggest that if breaches of the Provisional Measures Order have occurred, they are attributable to Cameroon.[6]

19.5 Subject to one point, there is in Nigeria's view nothing more to be said on the matter.[7] That point concerns Cameroon's protest letter of 28 September 2000, concerning "incidents" at Abana and Mayo Fauru. Nigeria will not repeat what its Agent said in his reply of 25 October 2000, which is annexed.[8] The allegation that Nigeria by constructing a secondary school and health centre at Abana is in breach of the Court's Order because it "completely destroys all available evidence" is absurd. In fact there is no evidence that Cameroon - for all its vaunted 40 years of "administration" of the Bakassi Peninsula - ever built a single school there, or any health centre. The Nigerian inhabitants of the Nigerian villages there have looked entirely to mainland Nigeria for such facilities, as has been shown comprehensively in Chapter 3.[9] Nor is there any indication of any concern on the part of Cameroon for that Nigerian population now, as witness the mere fact of a protest at the building of a health centre, not to mention the range of injuries suffered by that population in recent years at the hands of Cameroon organs. As to Mayo Fauru, the patent gap between the assertions of Cameroon and the facts demonstrated by Nigeria speaks for itself.

Reservation as to personal status and property rights along the boundary

19.6 Finally it is necessary to make an express reservation as to the existence of acquired rights of a legal character in respect of the status of persons and property rights in all disputed areas. Especially with respect to the sectors of the land boundary considered in Chapter 7 of this *Rejoinder*, the situation is likely to arise that "a number of nationals of the one Party will, following the delimitation of the disputed sectors, find themselves living in the territory of the other, and property rights apparently established under the laws of the one Party will be found to have been granted over land which is part of the territory of the other."[10] For its part, in such situations Nigeria will take appropriate measures to ensure "full respect for acquired rights" and to act in "a humane and orderly manner"[11] with respect to any Cameroon citizens who, as a result of the Court's judgment, may unwittingly find themselves and their homes in Nigeria. In view of the evidence presented above as to the activities of Cameroon gendarmes and others in the region of the border, it regrets to say that it has far less confidence in the opposite hypothesis.

19.7 As to the wells and other installations offshore the Bakassi Peninsula, which have for the most part been established and maintained without any protest by either party, Nigeria has already dealt with the legal consequences to be drawn from this fact. As already demonstrated, it is the case that the dispute over Bakassi itself has been pursued, by both Parties, independently of the much more limited dispute as to the area of overlapping licences south of Bakassi. Any solution to the question of maritime

delimitation needs to take these considerations into account.

19.8 It may be noted, in this context, that rights of access and user over maritime areas or rivers, notwithstanding the recognition of territorial sovereignty or sovereign rights in another State, are by no means unprecedented. To take two recent examples, in the *Yemen/Eritrea* case, the Arbitral Tribunal recognised the existence of a traditional fishing regime for nationals of both parties.[12] In the *Botswana/ Namibia* case (although it concerned a river rather than the open seas), the International Court accepted that nationals of each State had an established right of access and user of the waters around the island.[13] In both cases the Court was seeking to resolve a potential conflict between, on the one hand, access to and use of natural resources and, on the other hand, territorial sovereignty resulting from interstate transactions. The present situation is not identical, of course, but there is at least some analogy. Legitimate authority over human populations - such as the substantial Nigerian population of the Bakassi peninsula - is one thing; control over off-shore non-living resources is something else. In their actual practice, both parties have recognised the distinction, even if Cameroon has completely failed to do so in its argument before the Court. In Nigeria's respectful submission, the distinction is a most important one, having regard to the significant implications for the security of the substantial populations (overwhelmingly Nigerian populations) potentially affected by a judgment of the Court.

SUBMISSIONS

For the reasons given herein, the Federal Republic of Nigeria, reserving the right to amend and modify these submissions in the light of any further pleadings in this case, respectfully requests that the Court should:

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

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

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

(2) as to Lake Chad, *adjudge and declare:*

(c) that the proposed "demarcation" under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;

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

(e) that outstanding issues of the delimitation and demarcation within the area of Lake

Chad are to be resolved by the Parties to the Lake Chad Basin Commission within the framework of the constitution and procedures of the Commission.

(f) that in any event, the operation intended to lead to an overall delimitation of boundaries on Lake Chad is legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon.

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

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

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

(c) that subject to the clarifications, interpretations and variations explained in Chapter 7 of this *Rejoinder*, the land boundary between the mouth of the Ebeji and the point on the thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek is delimited by the terms of:

(i) paragraphs 2-61 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931;

(ii) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, (section 6(1) and the Second Schedule thereto;

(iii) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913; and

(iv) Articles XV to XVII of the Anglo-German Treaty of 11 March 1913.

(d) that the effect of the first two of those instruments, as clarified, interpreted or varied in the manner identified by Nigeria, is as set out in the Appendix to Chapter 8 and delineated in the maps in the *Atlas* submitted with this *Rejoinder*.

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

(e) that the Court lacks jurisdiction over Cameroon's maritime claim from the point at which its claim line enters waters claimed by or recognised by Nigeria as belonging to

Equatorial Guinea, or alternatively that Cameroon' s claim is inadmissible to that extent;

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

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

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

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

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

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

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

(6) as to Nigeria's counter-claims, as specified in Part VI of the *Counter-Memorial* and in Chapter 18 of this *Rejoinder*, *adjudge and declare:*

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

3 January 2001

Chief Bola Ige, S.A.N.
Honourable Attorney-General of the Federation
and Minister of Justice,
Agent of the Federal Republic of Nigeria

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1 See above, para. 9.2.

2 See above, para. 15.93 & Annex NR 184.

3 See above, paras. 16.20-16.32.

4 See above, paras. 7.169-7.181, 16.47-16.54.

5 See above, paras. 6.17-6.22, 6.41-6.43.

6 See above, Appendix to Chapter 18, paras. 2-14, 30.

7 See in particular, Chapter 16, Appendix, paras. 161-174, 180-184, 188-191.

8 Annex NR 183.

9 See above, paragraph 3.344 and the accompanying Table comparing evidence of Nigerian activity and Cameroon inactivity.

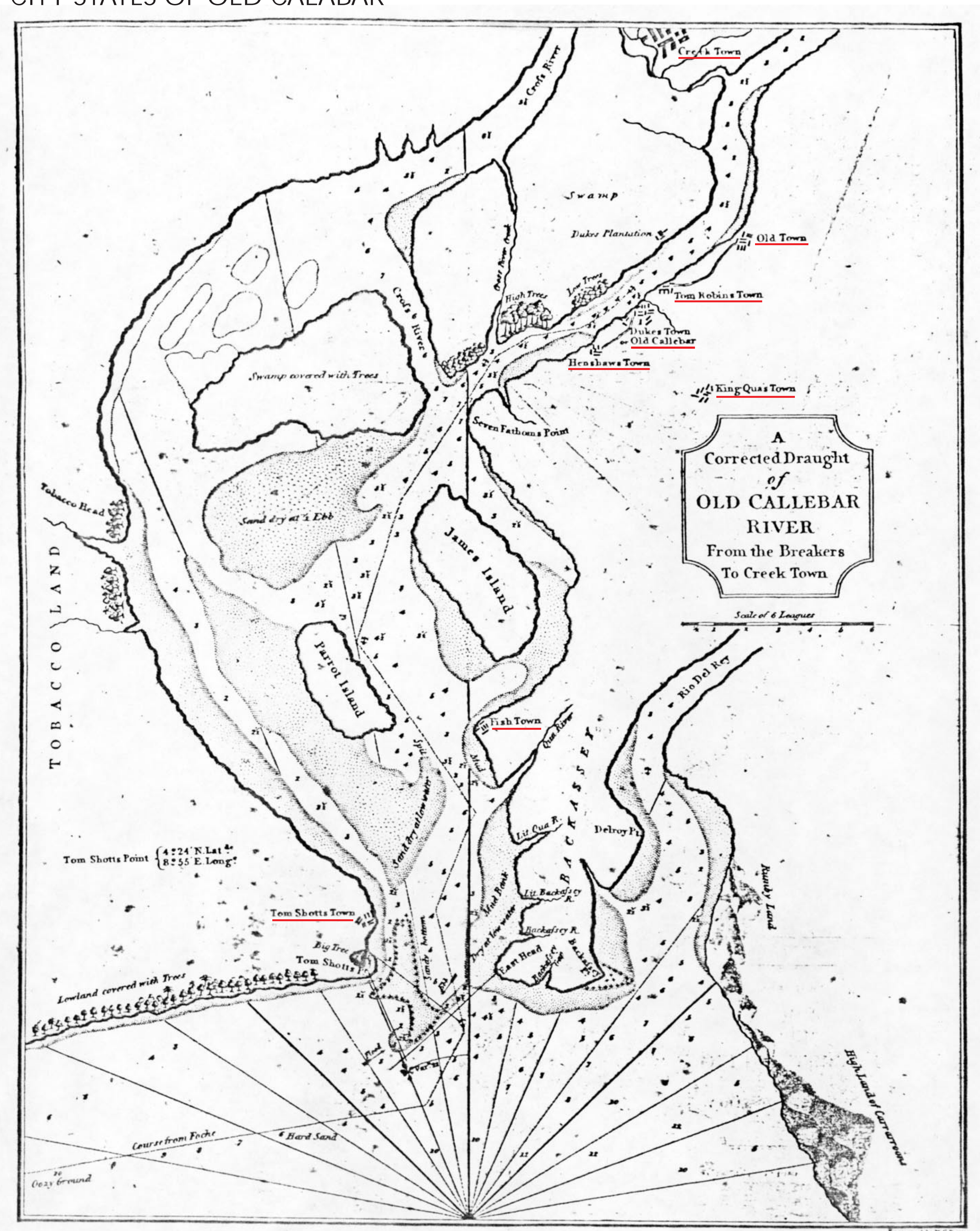
10 *cf. Case concerning the Land, island and Maritime Frontier Dispute (El Salvador/Honduras)*, ICJ Reports 1992 p. 400, para. 66.

11 *ibid.* pp. 400-401, para. 66.

12 See the Award of 9 October 1998, 114 ILR 1 at p. 137 paras. 525-526; Award of 17 December 1999 (*Phase II*), Ch. IV paras. 87-112. On co-operation in relation to hydrocarbons see *ibid.*, paras. 85-86.

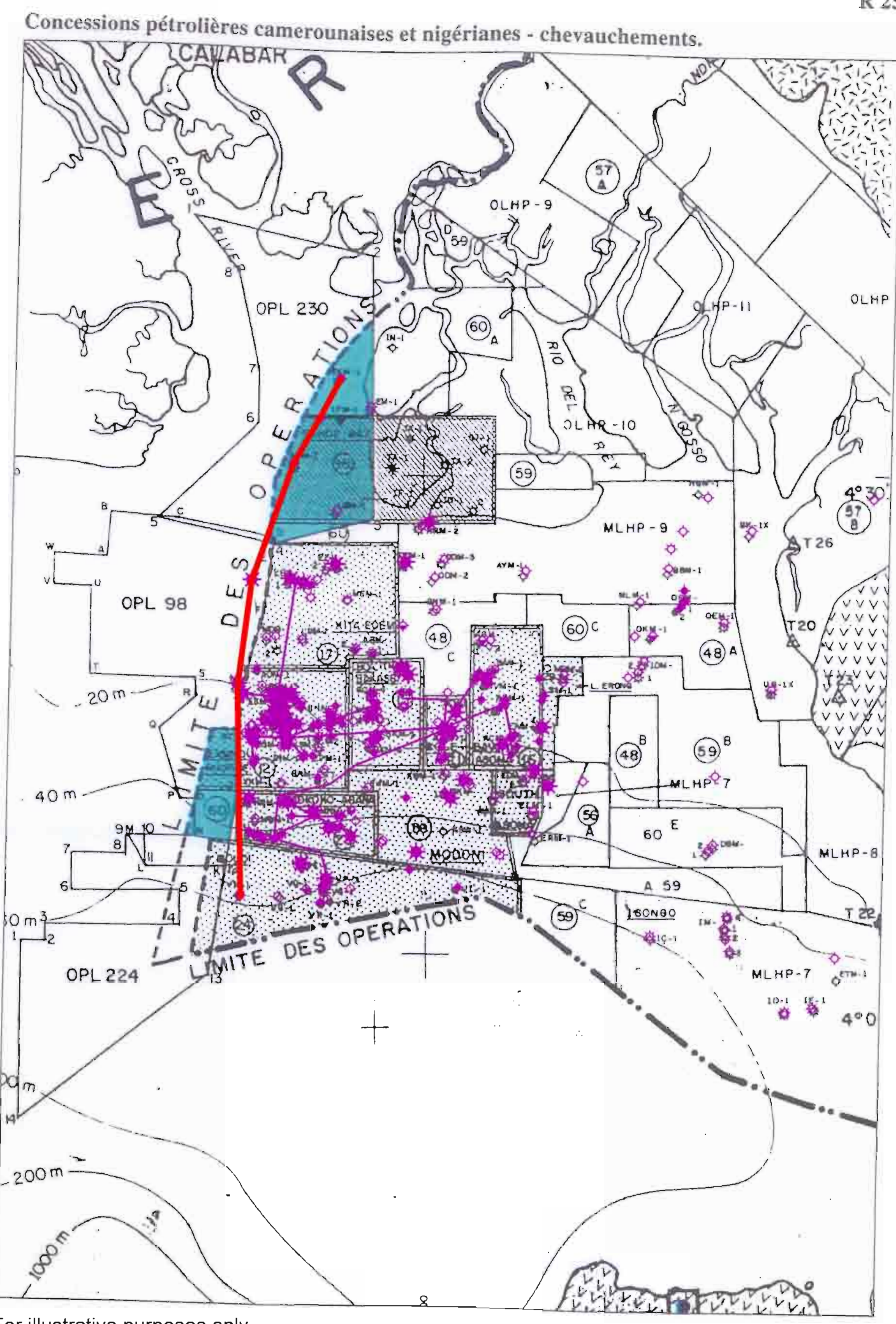
13 Judgment of 13 December 1999, English text in 39 ILM 310 at p. 351 paras. 102-103.

CITY STATES OF OLD CALABAR



Reproduced from Map 20 of Nigeria's Counter-Memorial Atlas

Bold, c.1822



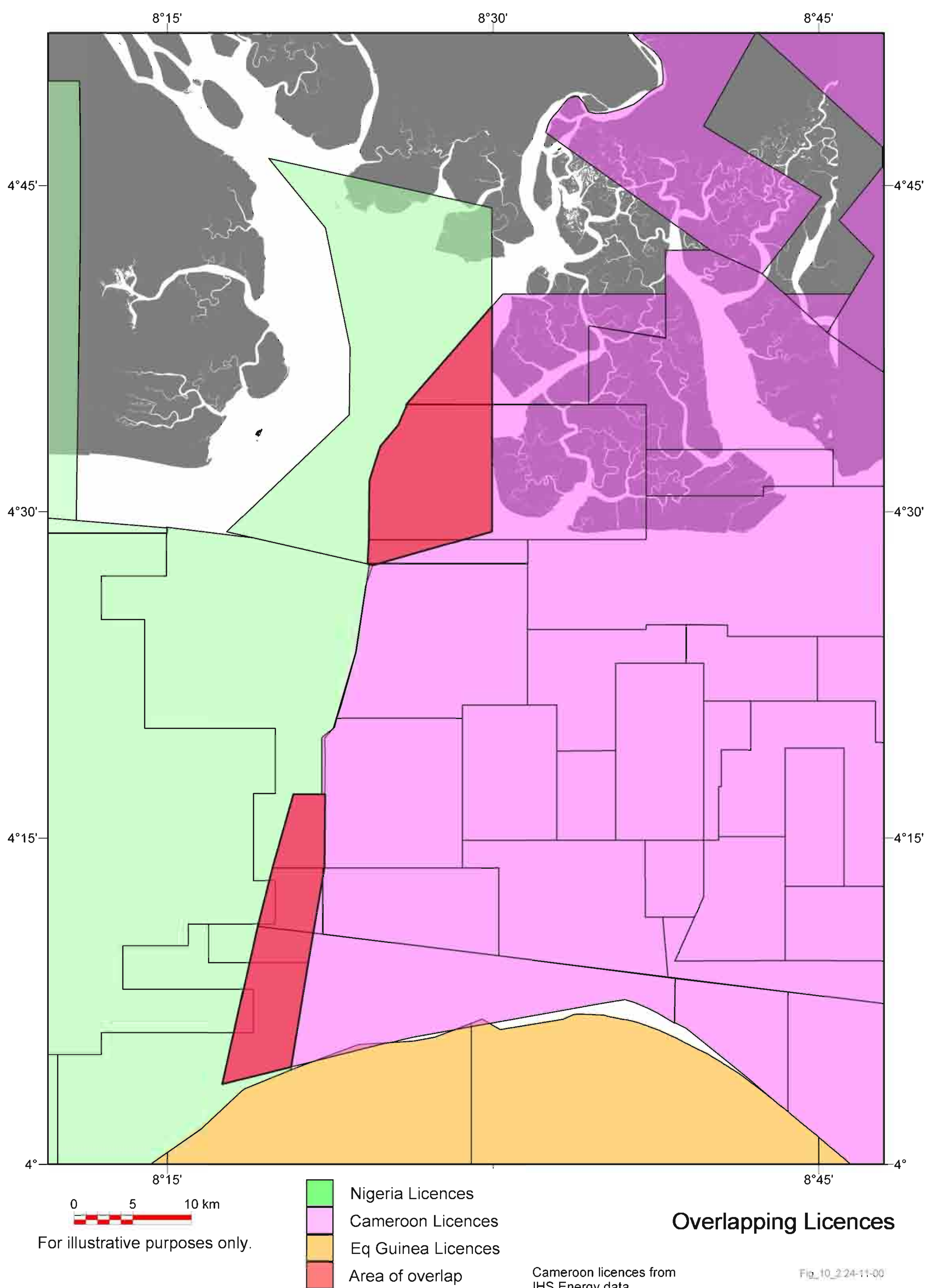
For illustrative purposes only.

Actual limit of Cameroon operations
Cameroon pipelines
Cameroon wells

(Wells and pipelines from IHS Energy data)

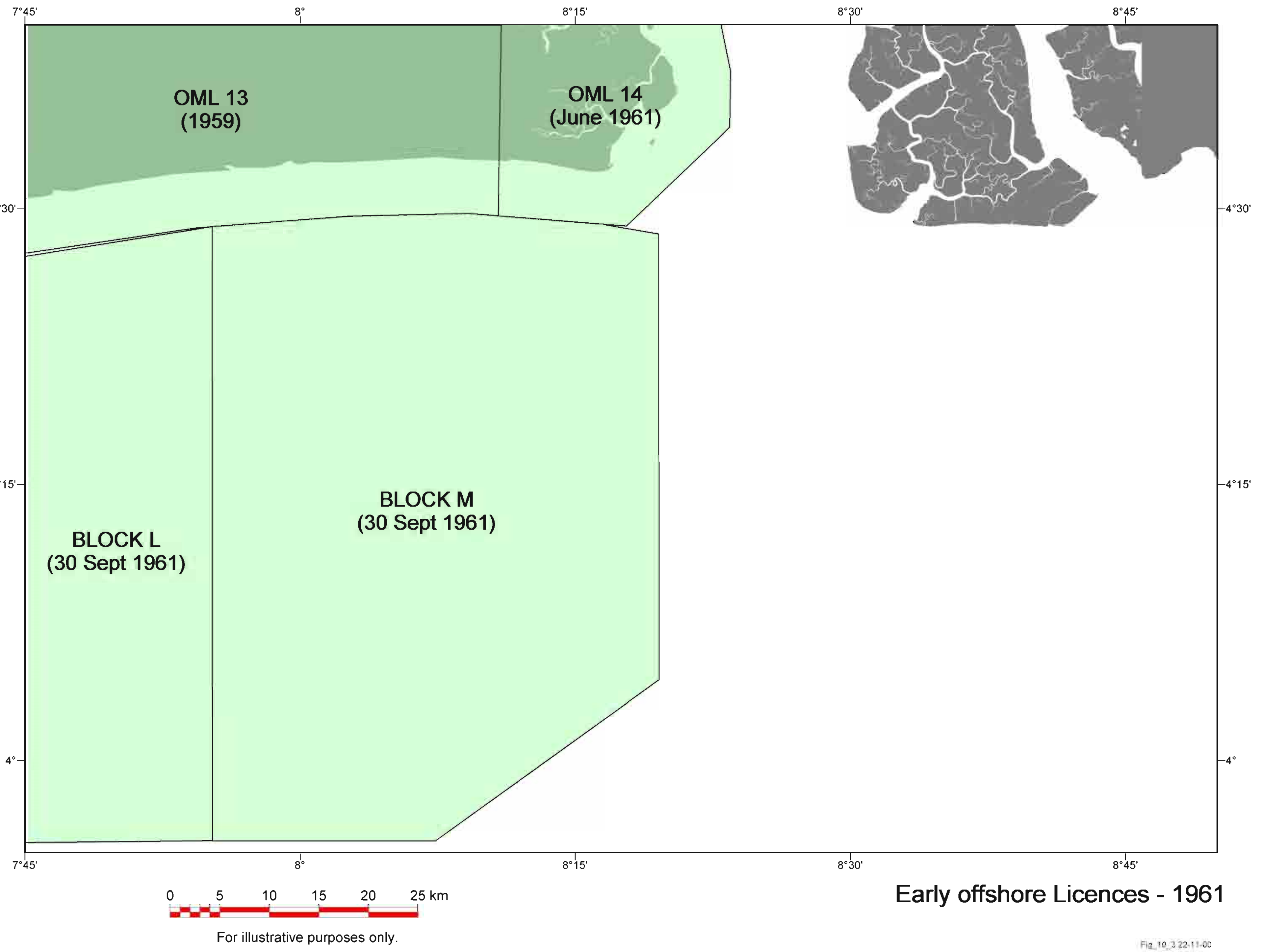
Cameroon's Map R25
showing Cameroonian wells and pipelines.

Fig. 10.2



Overlapping Licences

Fig. 10.3



Early offshore Licences - 1961

Fig. 10.4

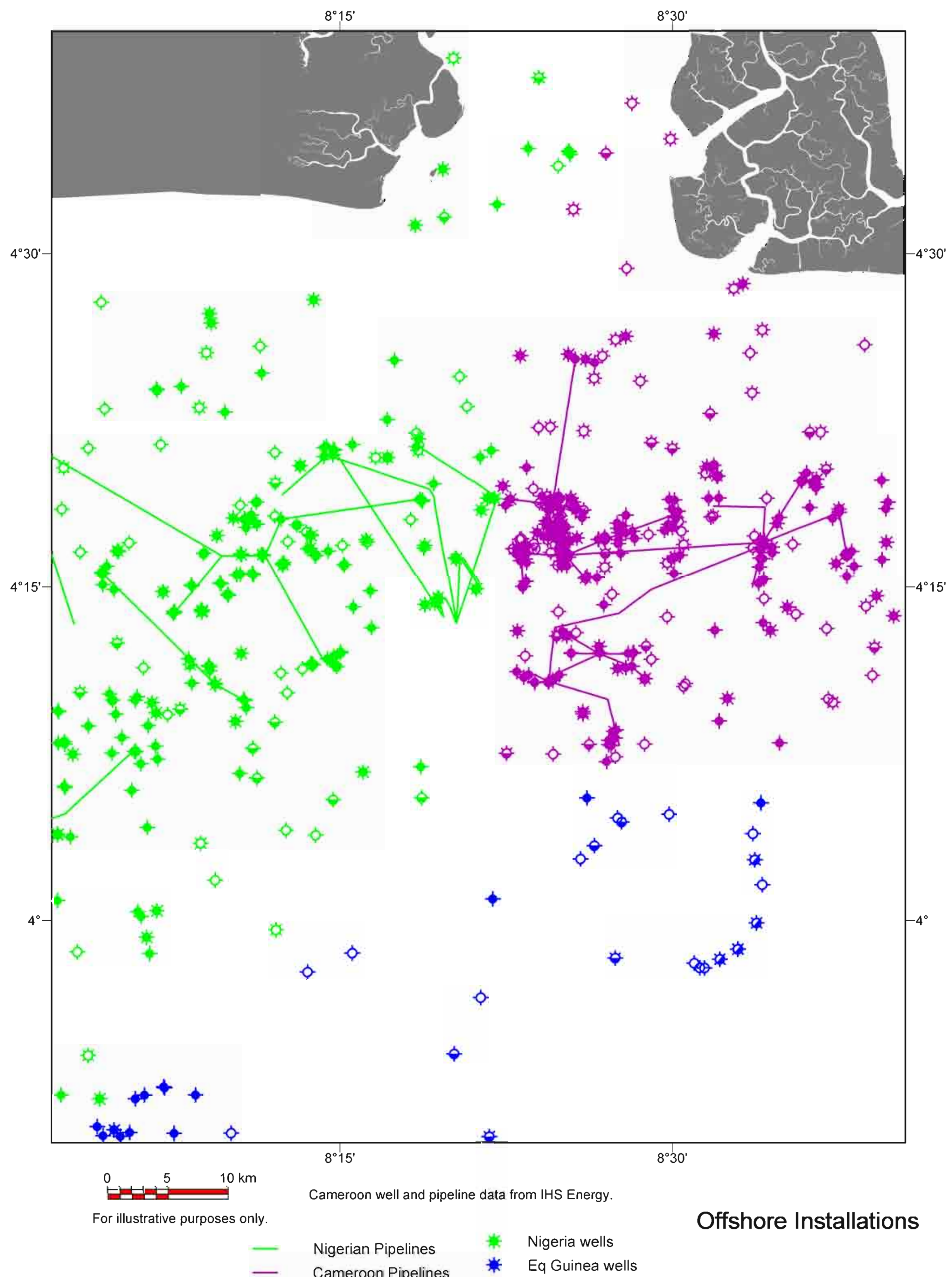
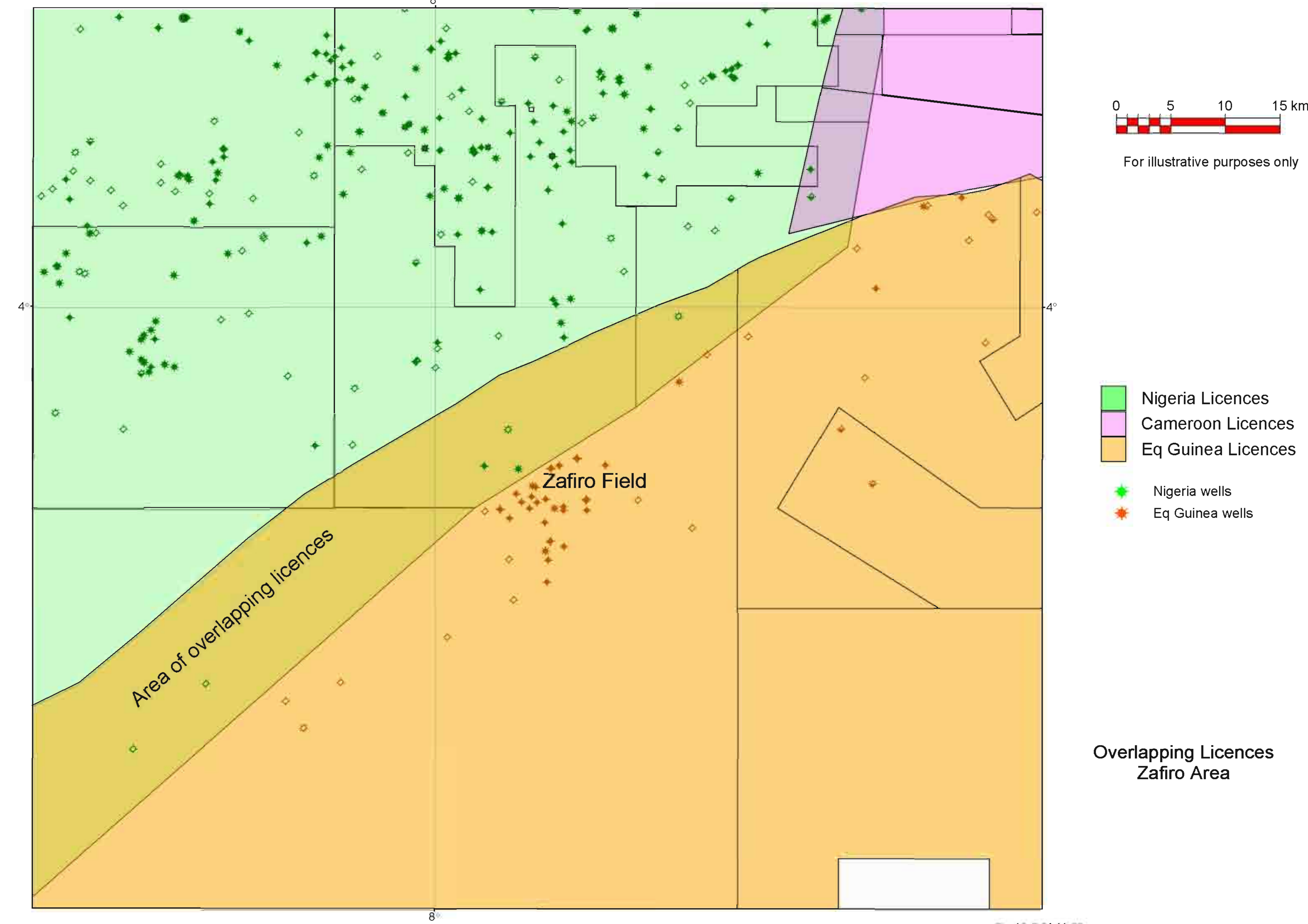


Fig. 10.5



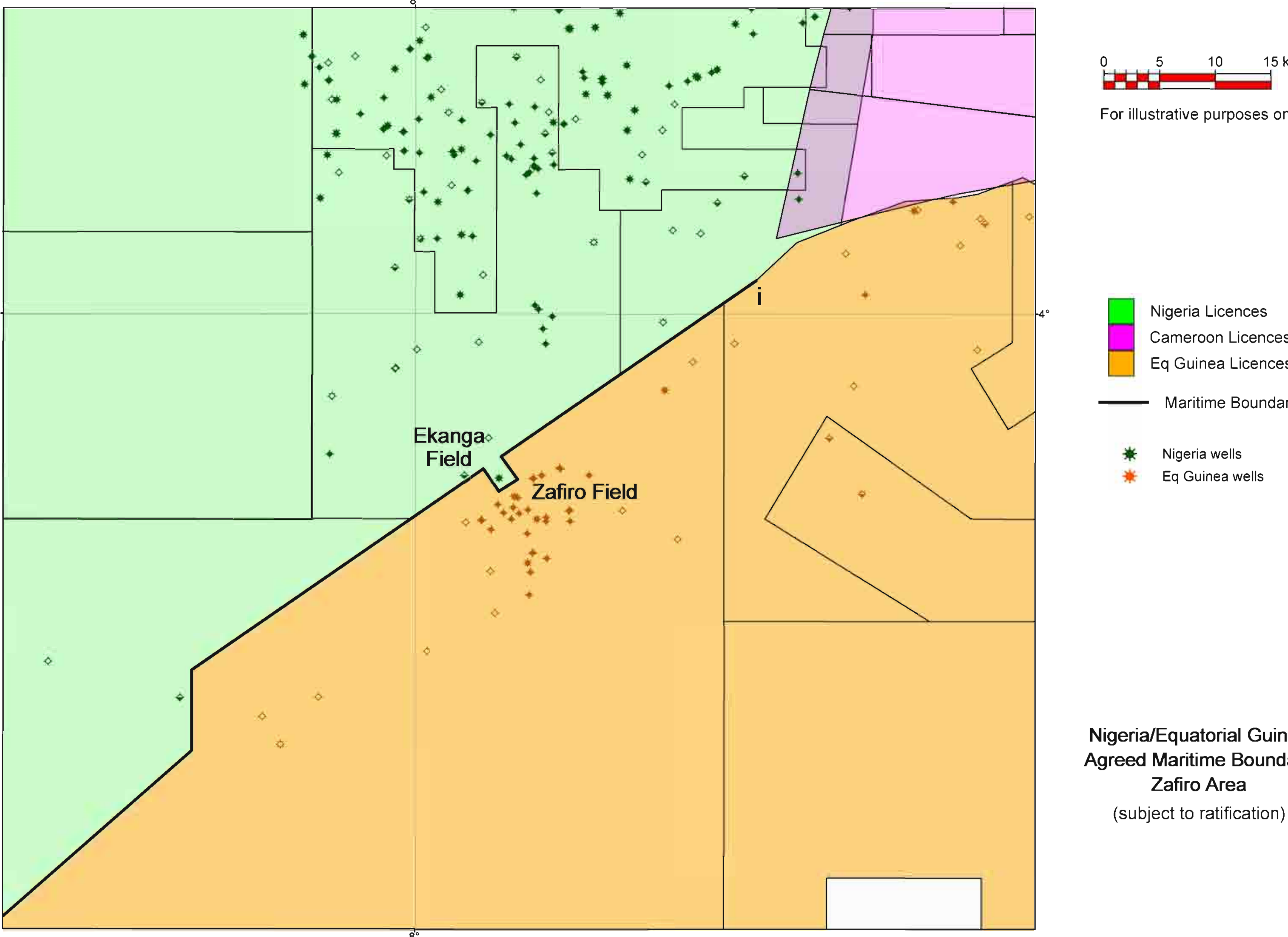
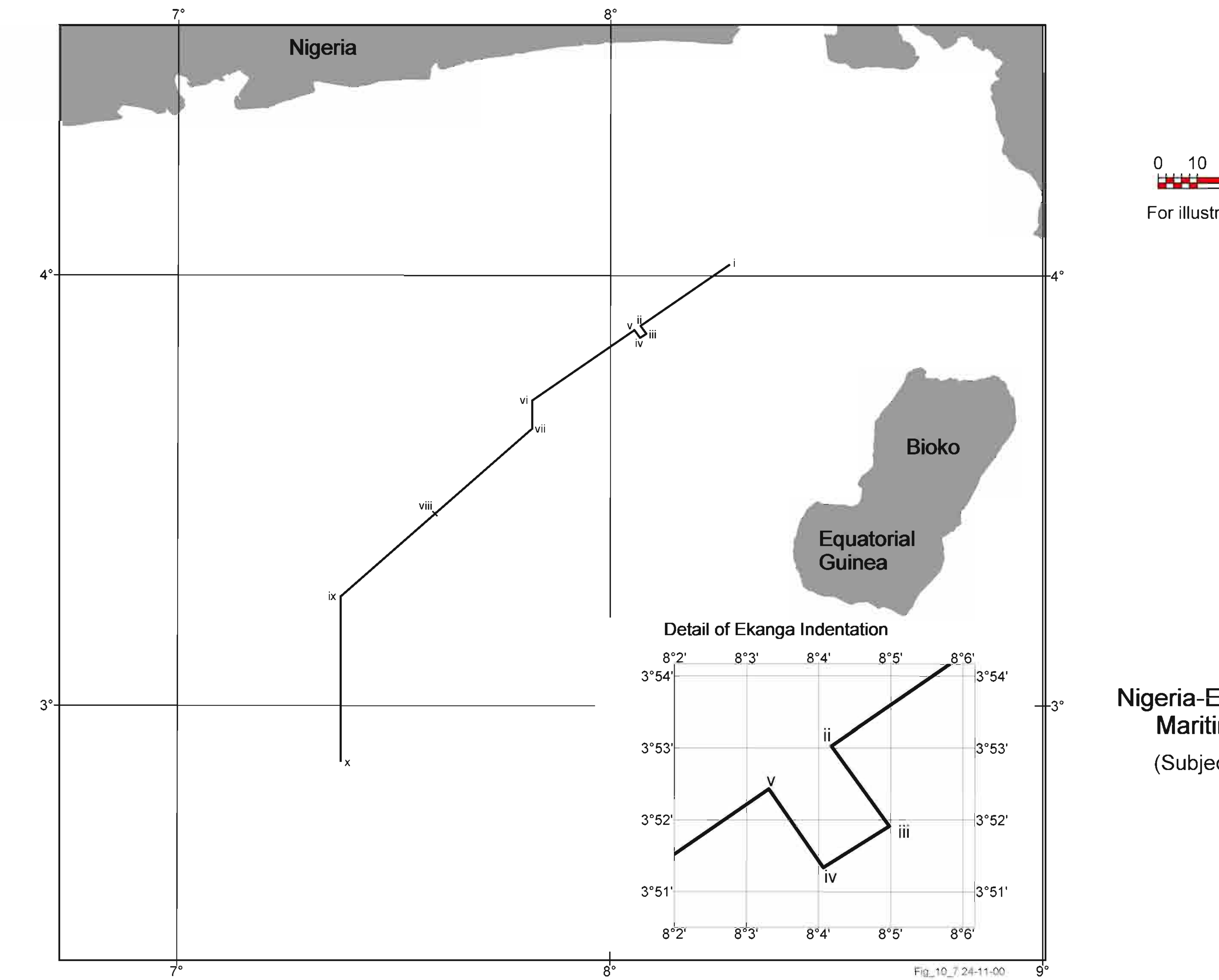
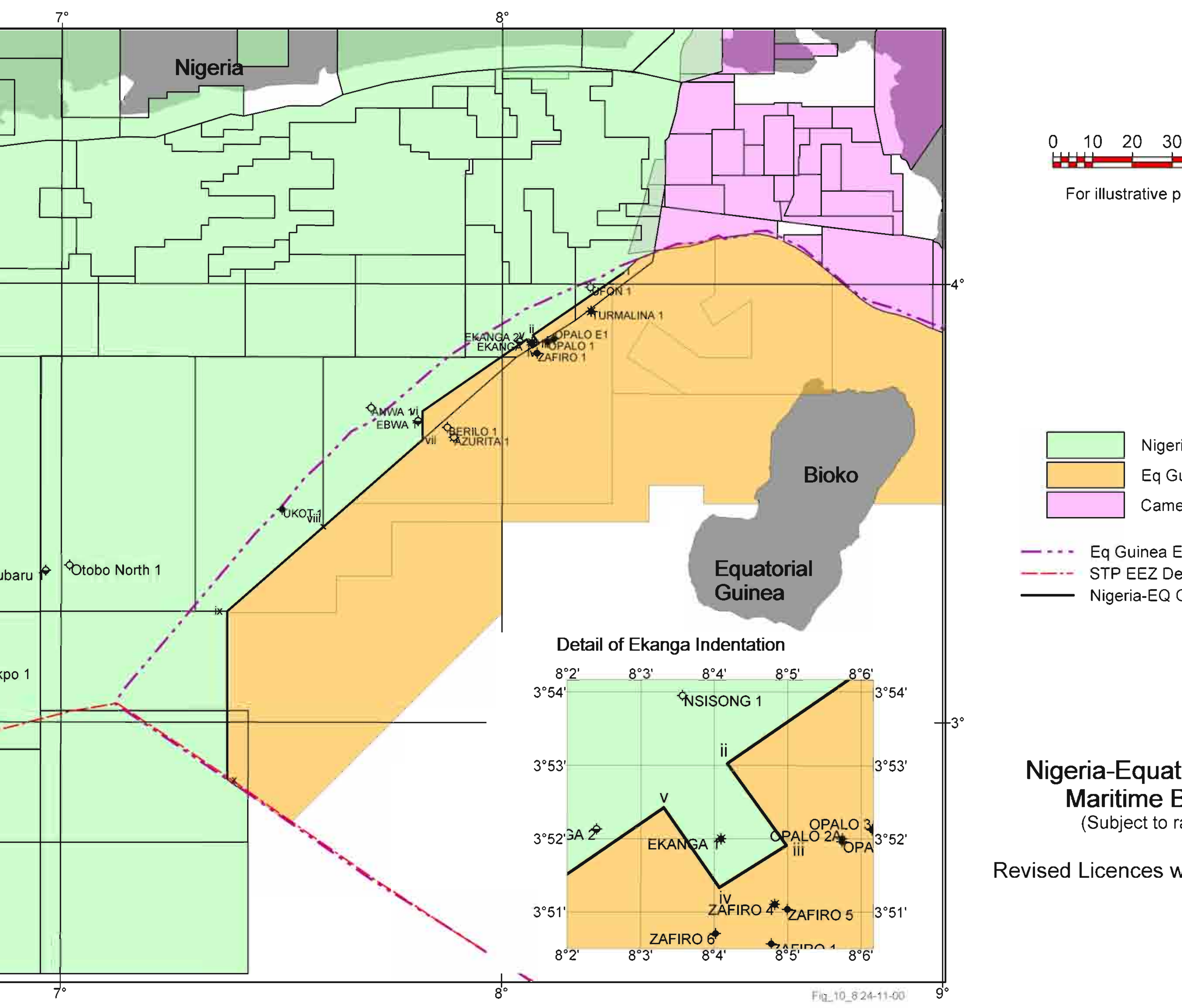


Fig. 10.6

Fig. 10.7



Nigeria-Equatorial Guinea
Maritime Boundary
(Subject to ratification)

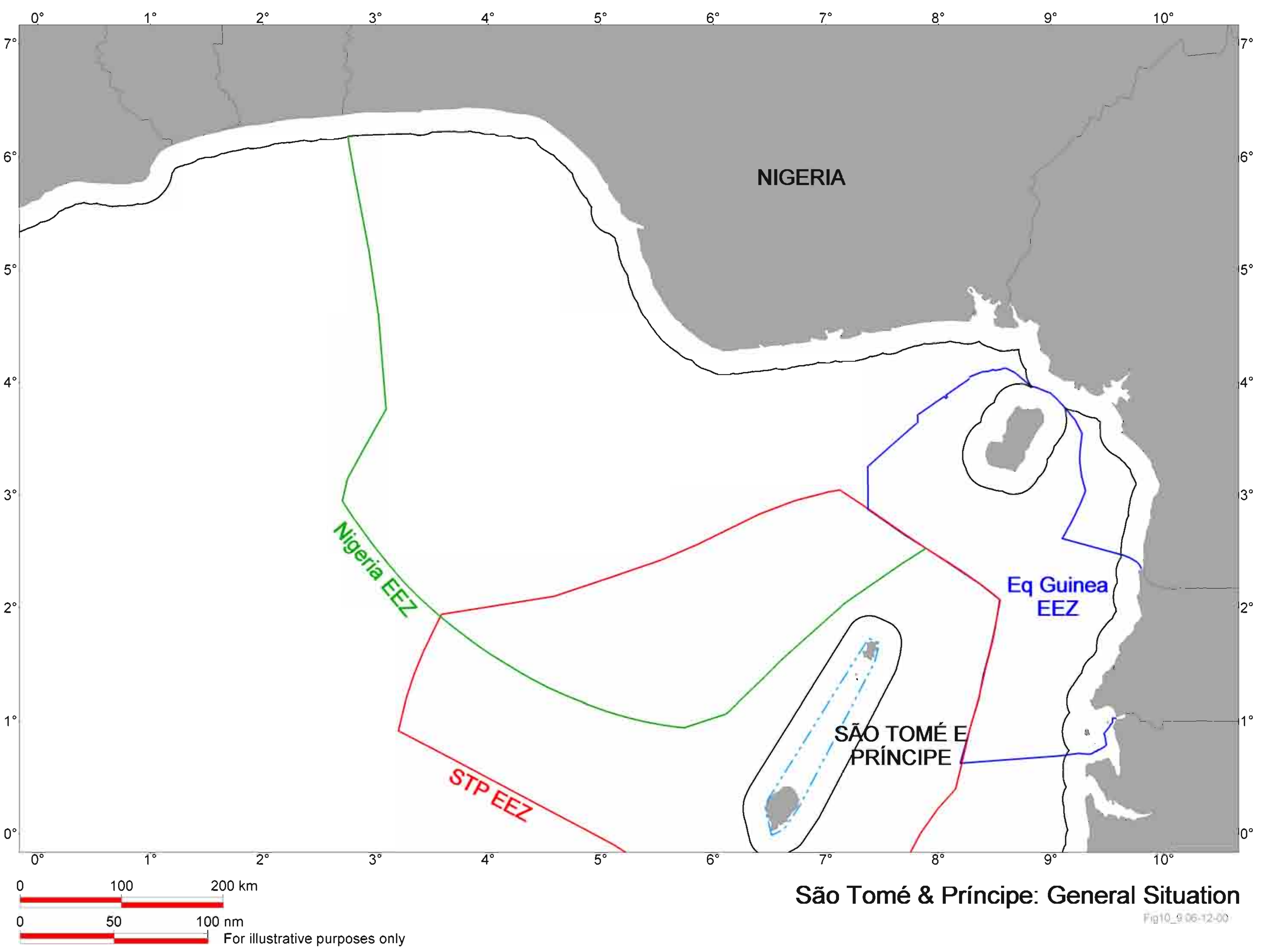


Nigeria-Equatorial Guinea Maritime Boundary
(Subject to ratification)

Revised Licences with selected wells

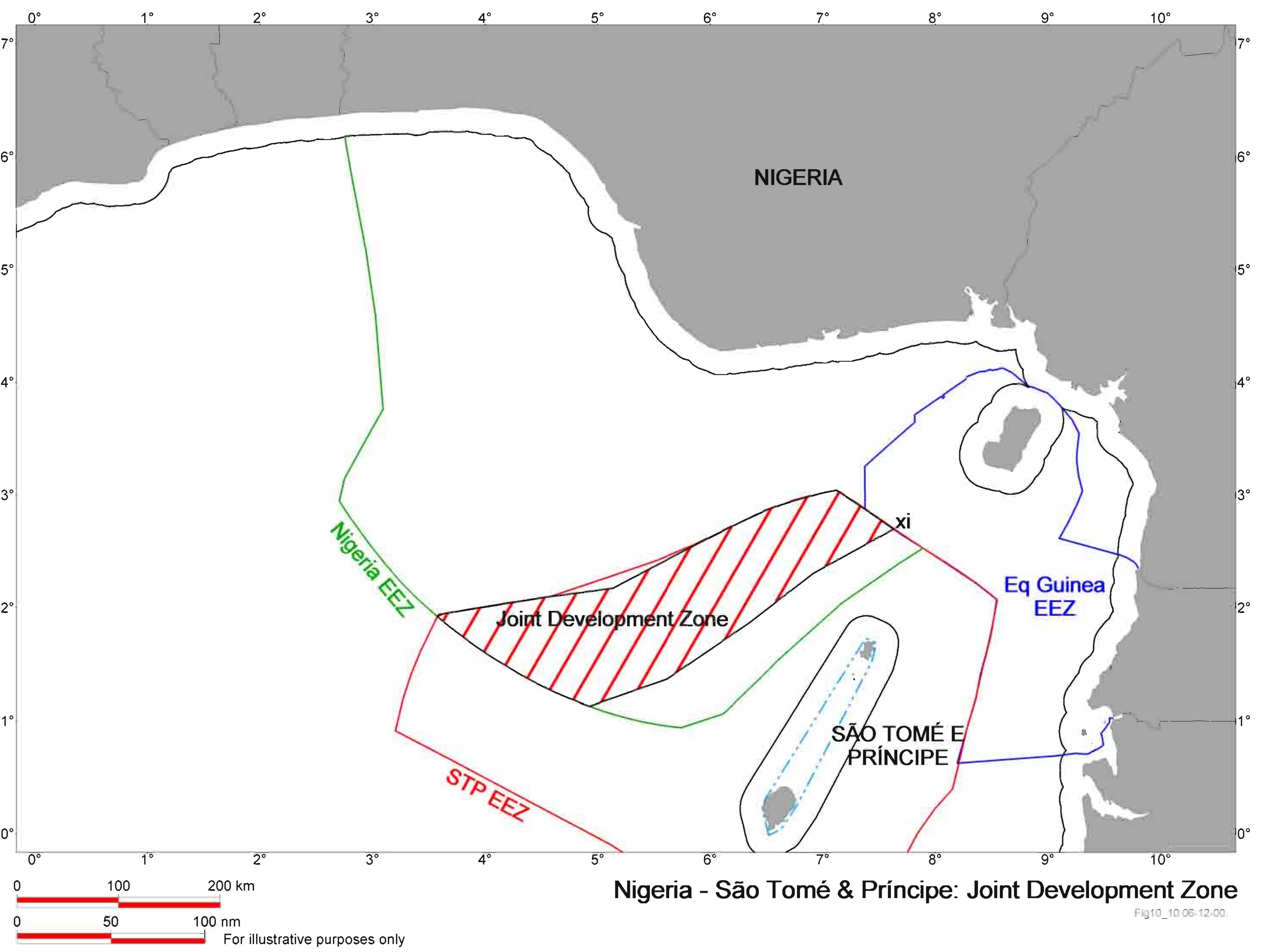
Fig. 10.8

Fig. 10.9



São Tomé & Príncipe: General Situation

Fig. 10.10



Nigeria - São Tomé & Príncipe: Joint Development Zone

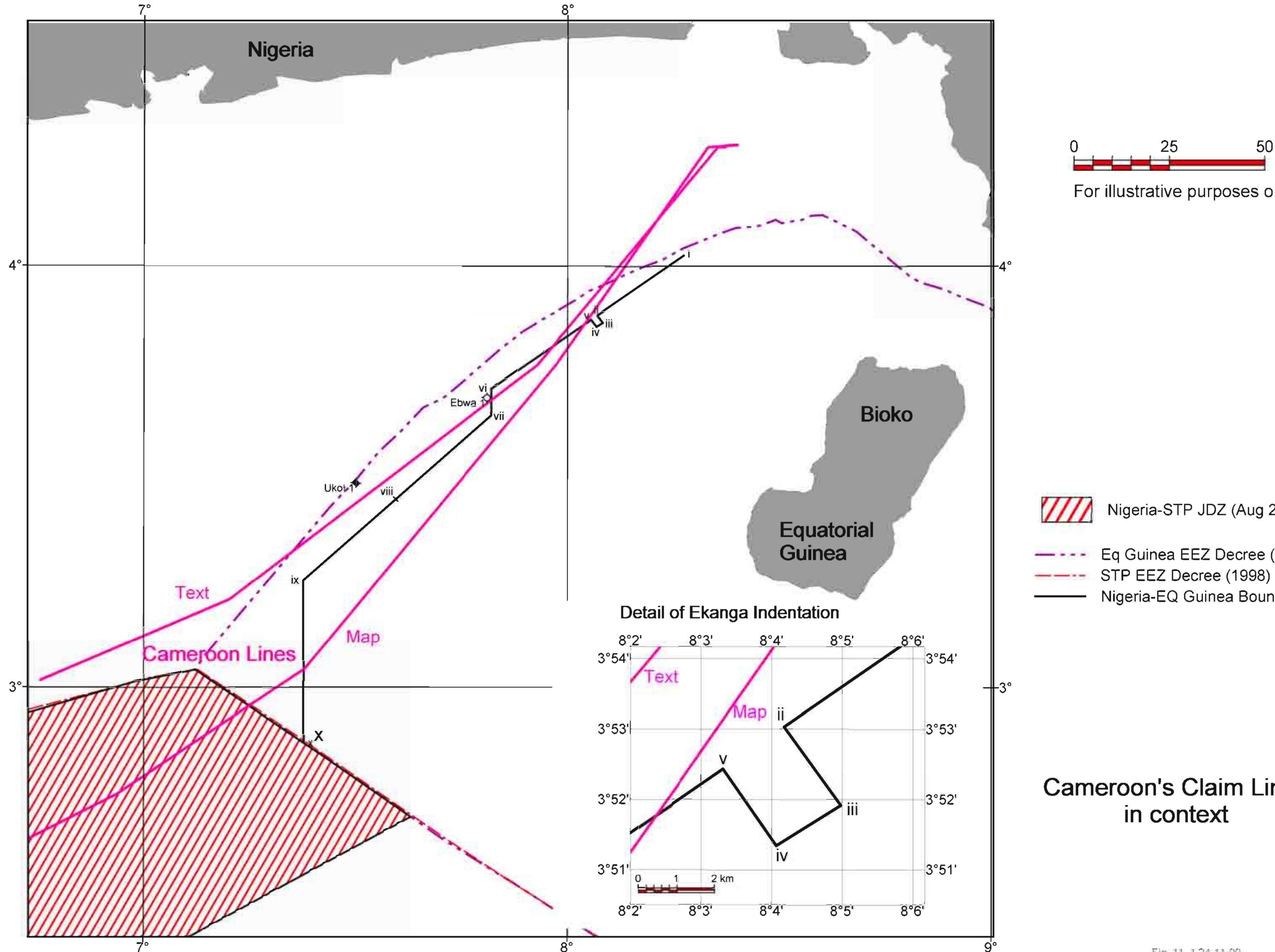


Fig. 11.1

Fig. 12.1

The General Geographic Region

For illustrative purposes only

0 50 100 150 200 km

0 25 50 75 100 nm

Benin
Nigeria
Cameroon
Rio Muni
Gabon
Bight of Bonny
Bioko
Príncipe
São Tomé
Akasso
Bonny
West Point
Tom Shot Point
Sandy Point
East Point
Debundsha
Douala
Cap Nachtigal
Malimba Point
Kribi
Campo
Gabo San Juan
Cap Estera
Ngombe
Cap Lopez

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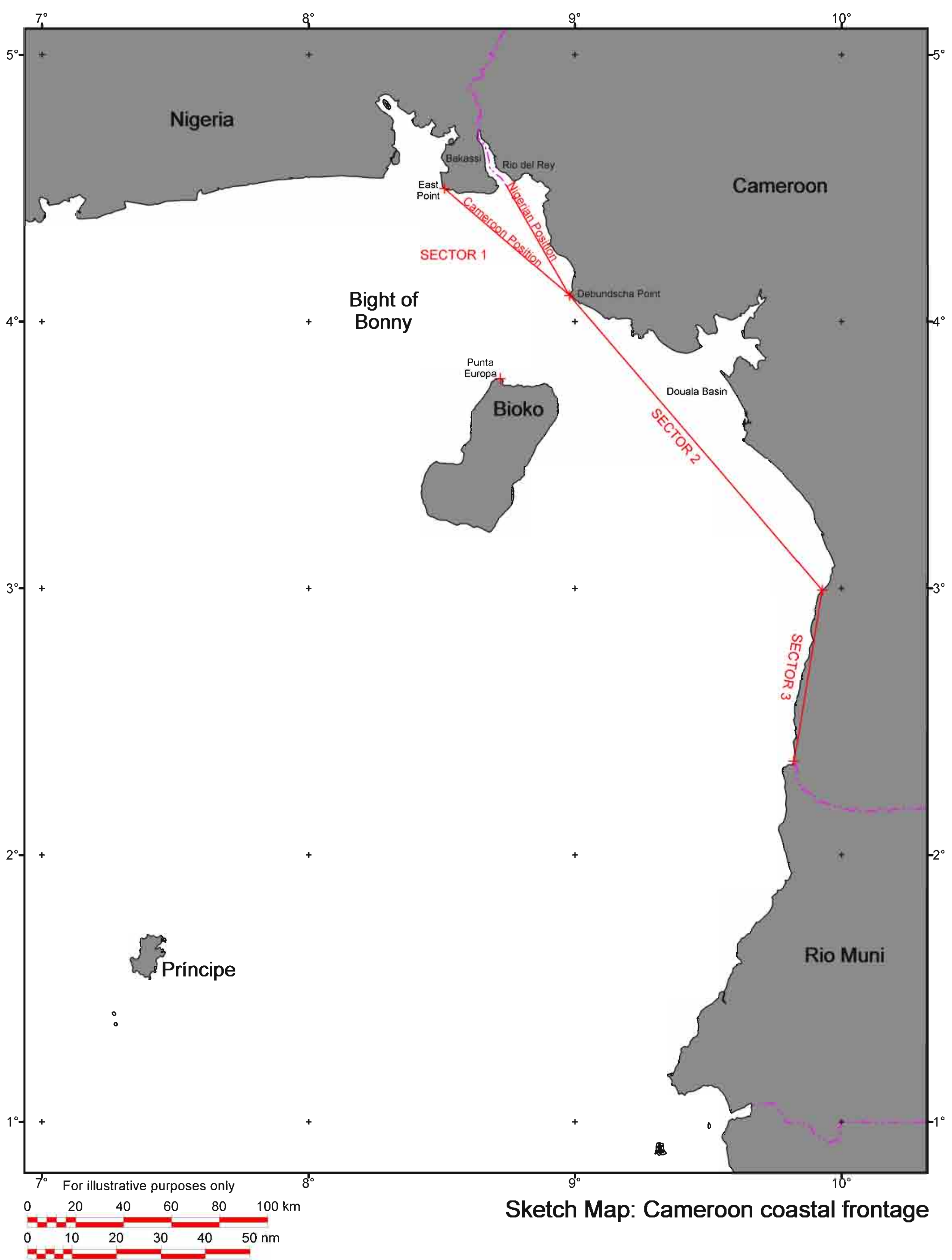
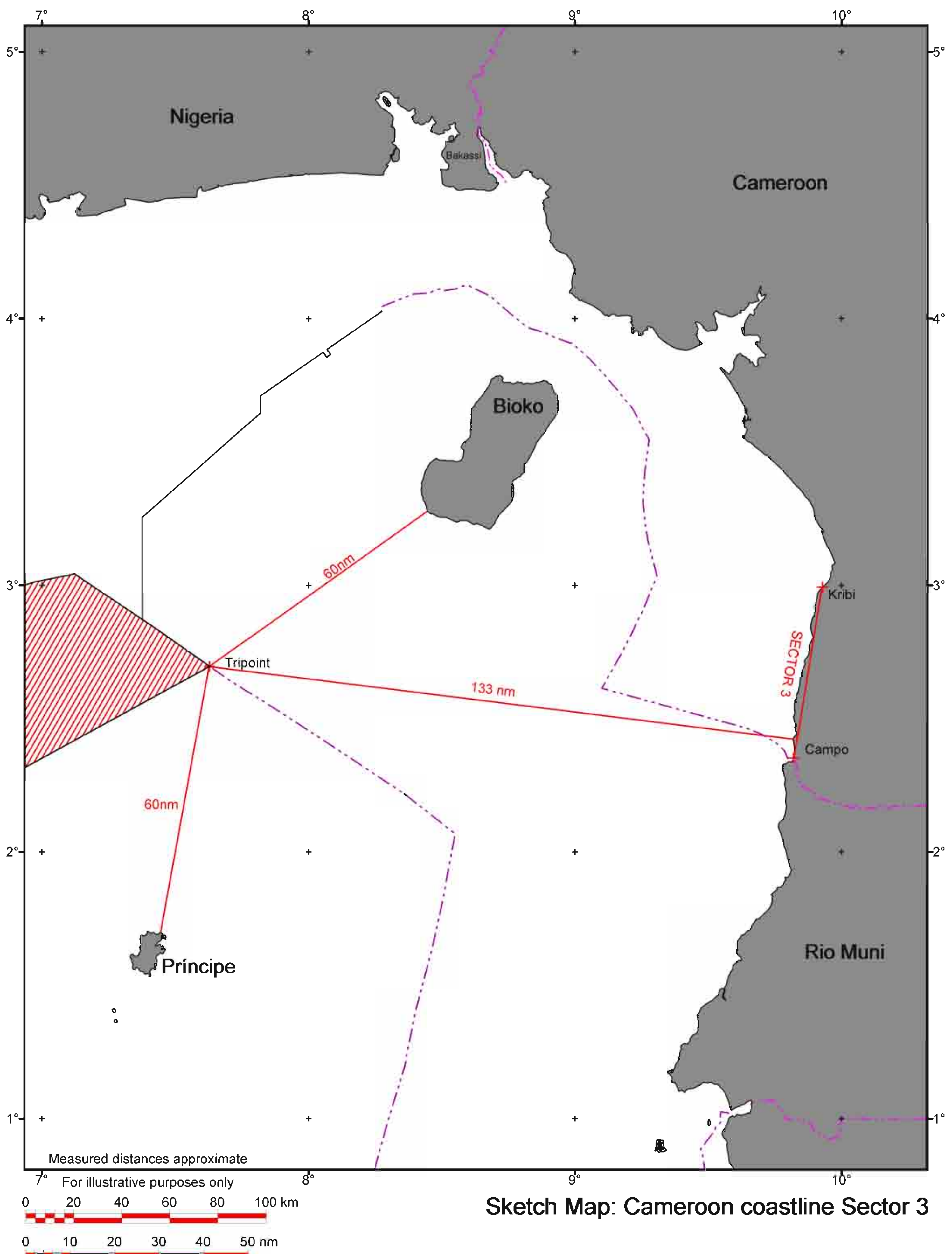
Fig. 13.1



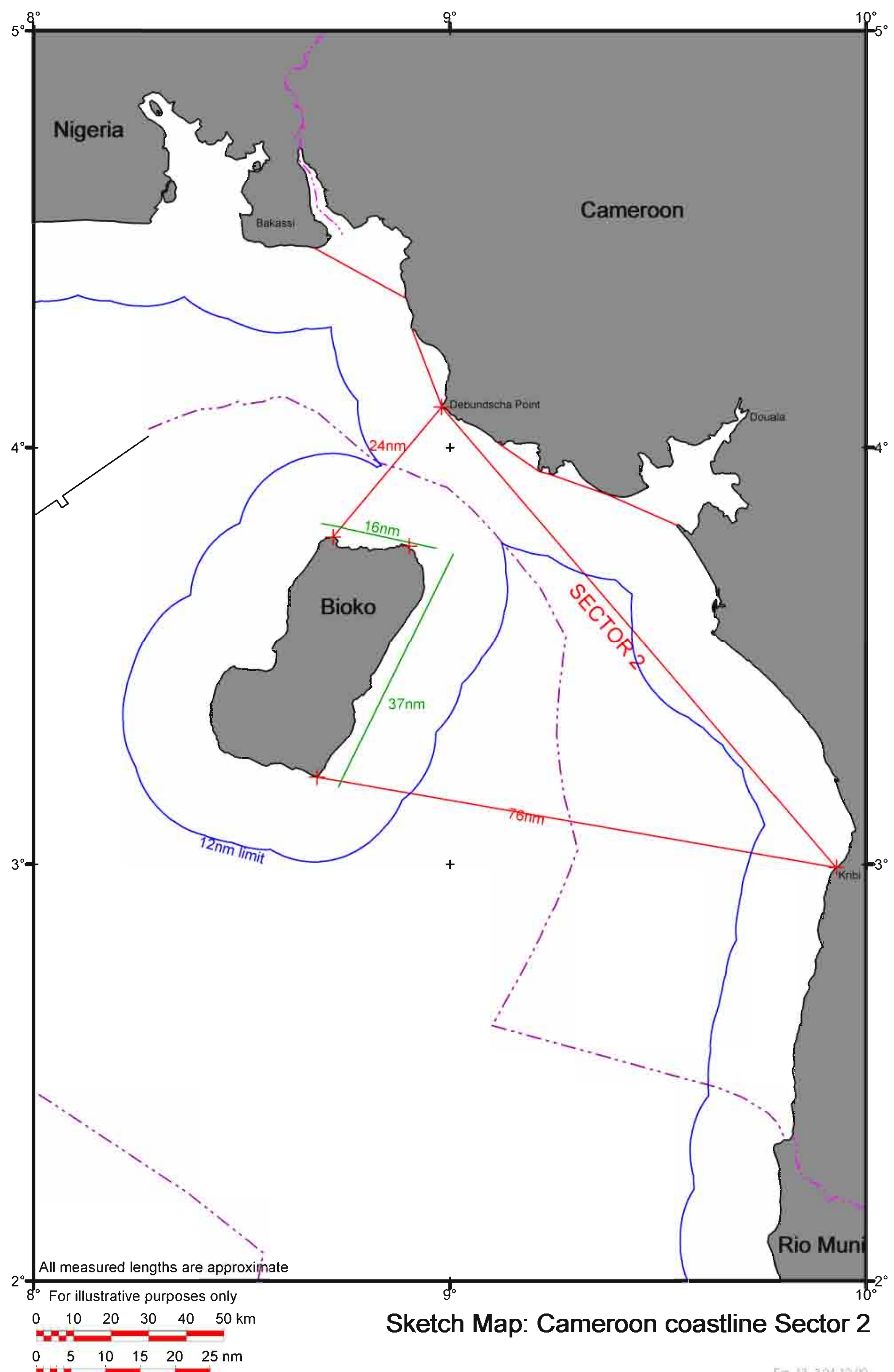
Sketch Map: Cameroon coastal frontage

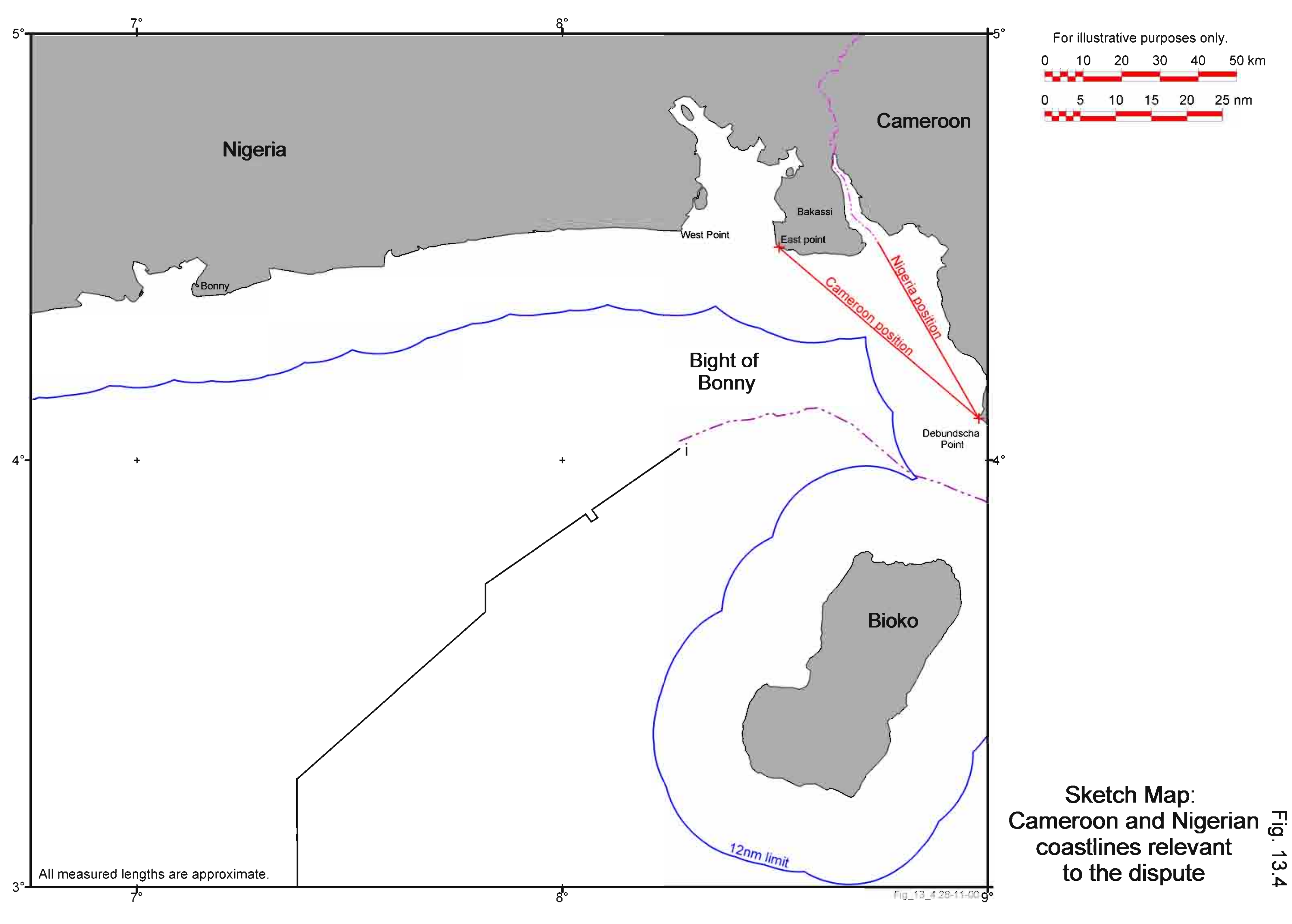
Fig. 13.2



Sketch Map: Cameroon coastline Sector 3

Fig. 13.3





Sketch Map: Cameroon and Nigerian coastlines relevant to the dispute

Fig. 13.4

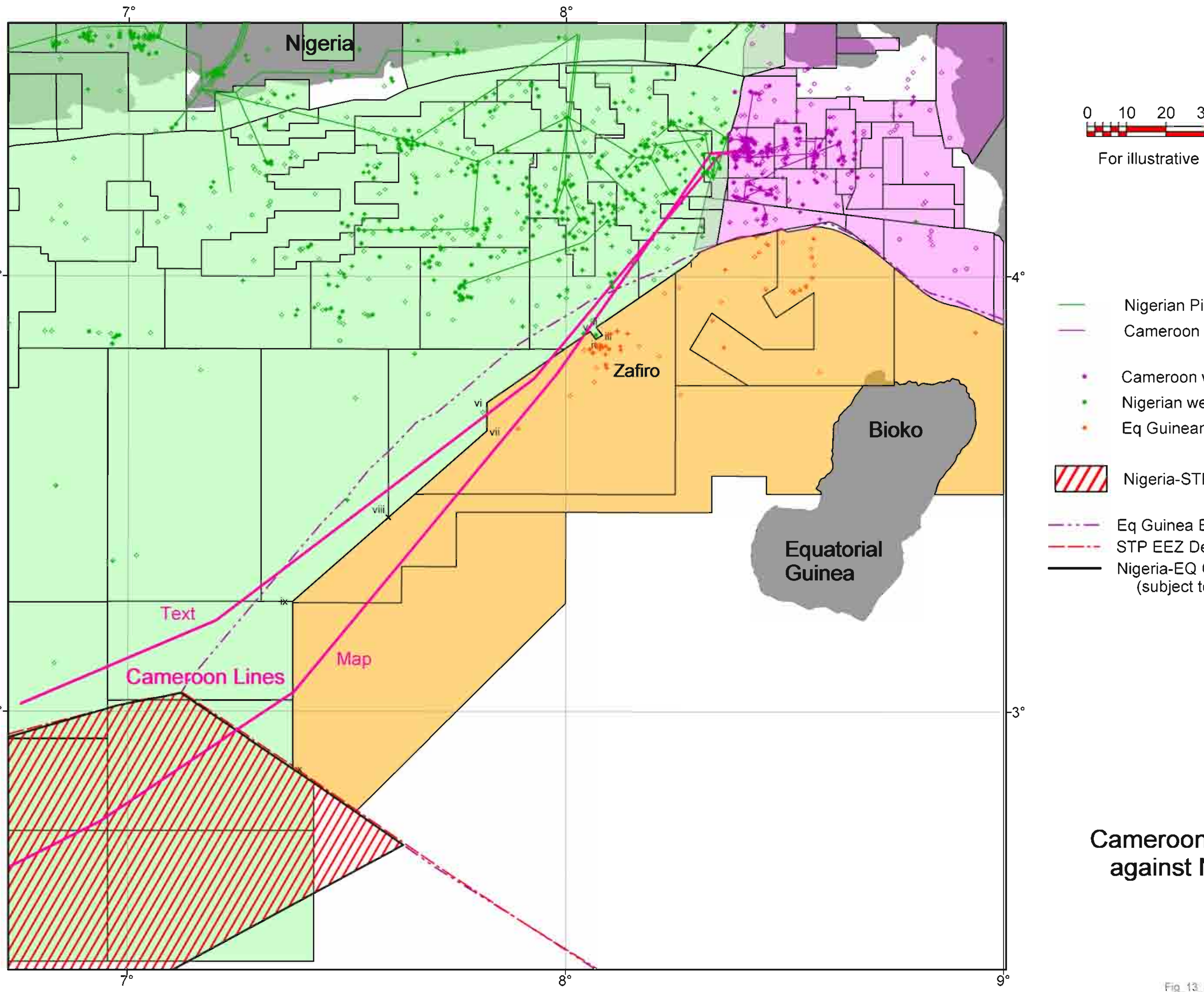


Fig. 13.5

Fig. 13.6

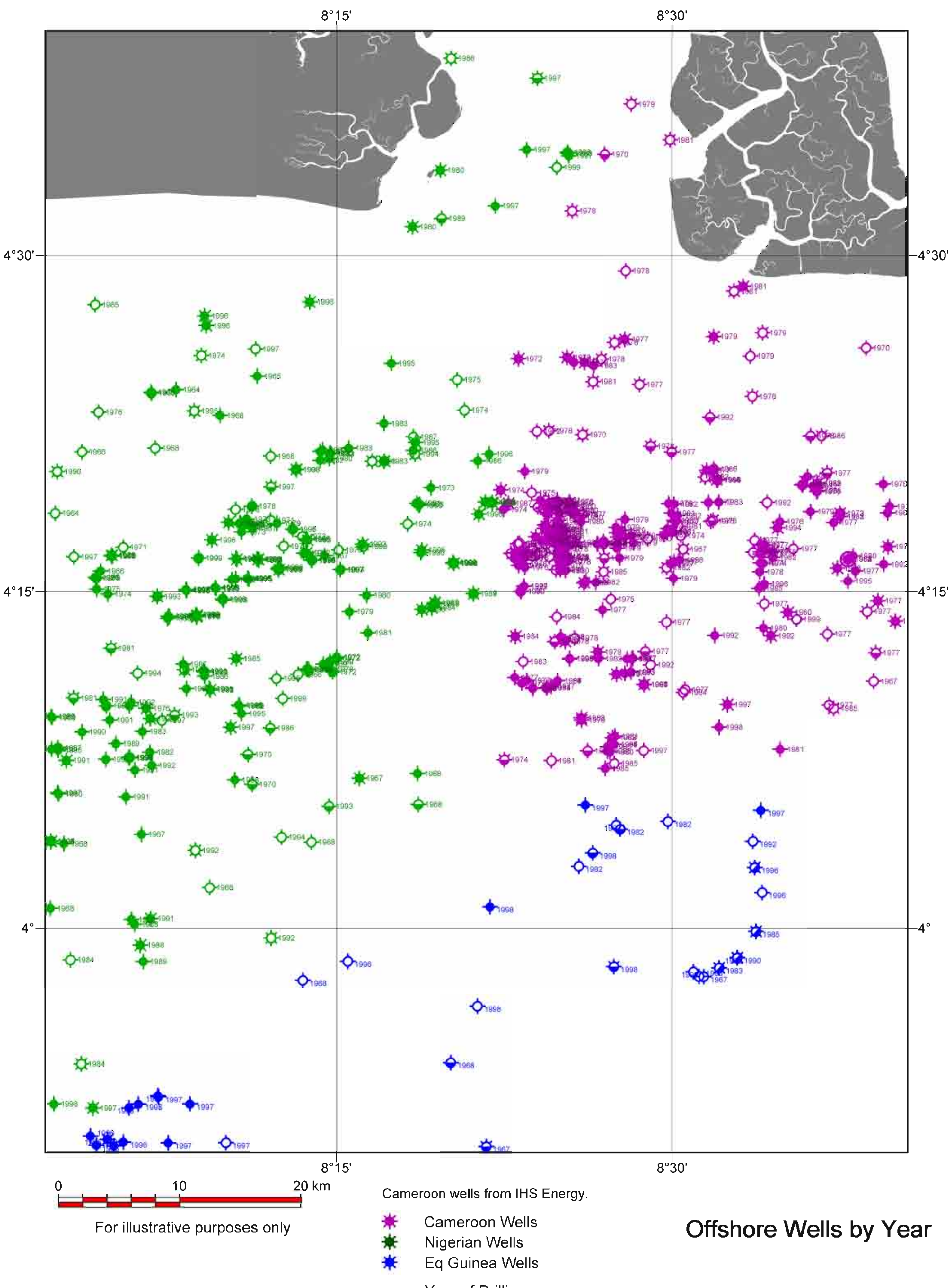


Fig. 13.7

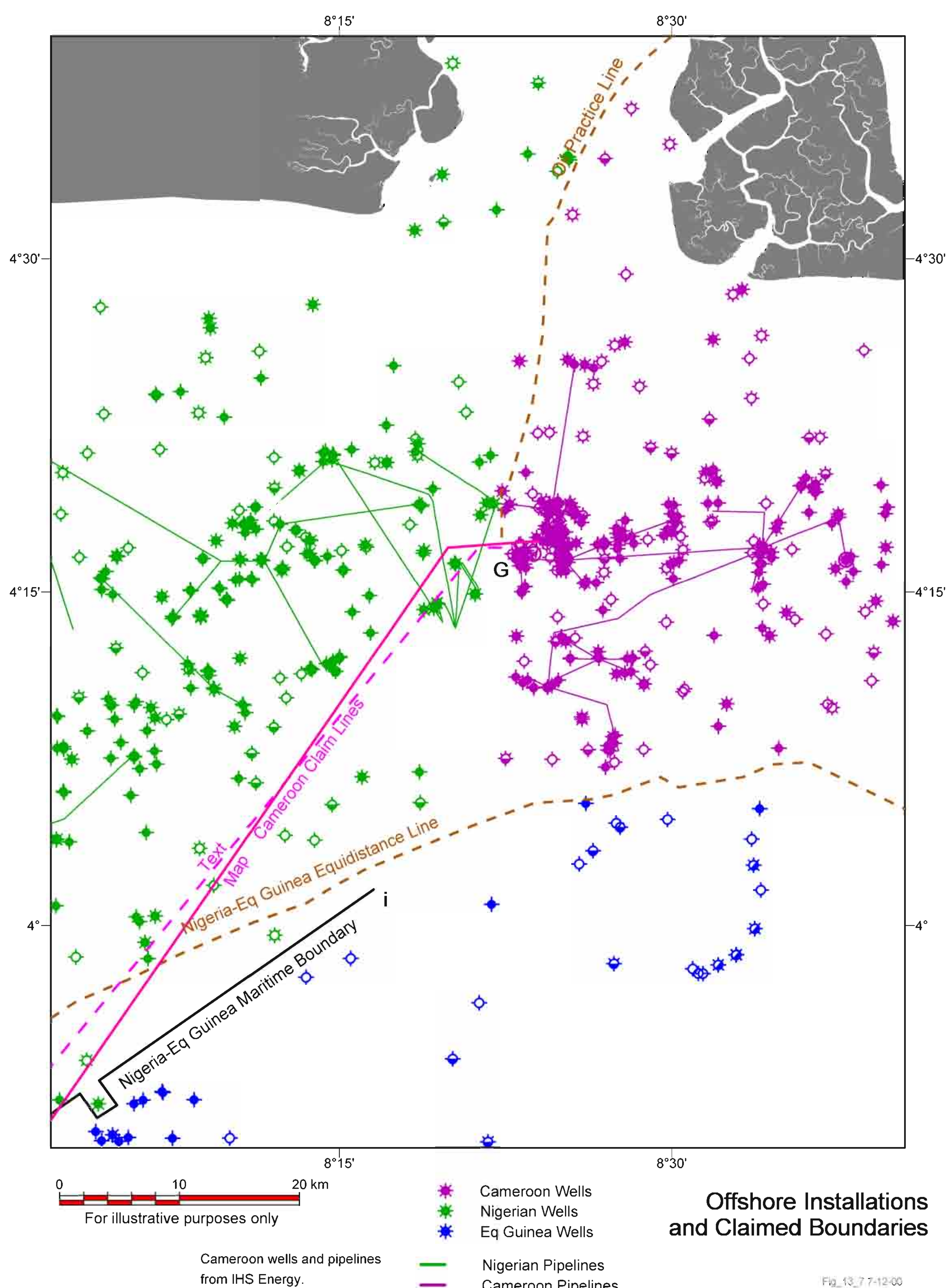
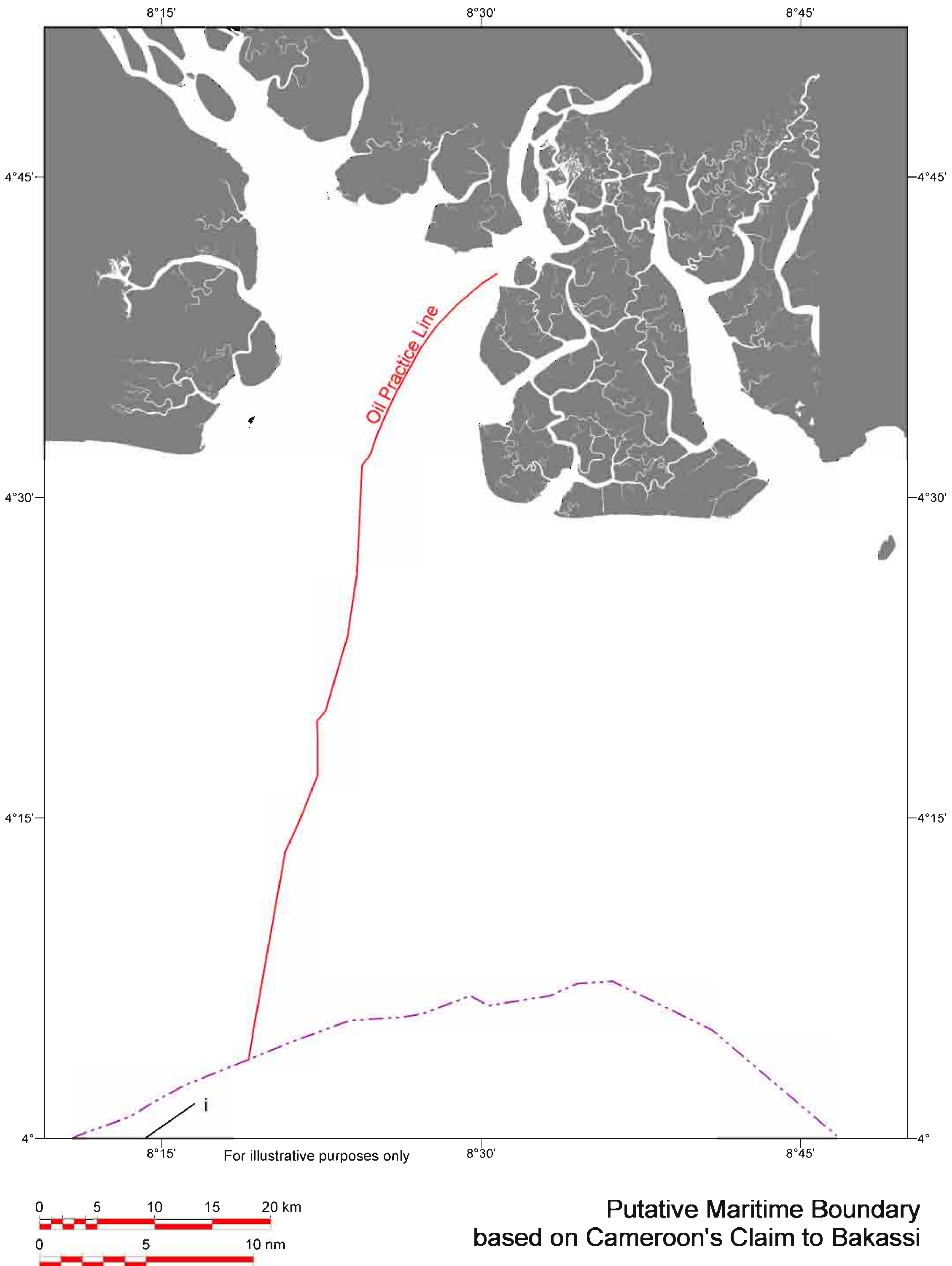


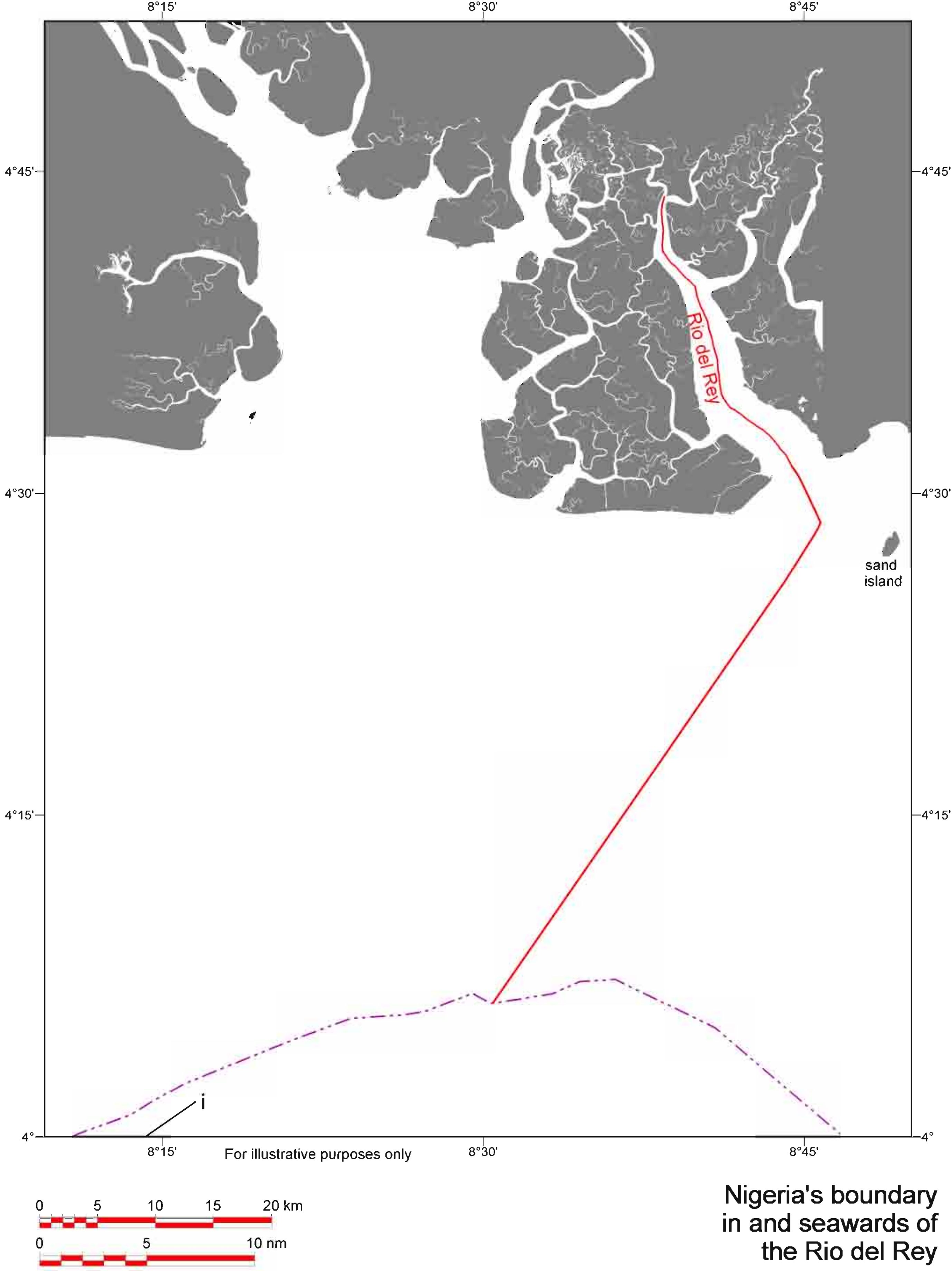
Fig. 13.8



Putative Maritime Boundary
based on Cameroon's Claim to Bakassi

Fig_13_8 4-12-00

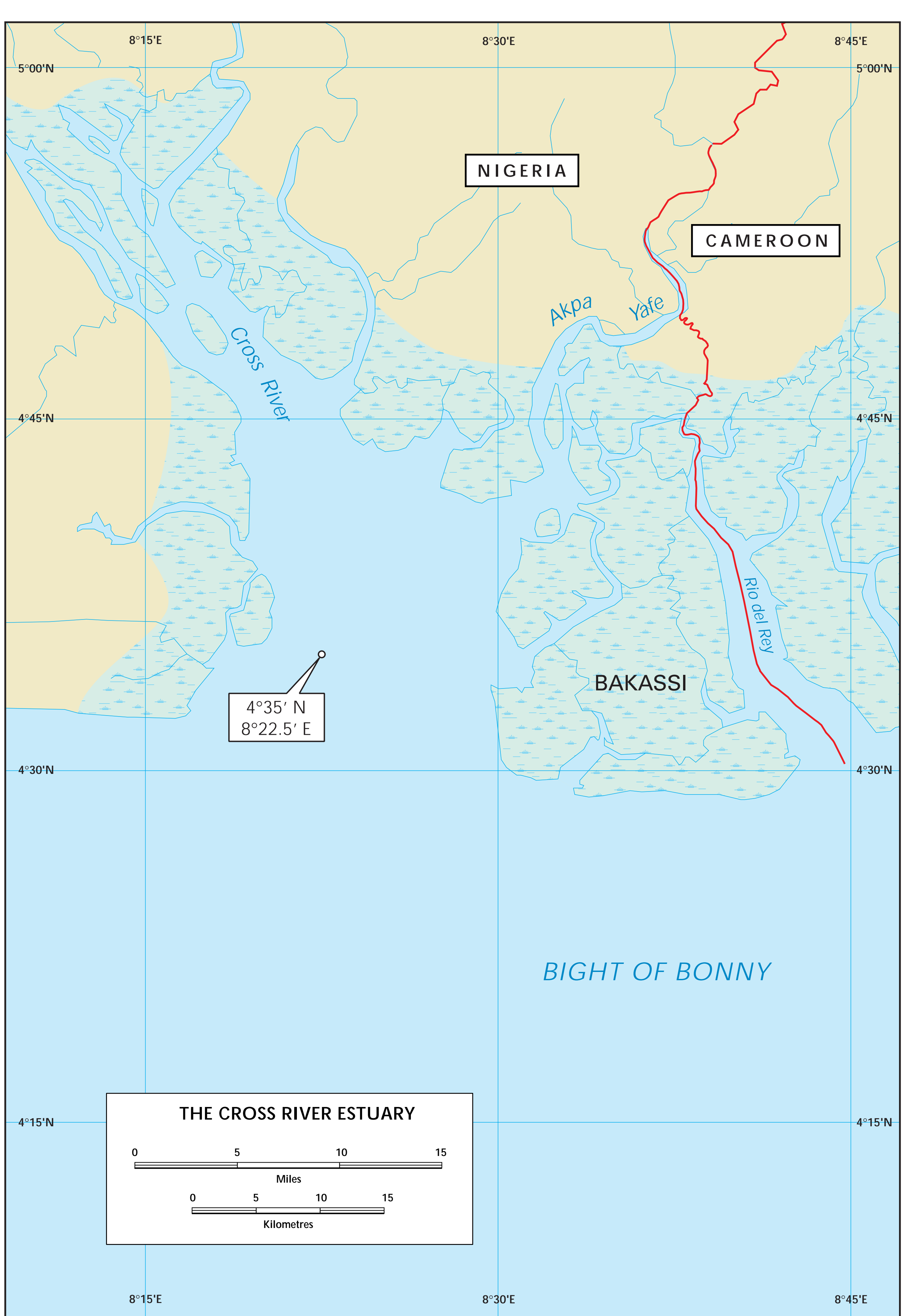
Fig. 13.9



Nigeria's boundary in and seawards of the Rio del Rey

Fig_13_9 4-12-00

Figure 16.1



For illustrative purposes only.

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Figure 16.2

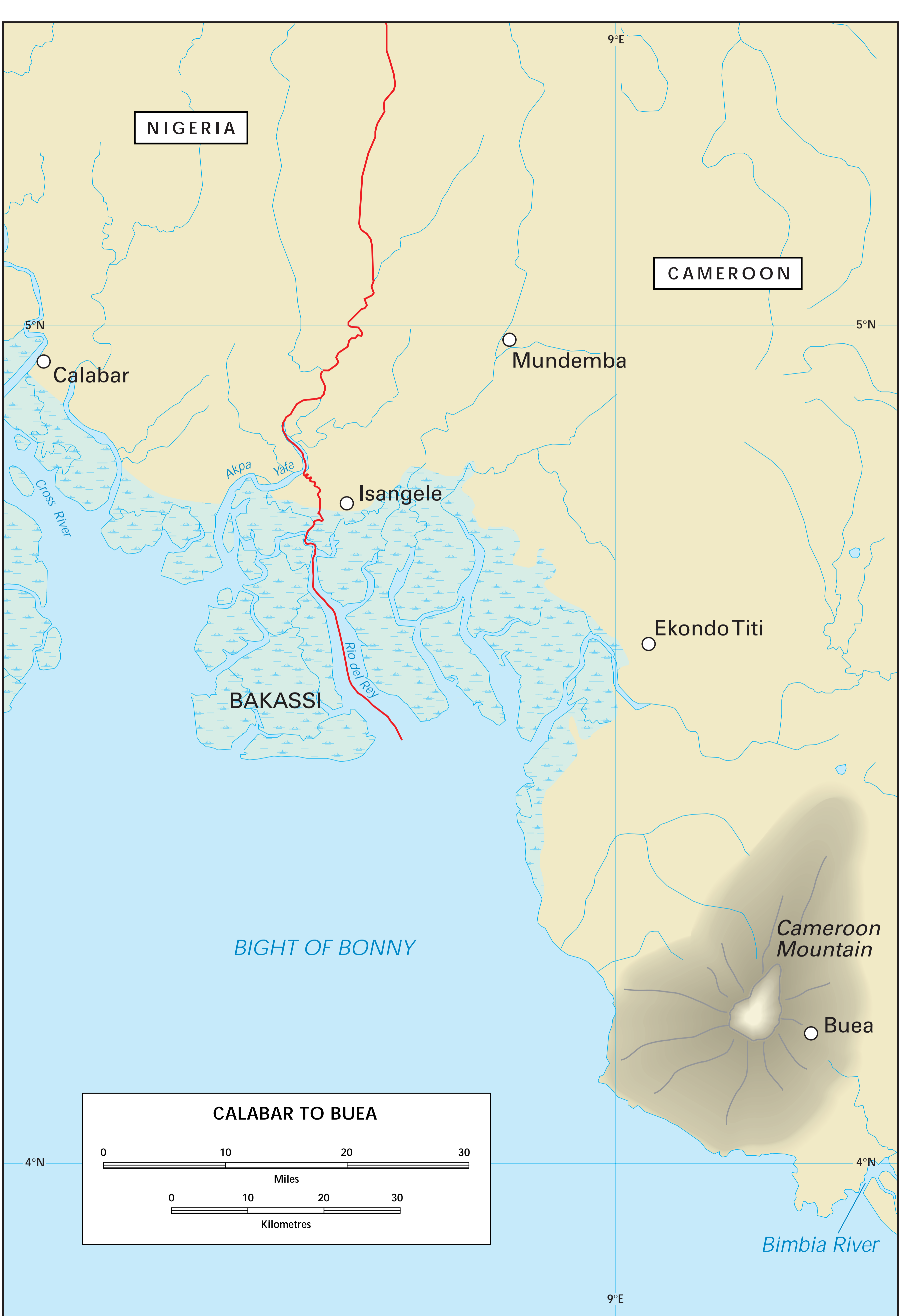

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Figure 16.3

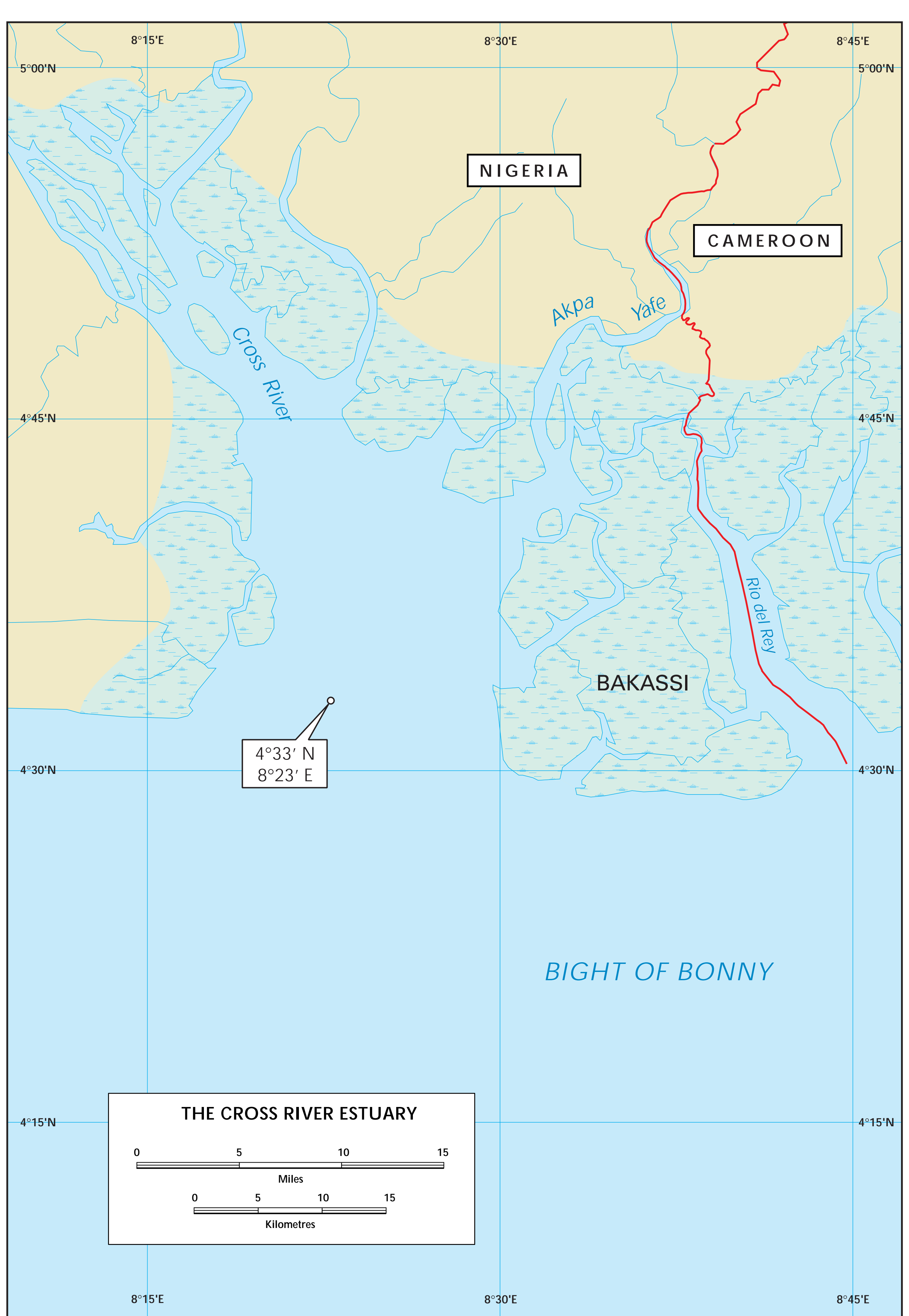

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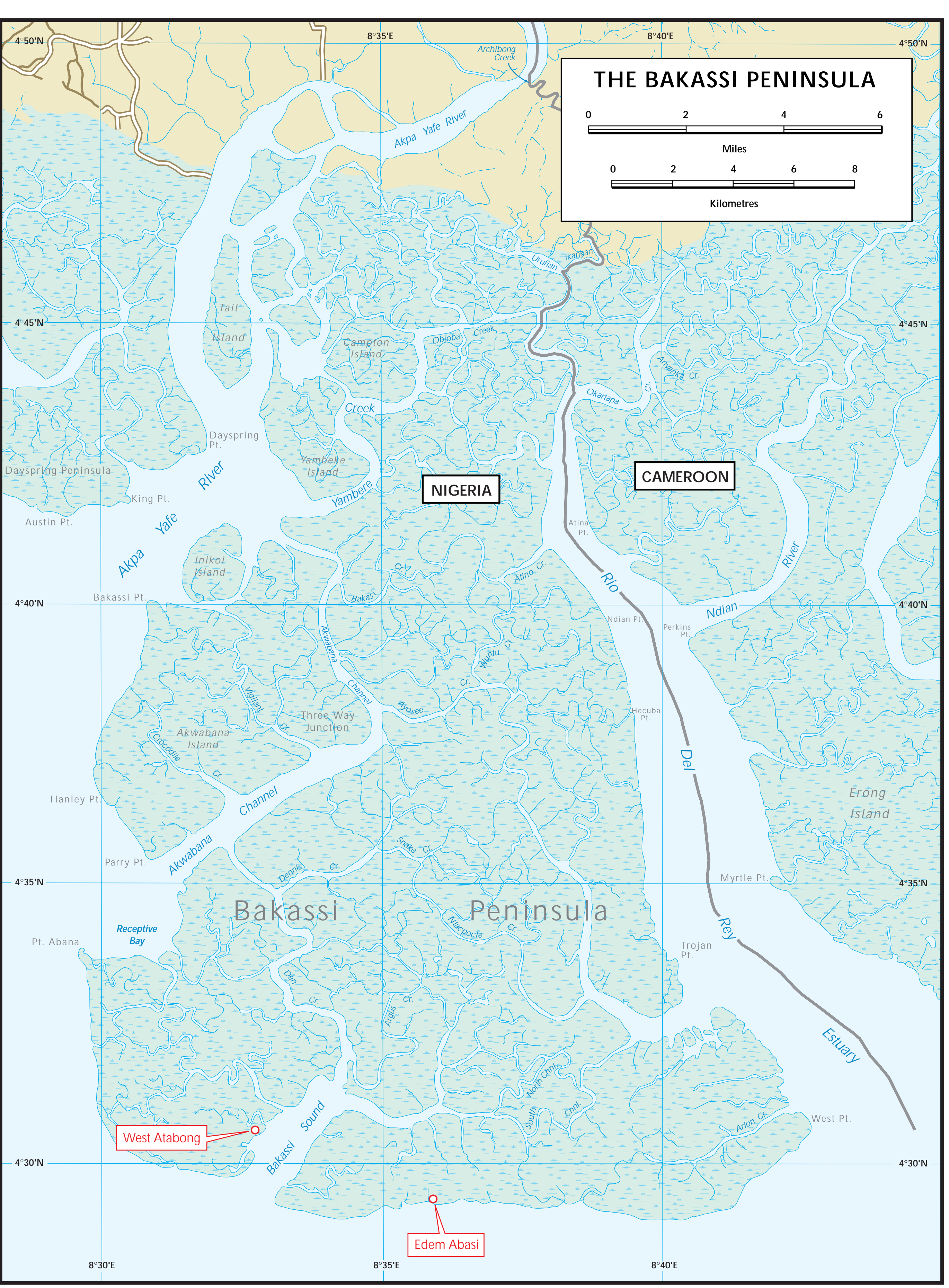
Figure 16.4



For illustrative purposes only.

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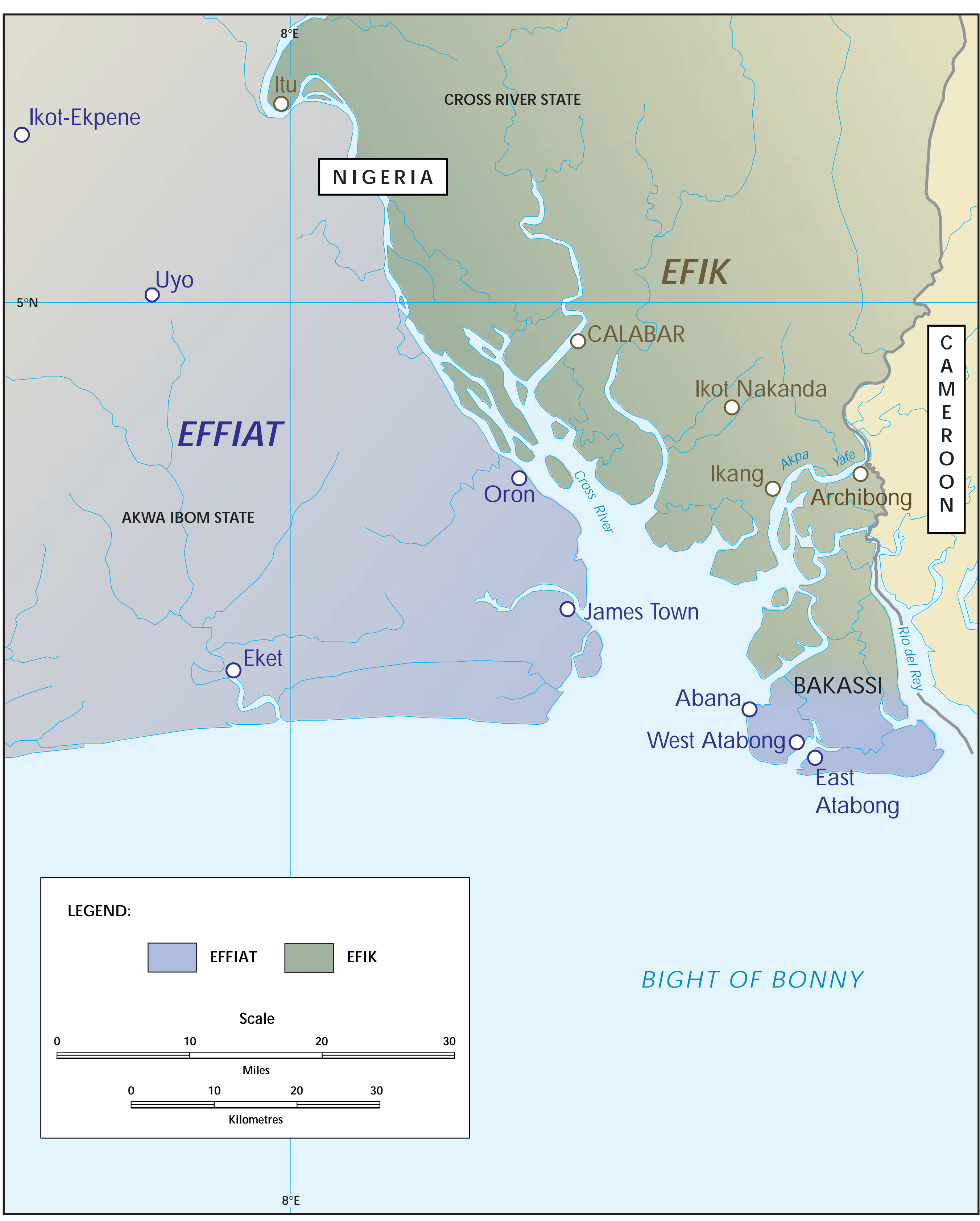
DISTRIBUTION OF EFIK AND EFFIAT PEOPLES



For illustrative purposes only.

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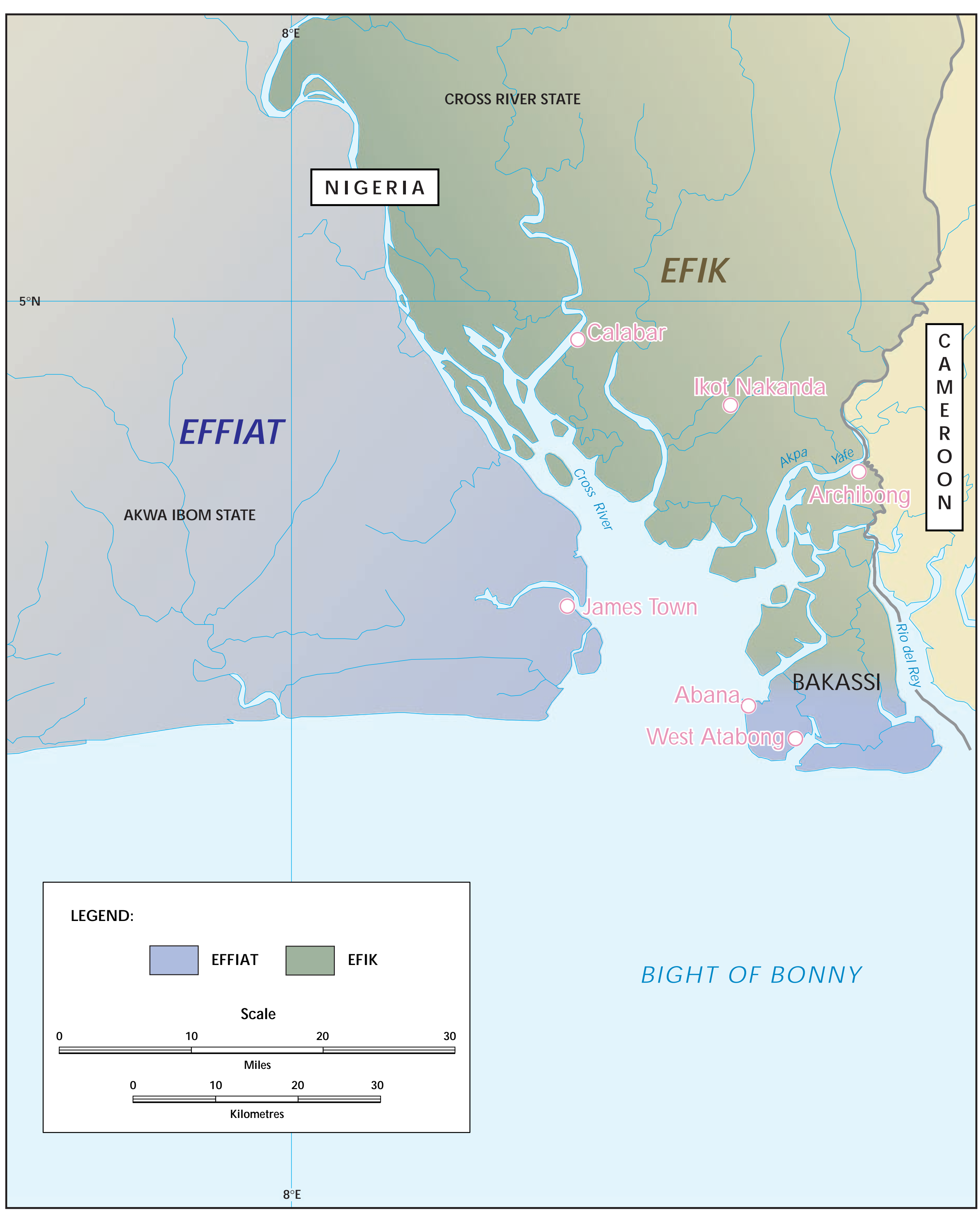
LOCATION OF EKPE SHRINES



For illustrative purposes only.

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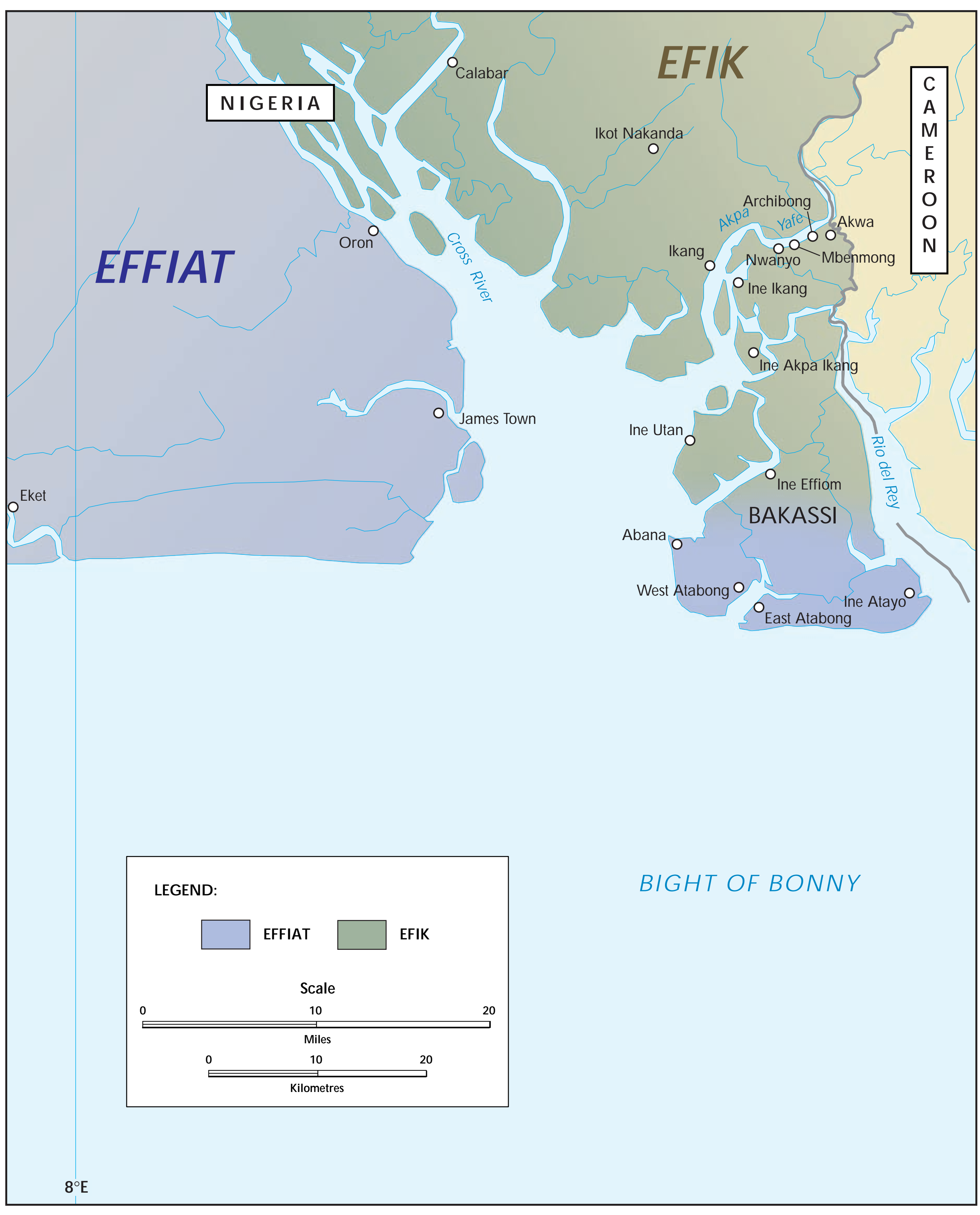
SETTLEMENT OF BAKASSI VILLAGES



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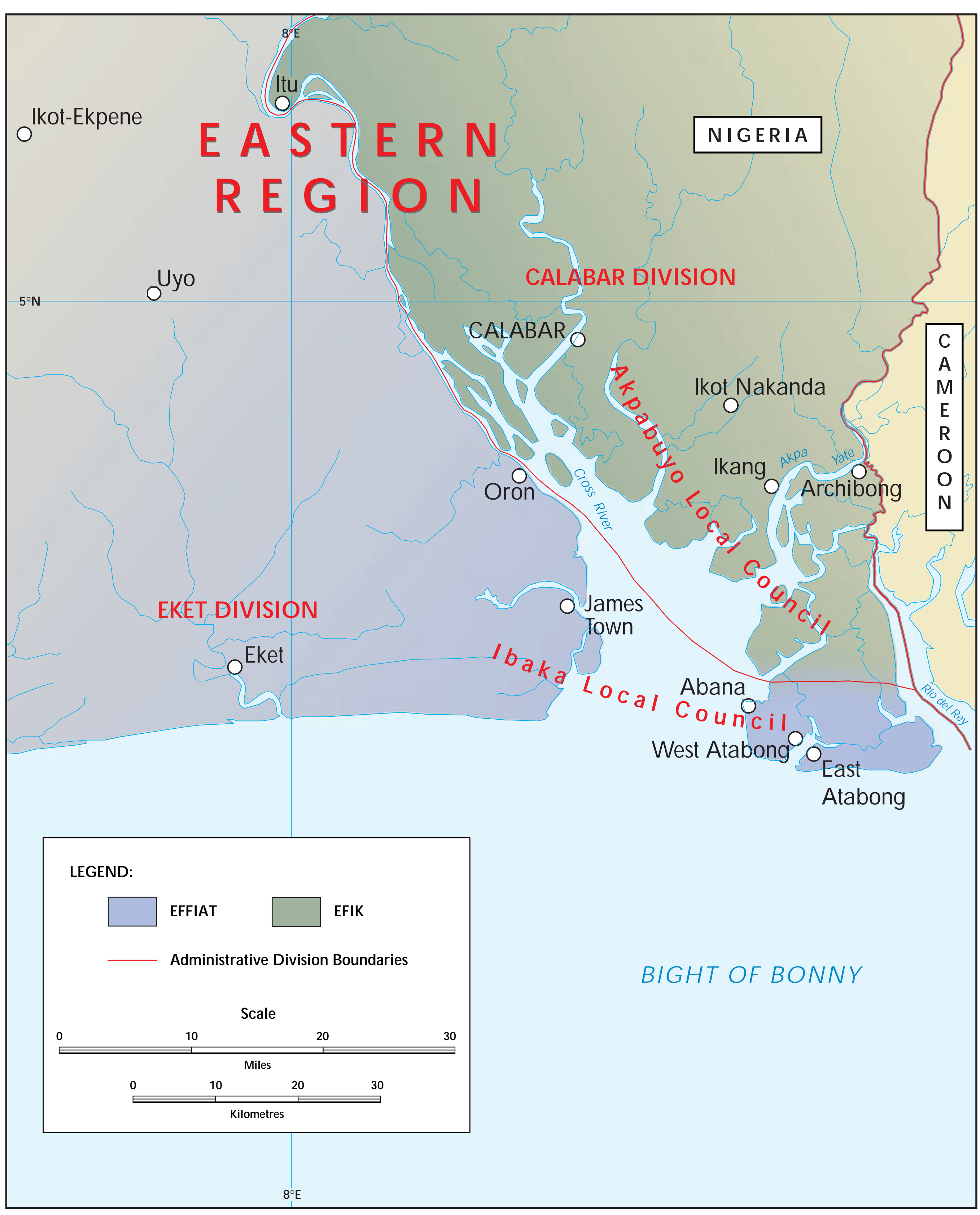
BAKASSI LOCAL GOVERNMENT ADMINISTRATION: 1960



For illustrative purposes only.

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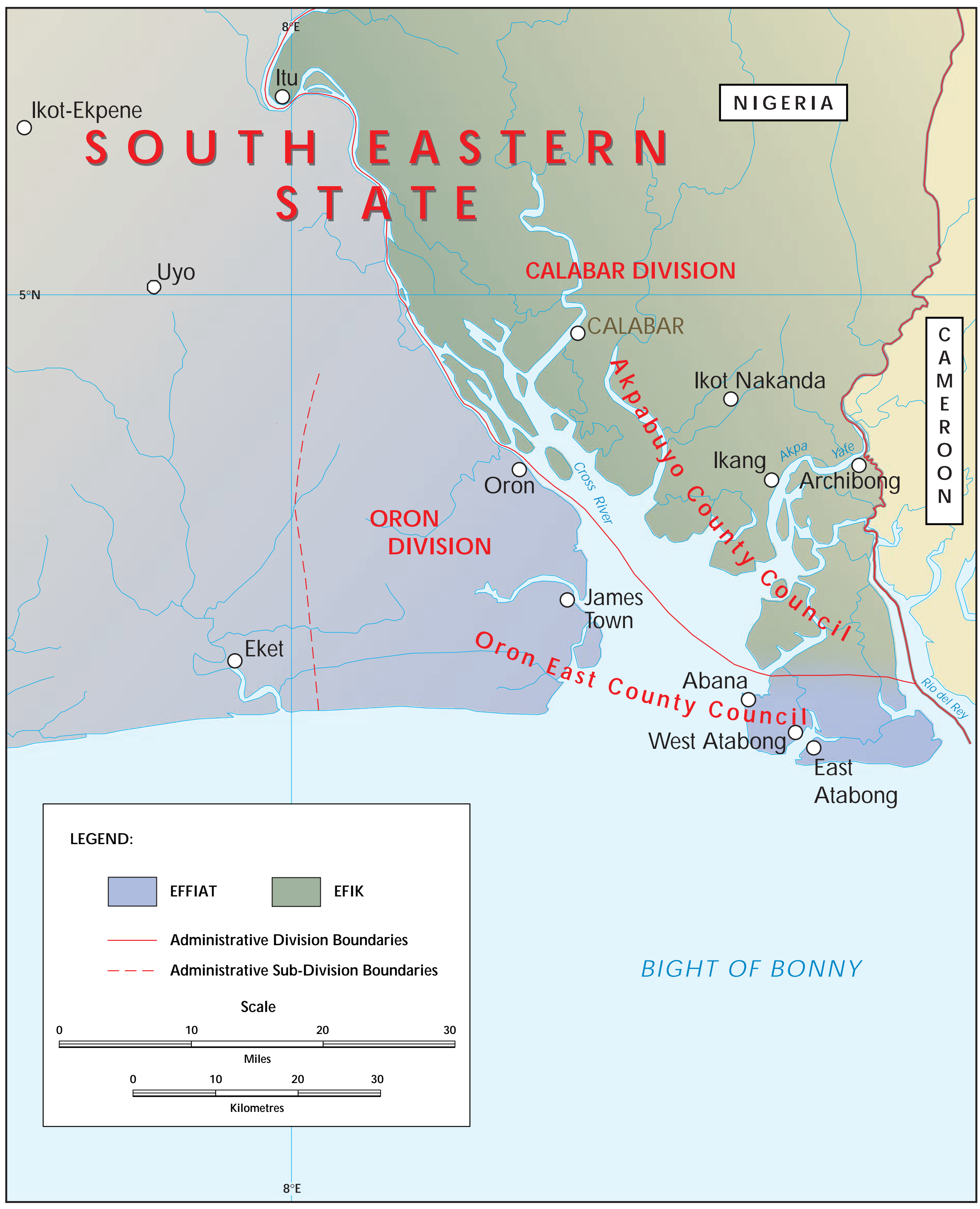

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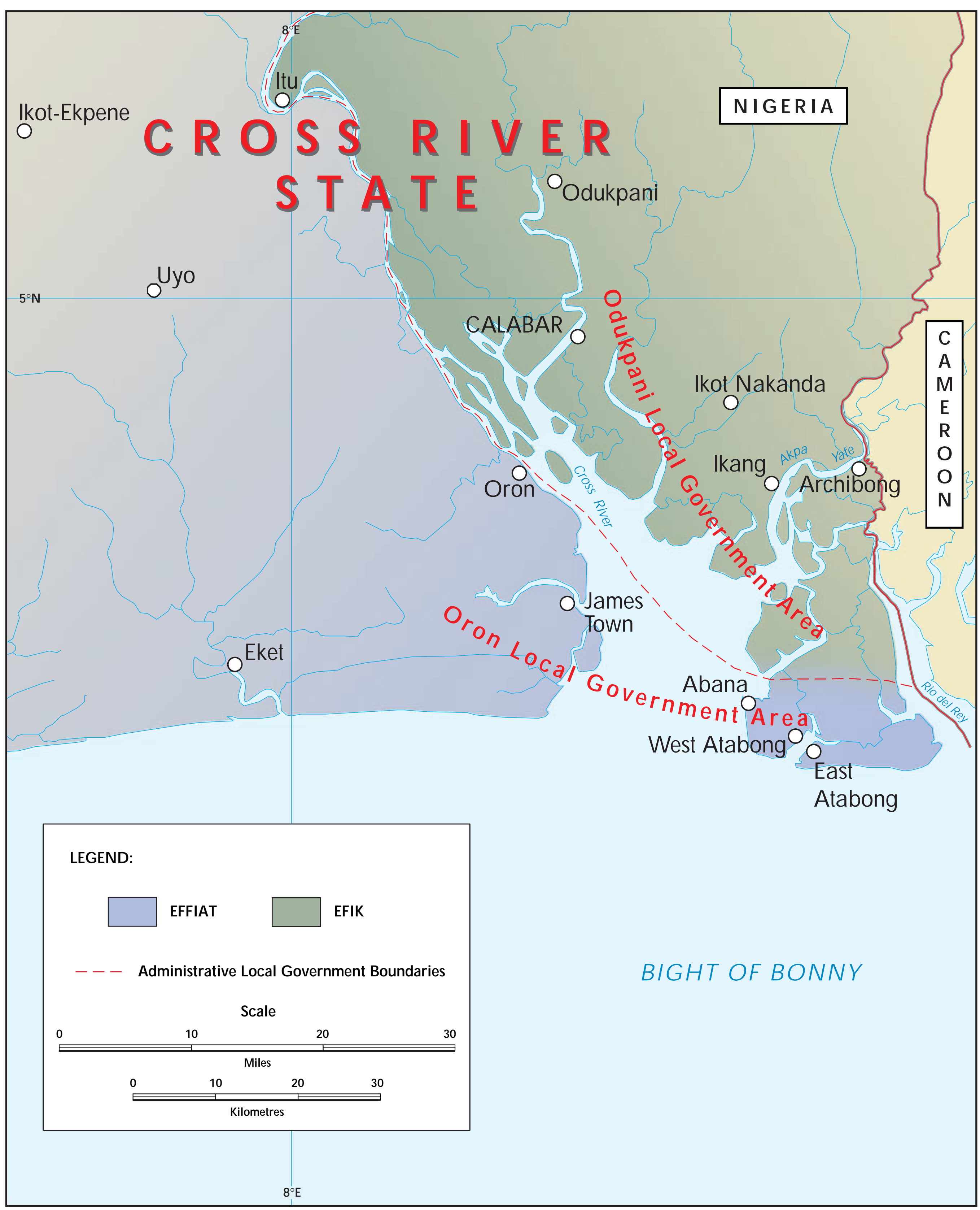

For illustrative purposes only.

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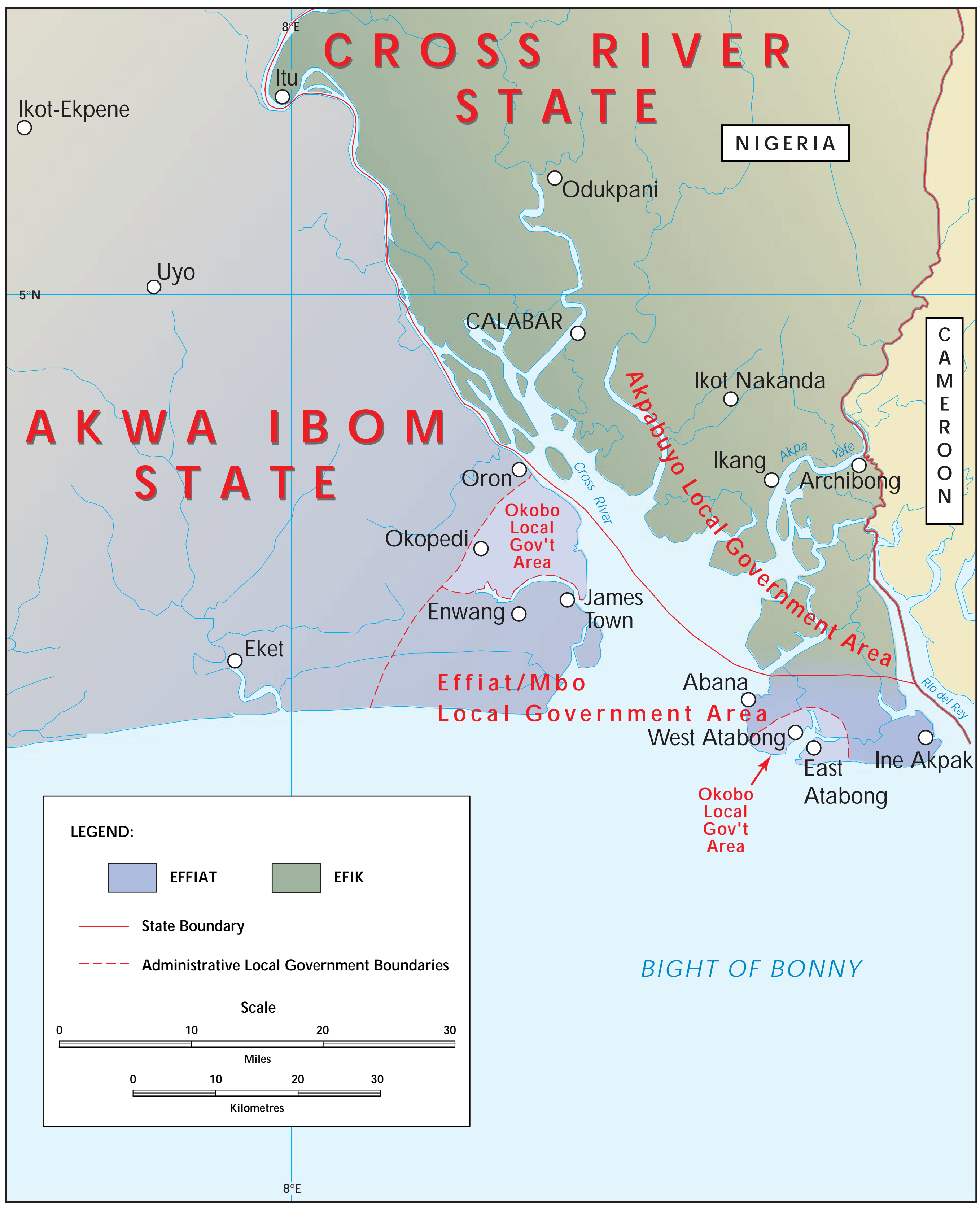

For illustrative purposes only.

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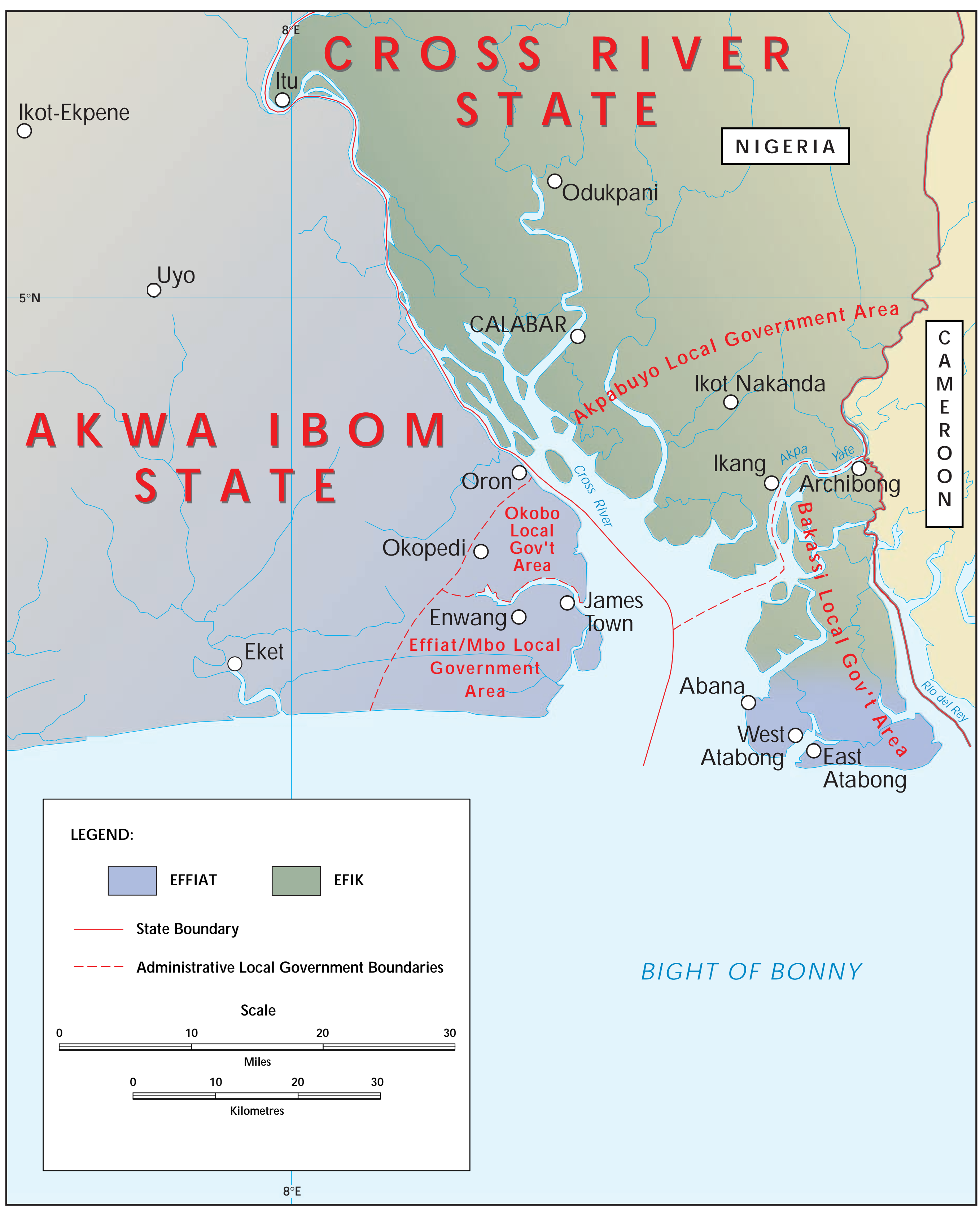
BAKASSI LOCAL GOVERNMENT ADMINISTRATION: 1996



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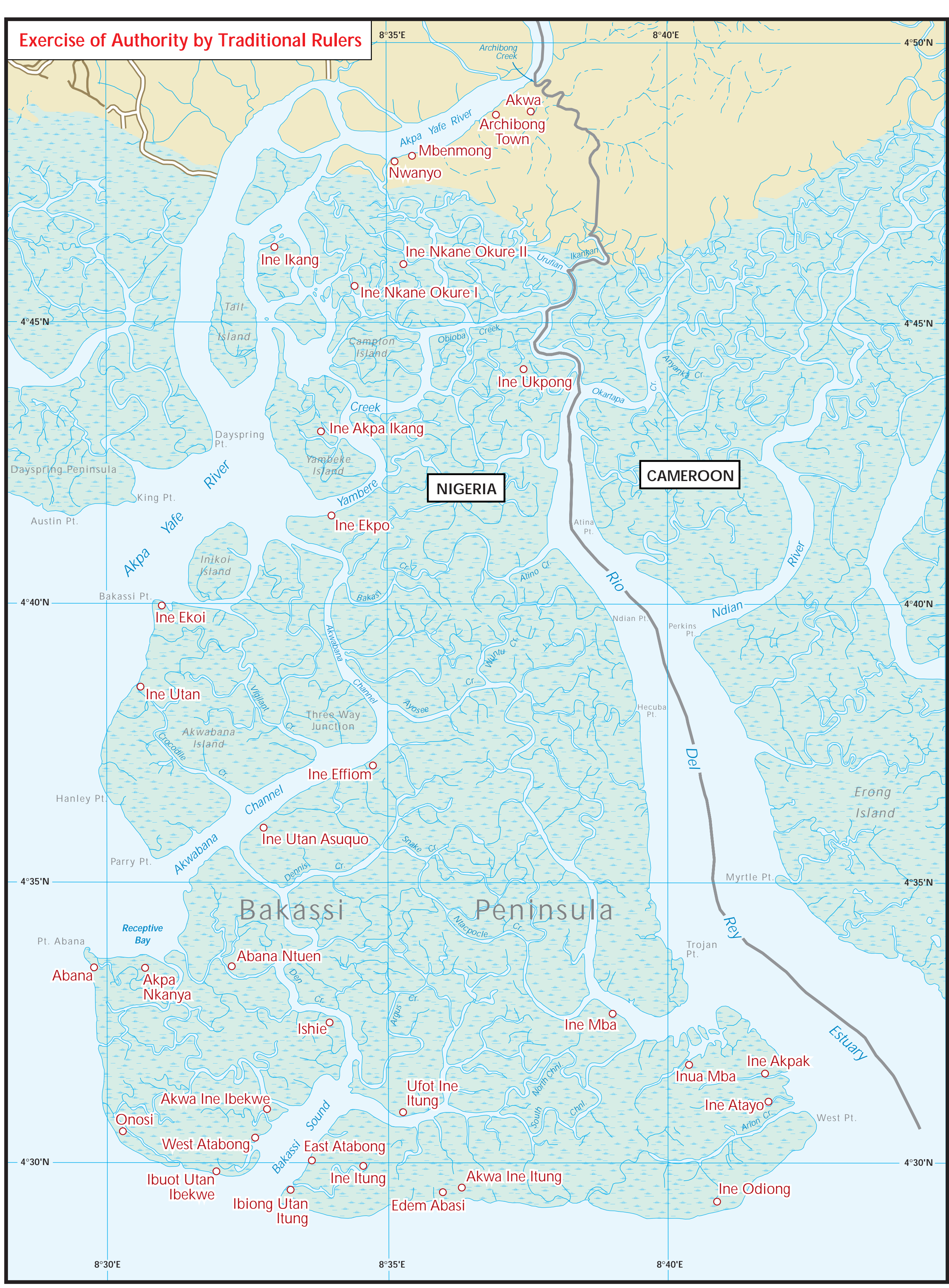

For illustrative purposes only.

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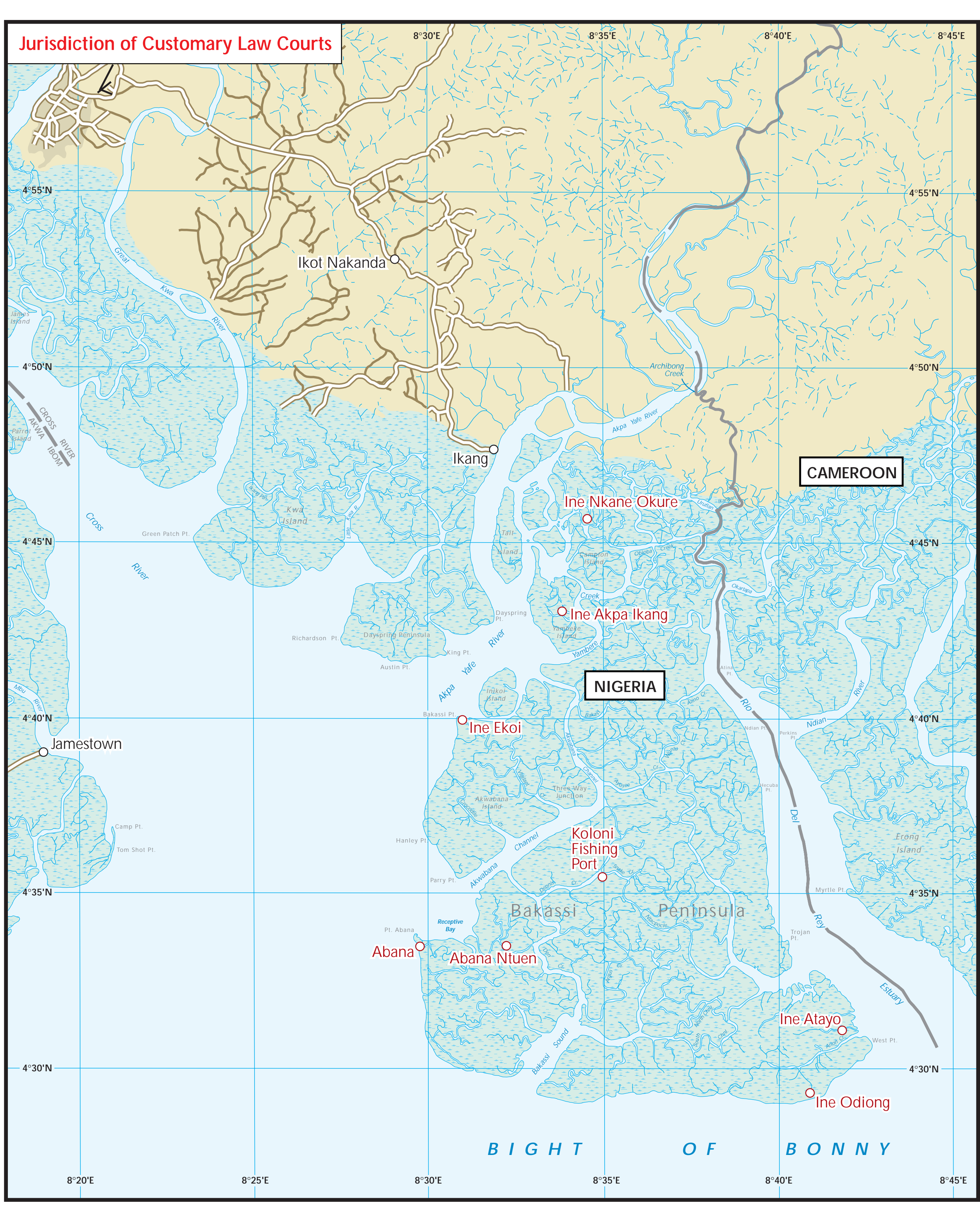
Figure 3.10



For illustrative purposes only.

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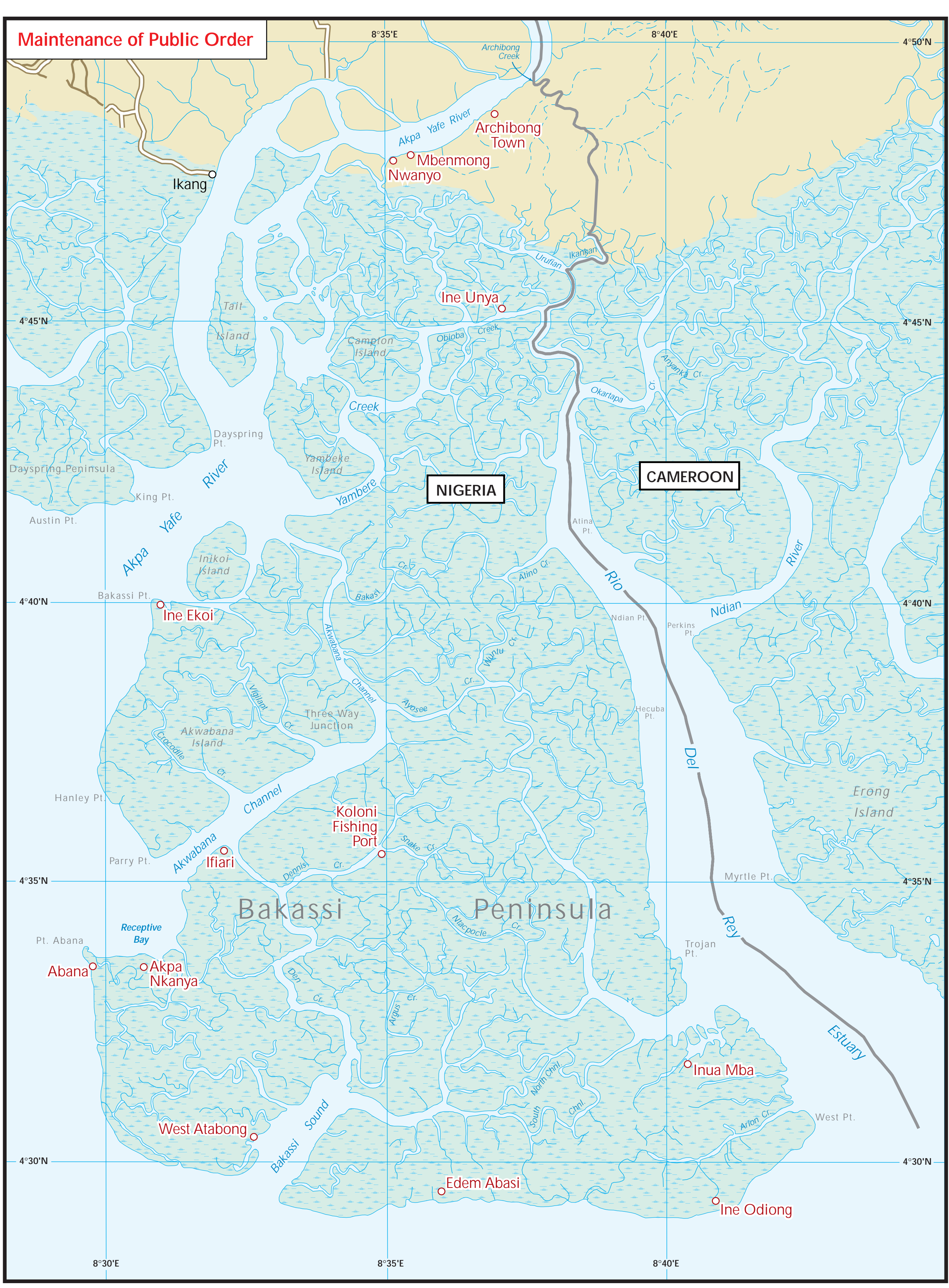
Figure 3.11



For illustrative purposes only.

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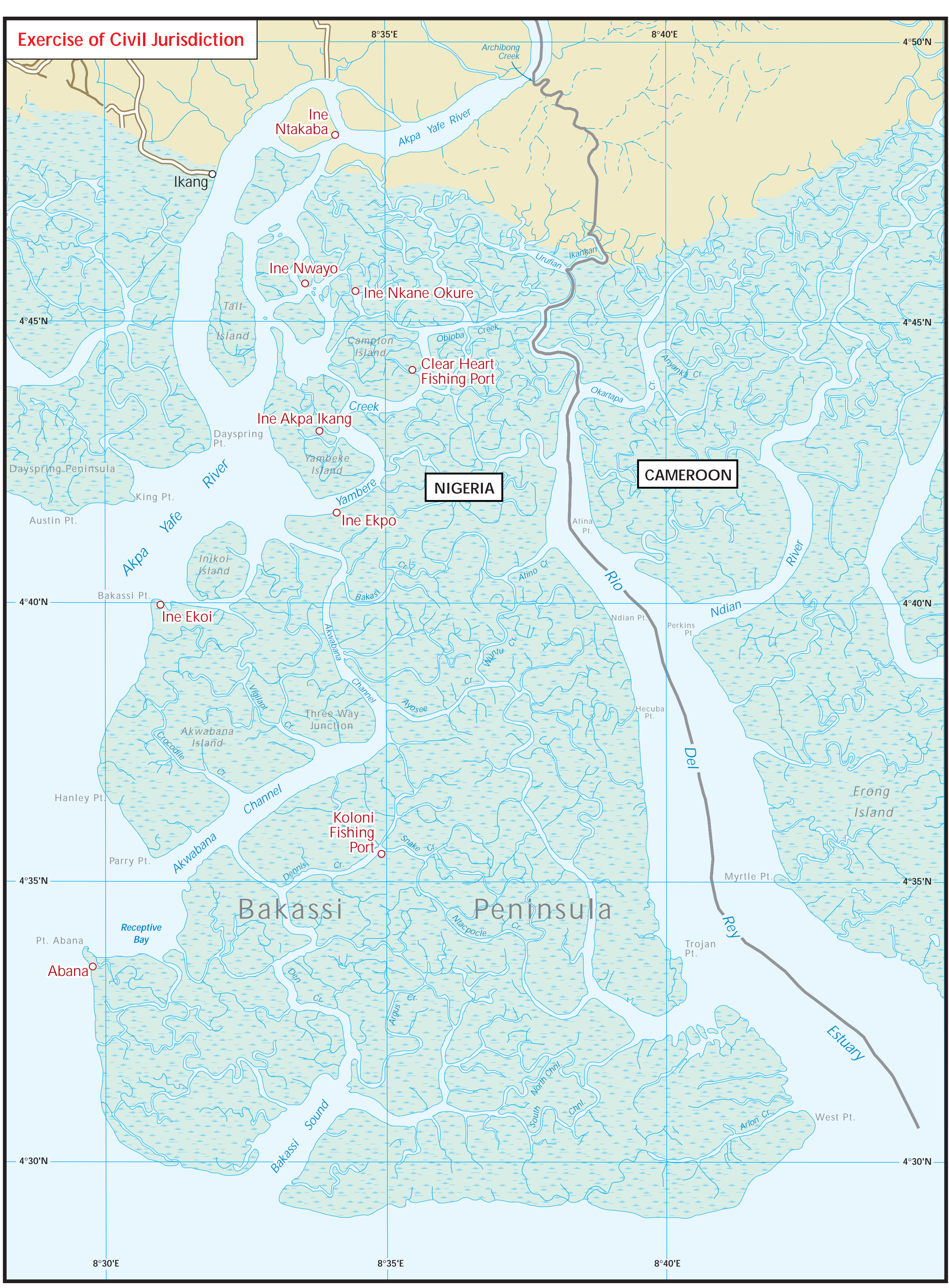
Figure 3.12



For illustrative purposes only.

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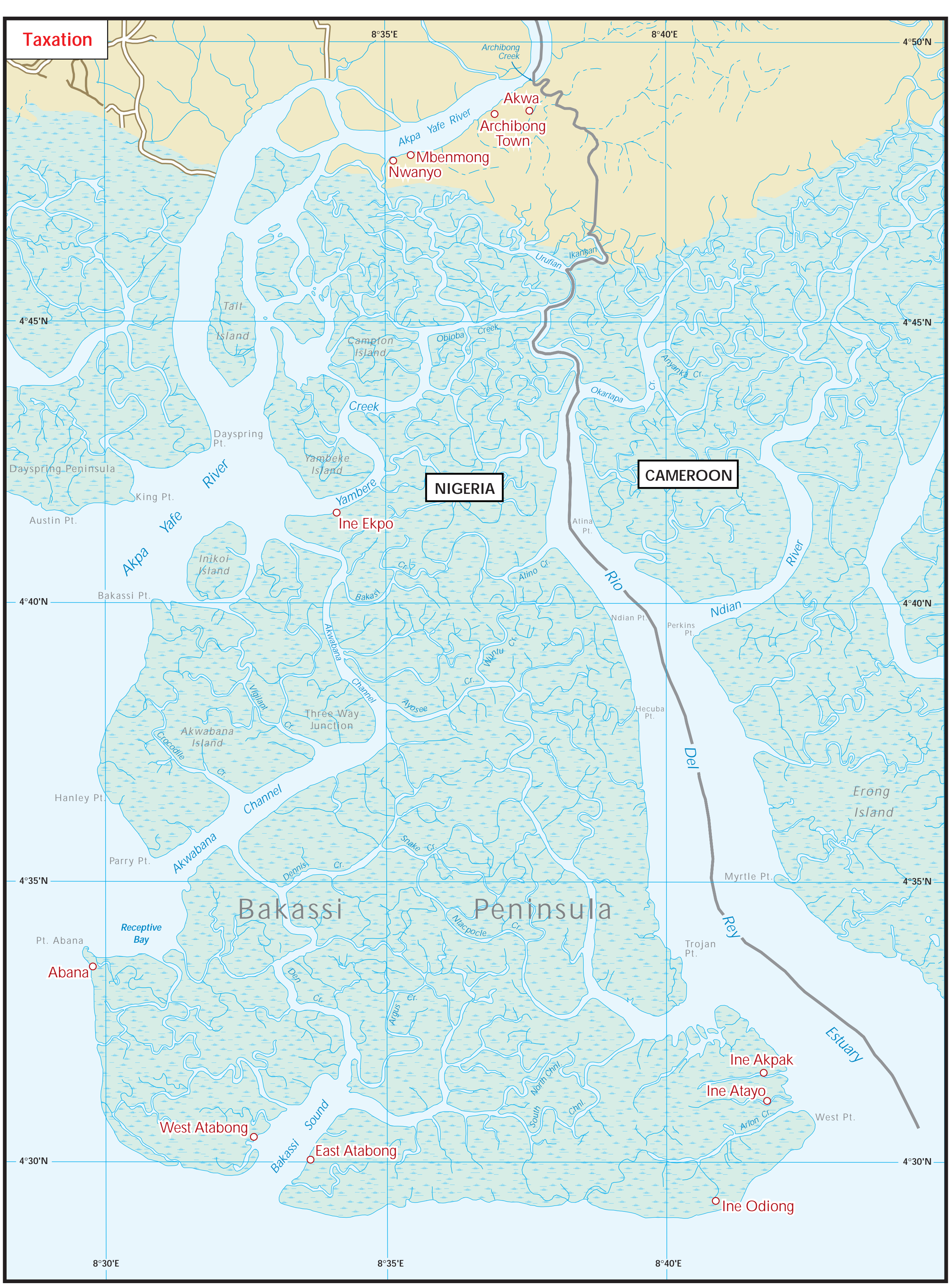
Figure 3.13



For illustrative purposes only.

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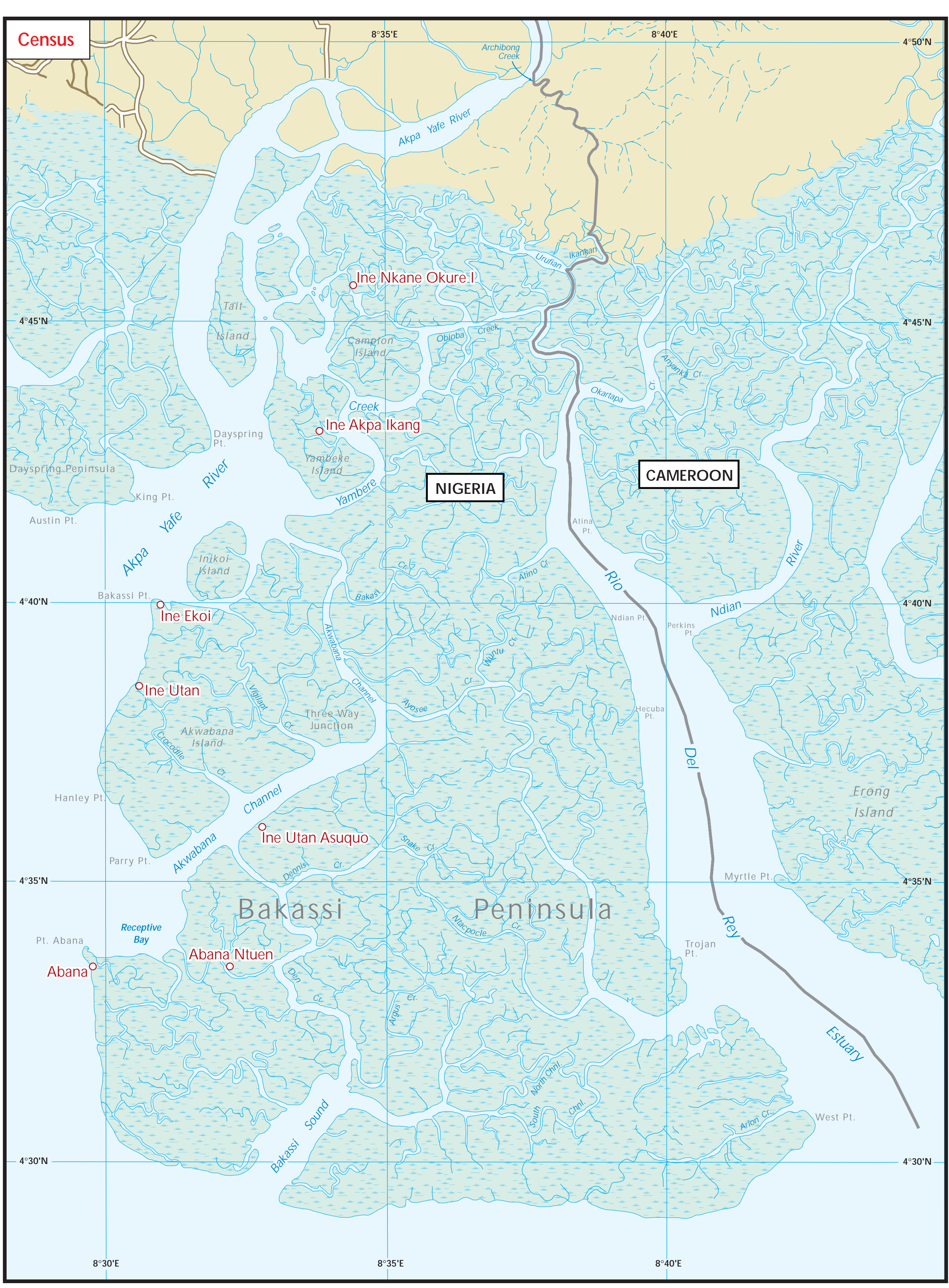
Figure 3.14



For illustrative purposes only.

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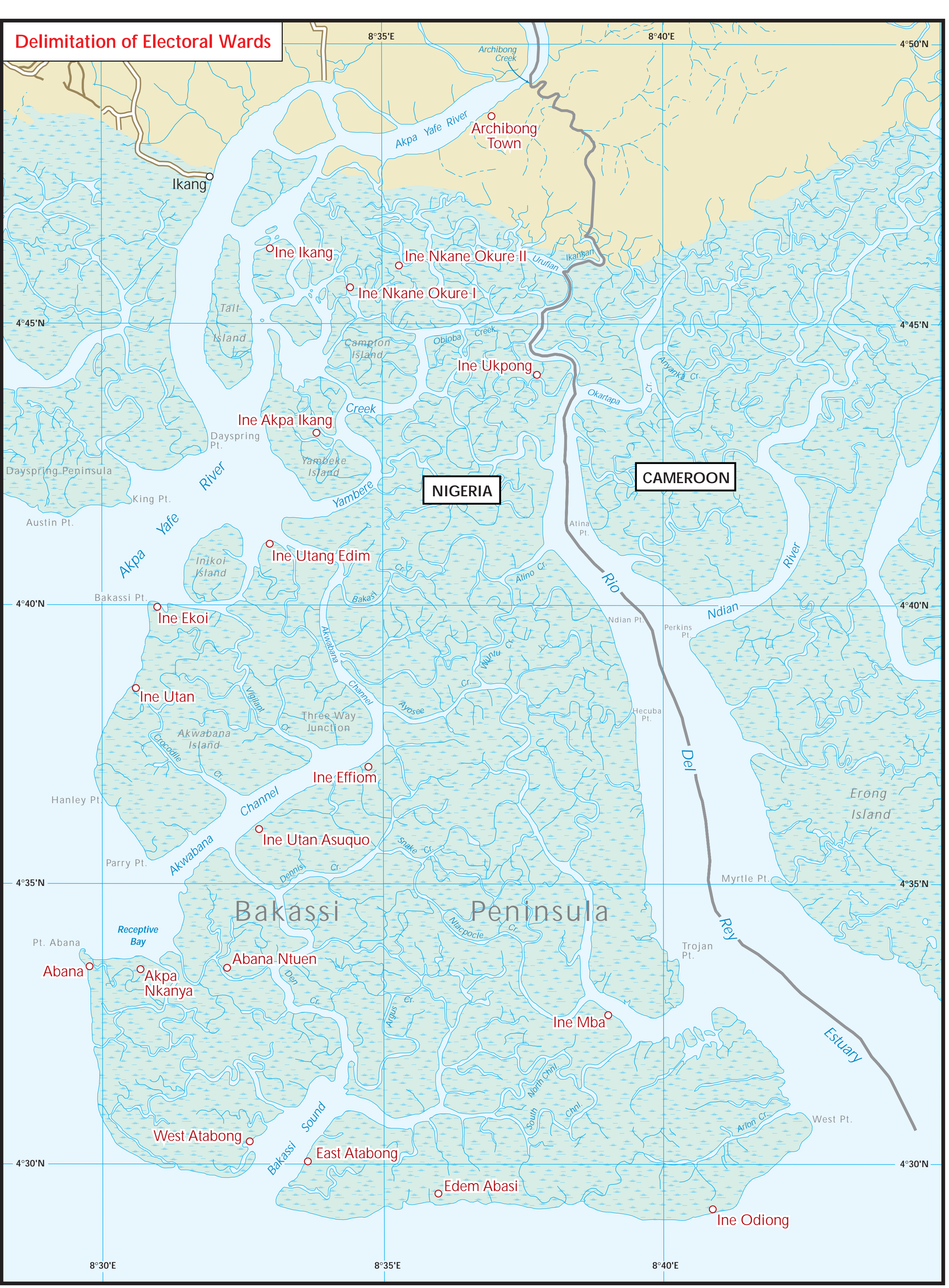
Figure 3.15



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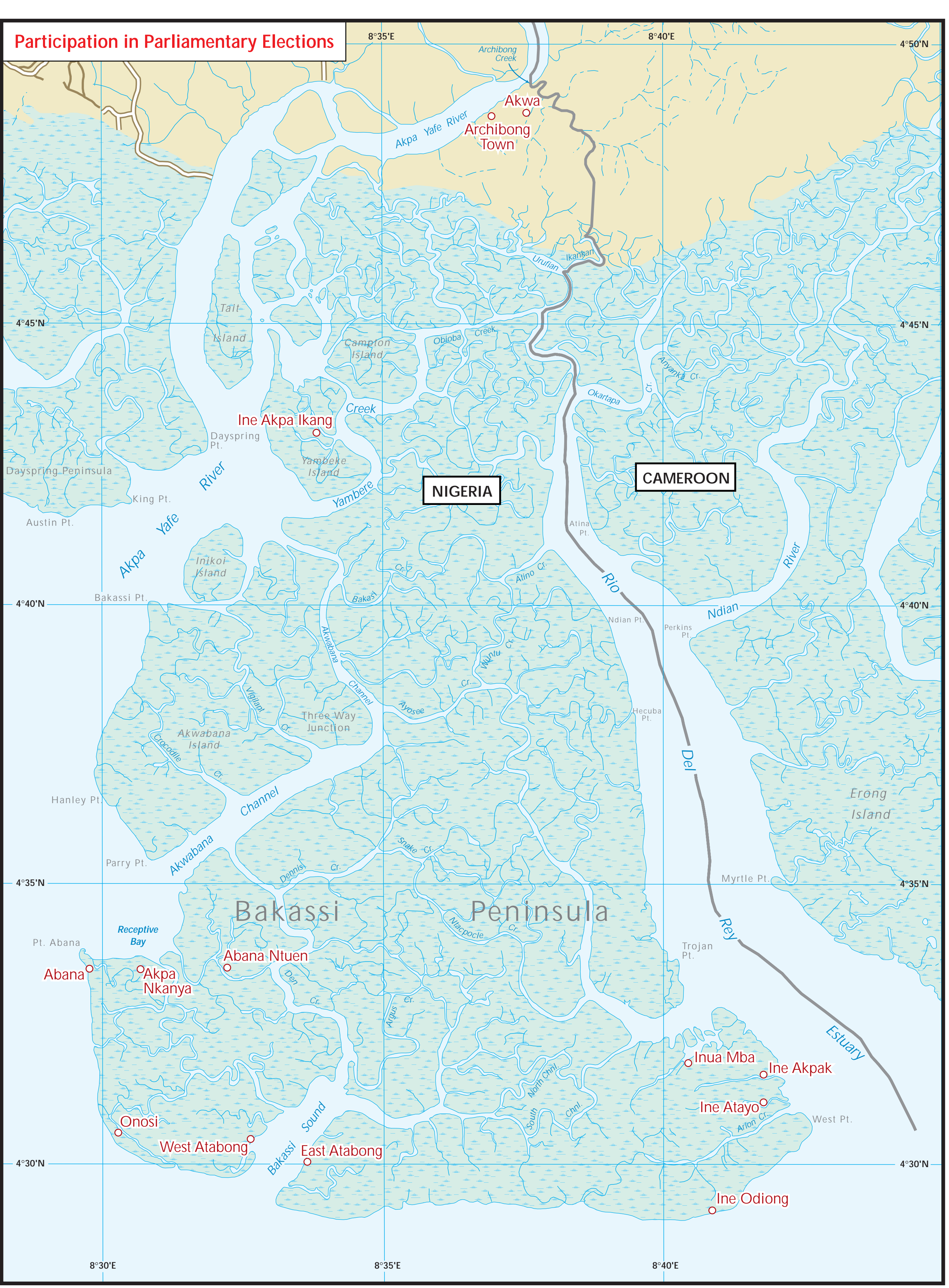

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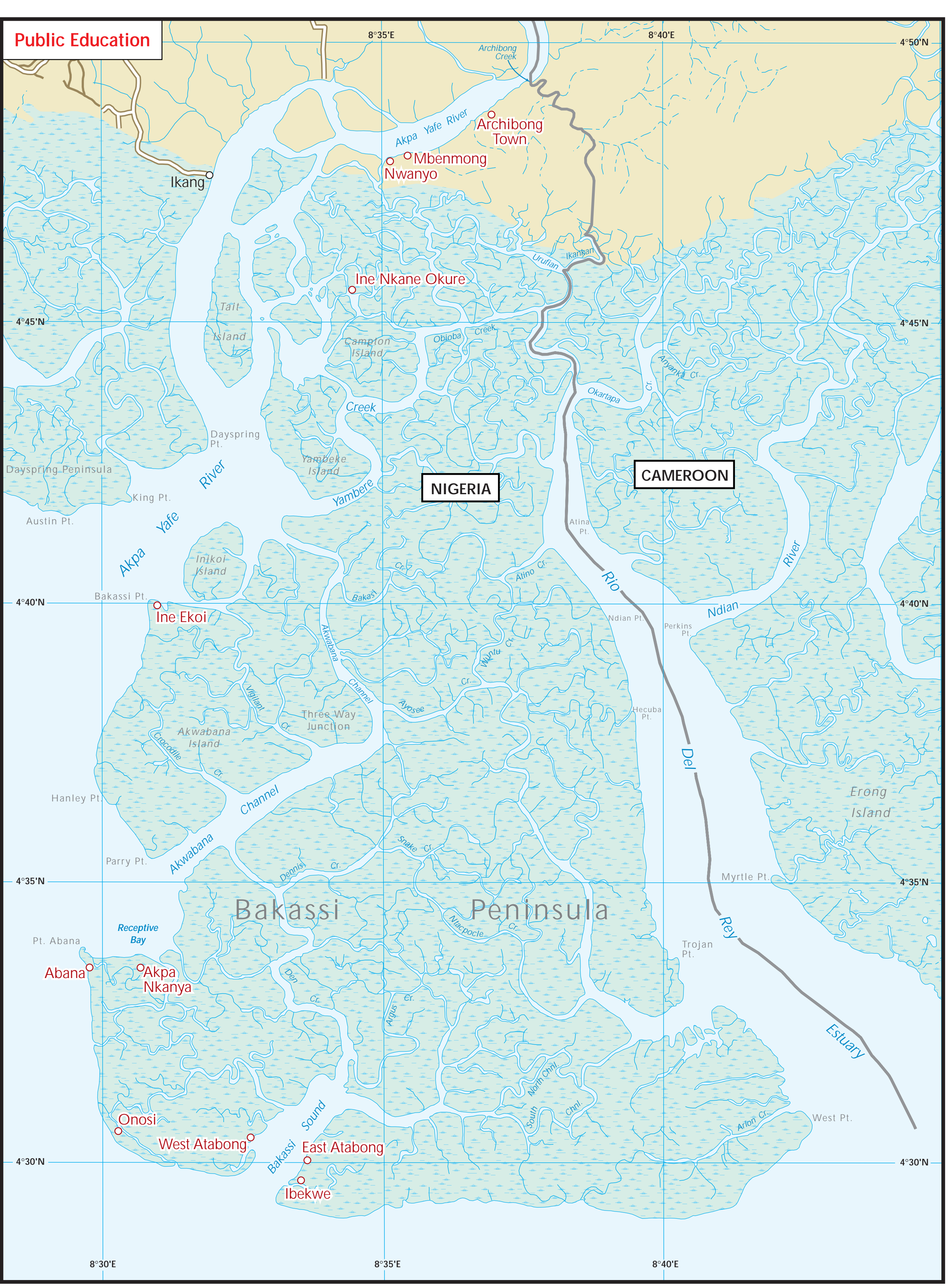

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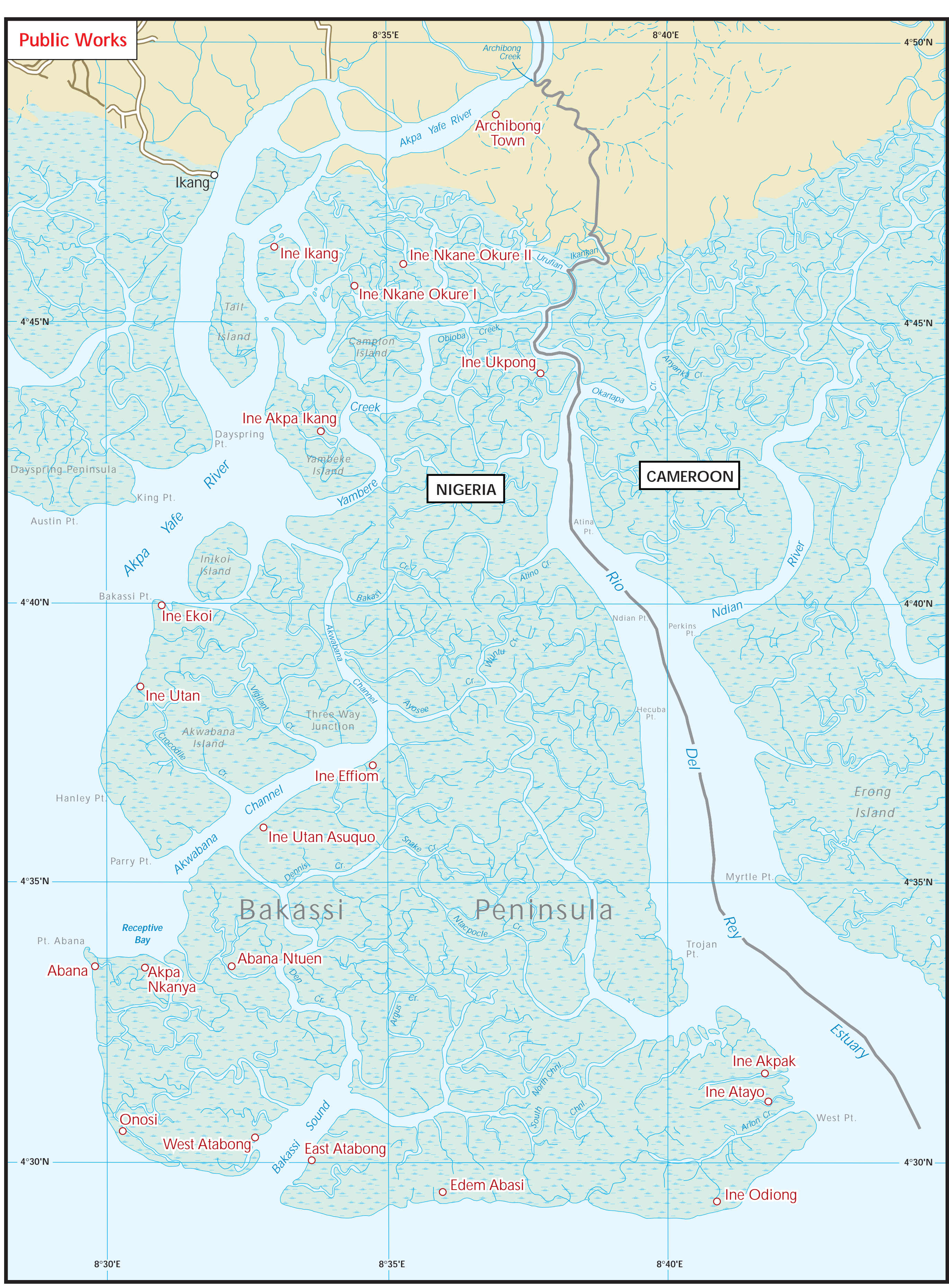
Figure 3.18



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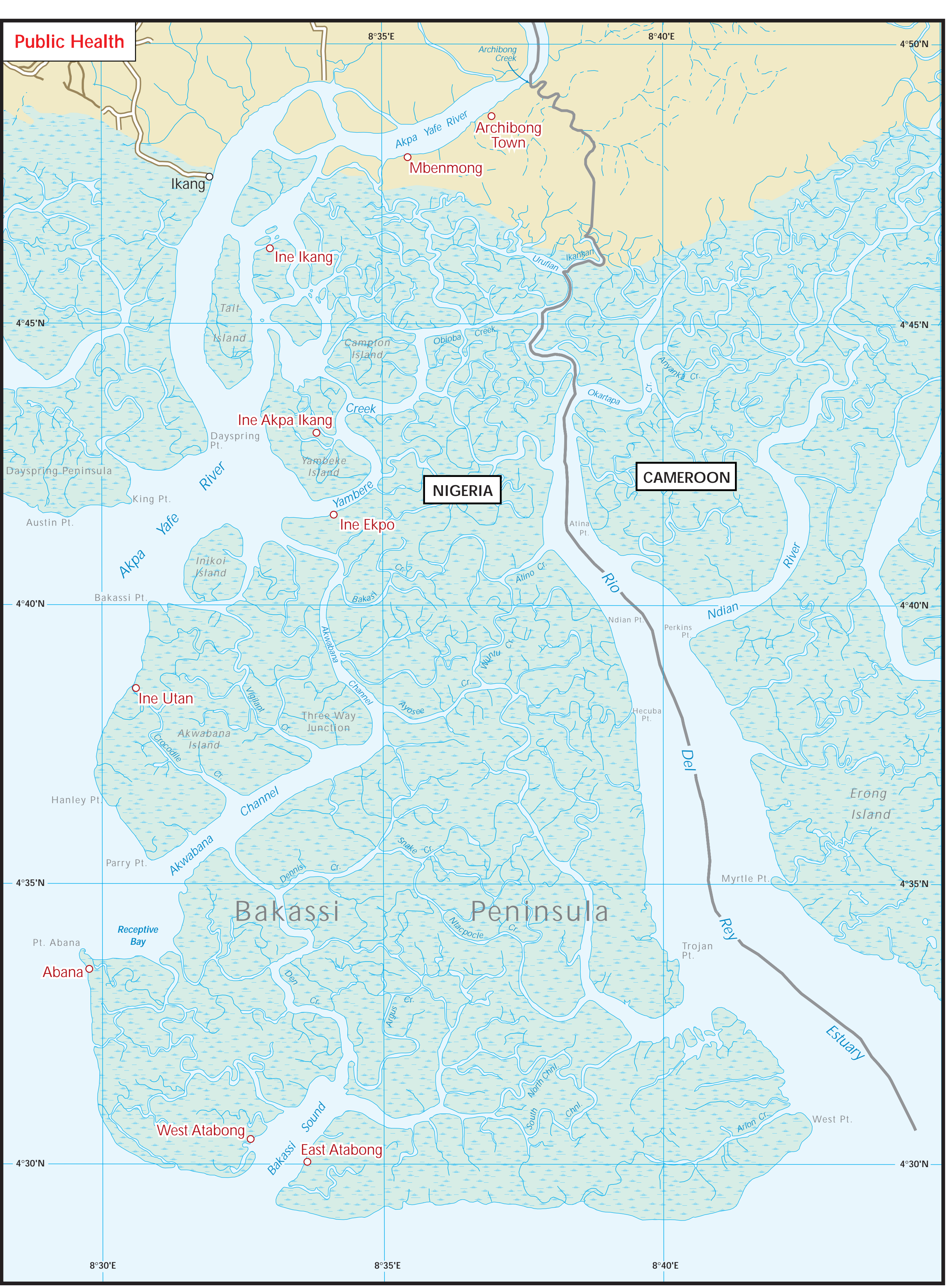


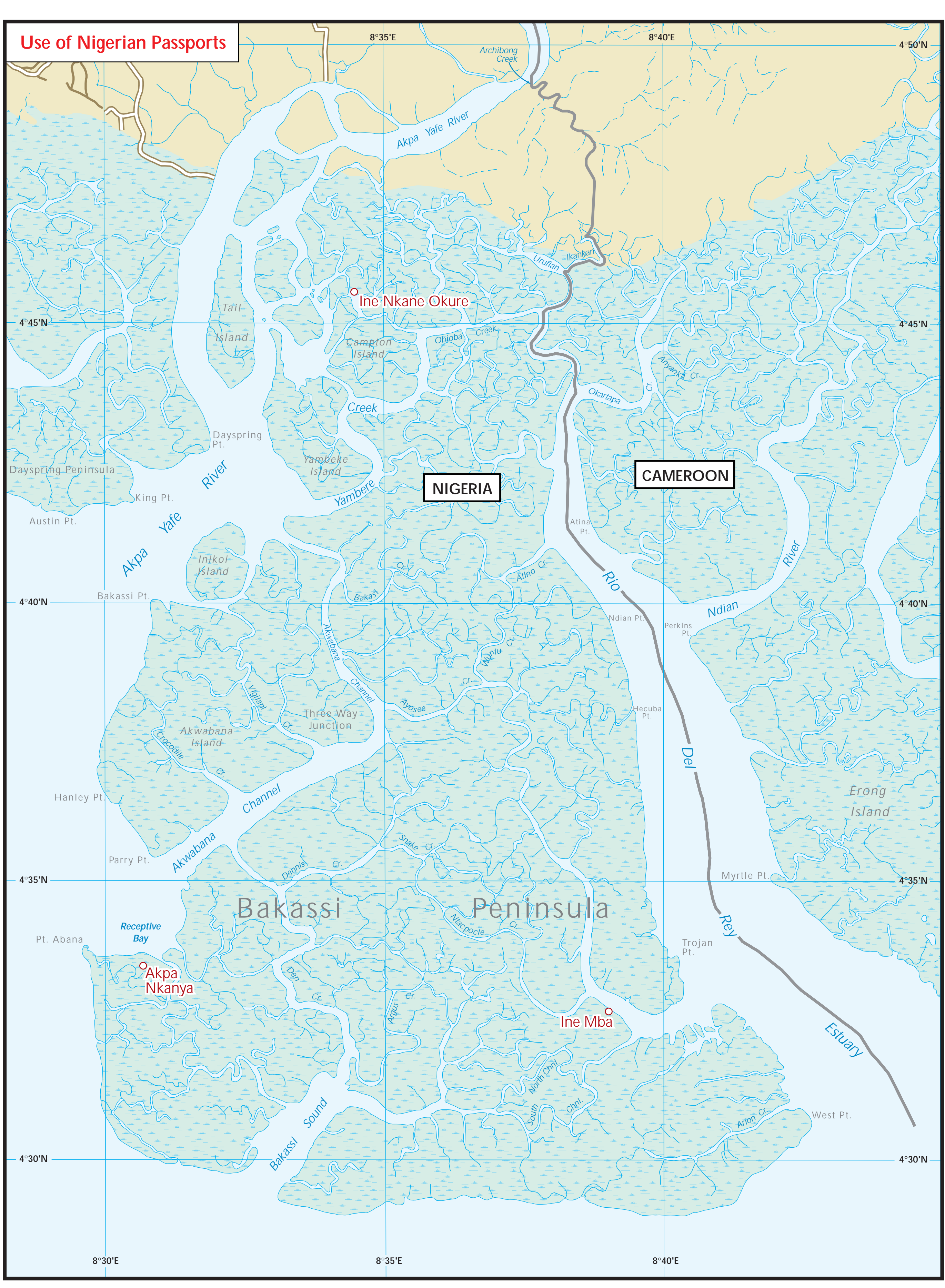
For illustrative purposes only.

1:174,000

For illustrative purposes only.

1:284,000

Figure 3.21



For illustrative purposes only.

1:174,000

Figure 3.22

Block OML 10

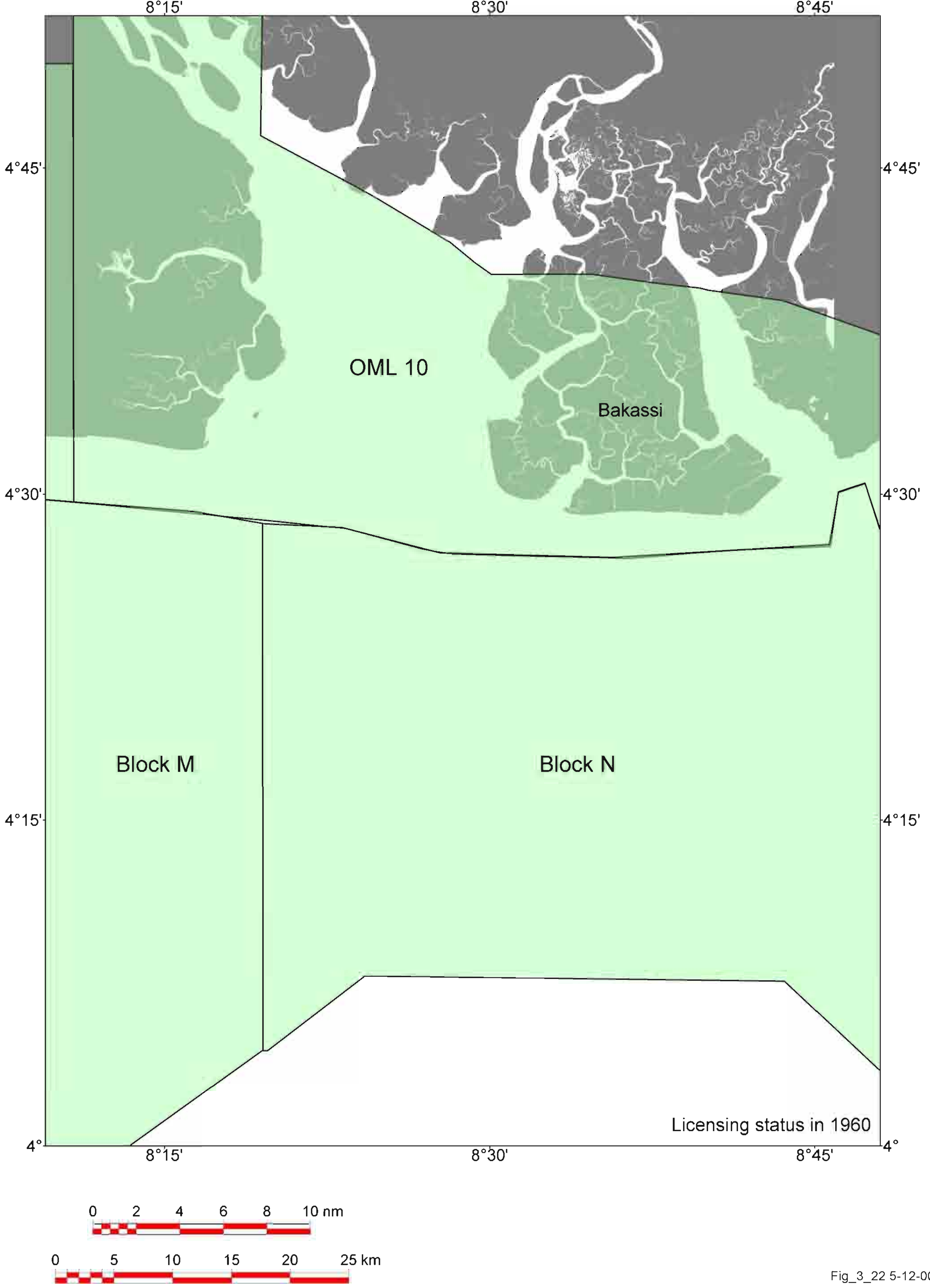
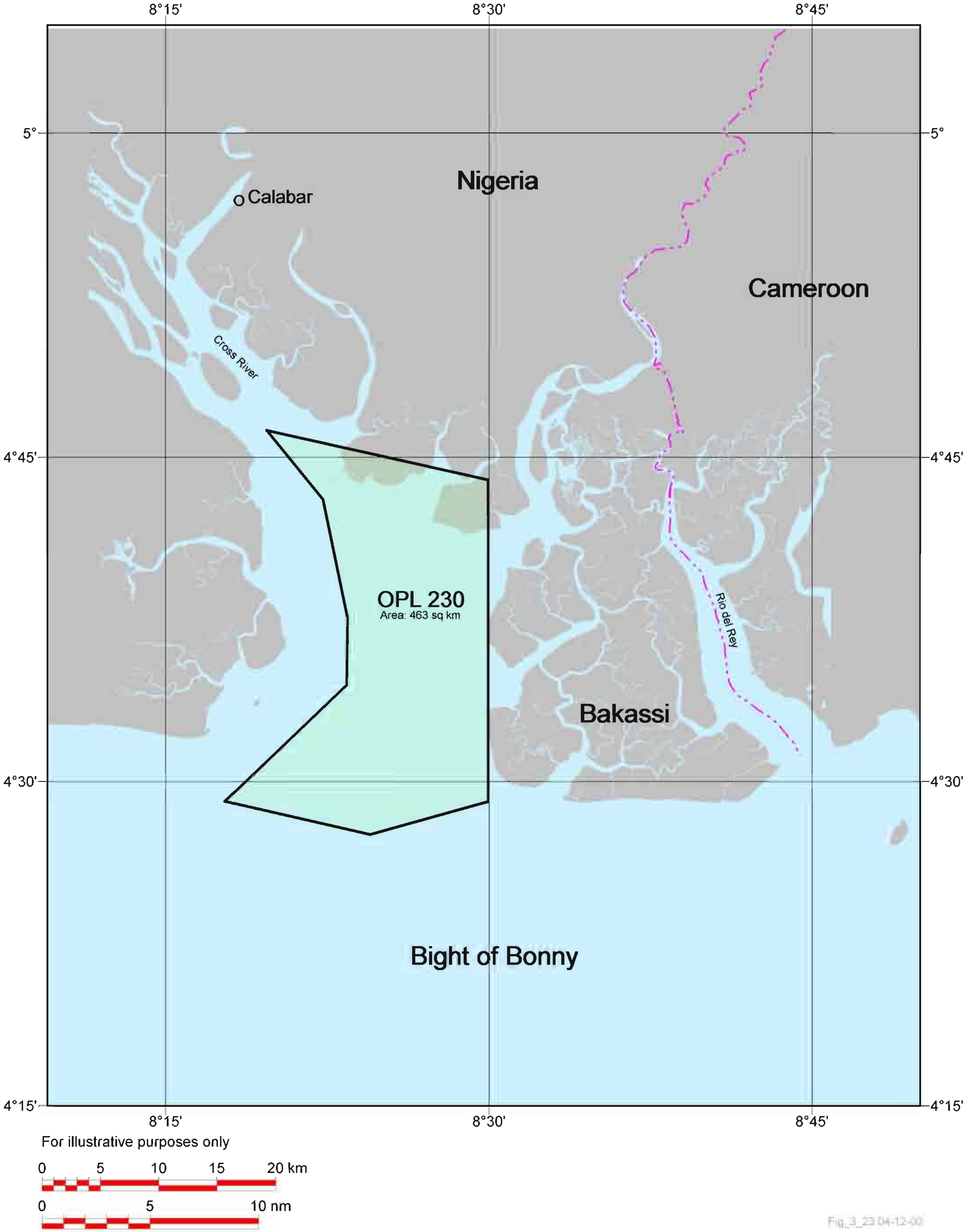
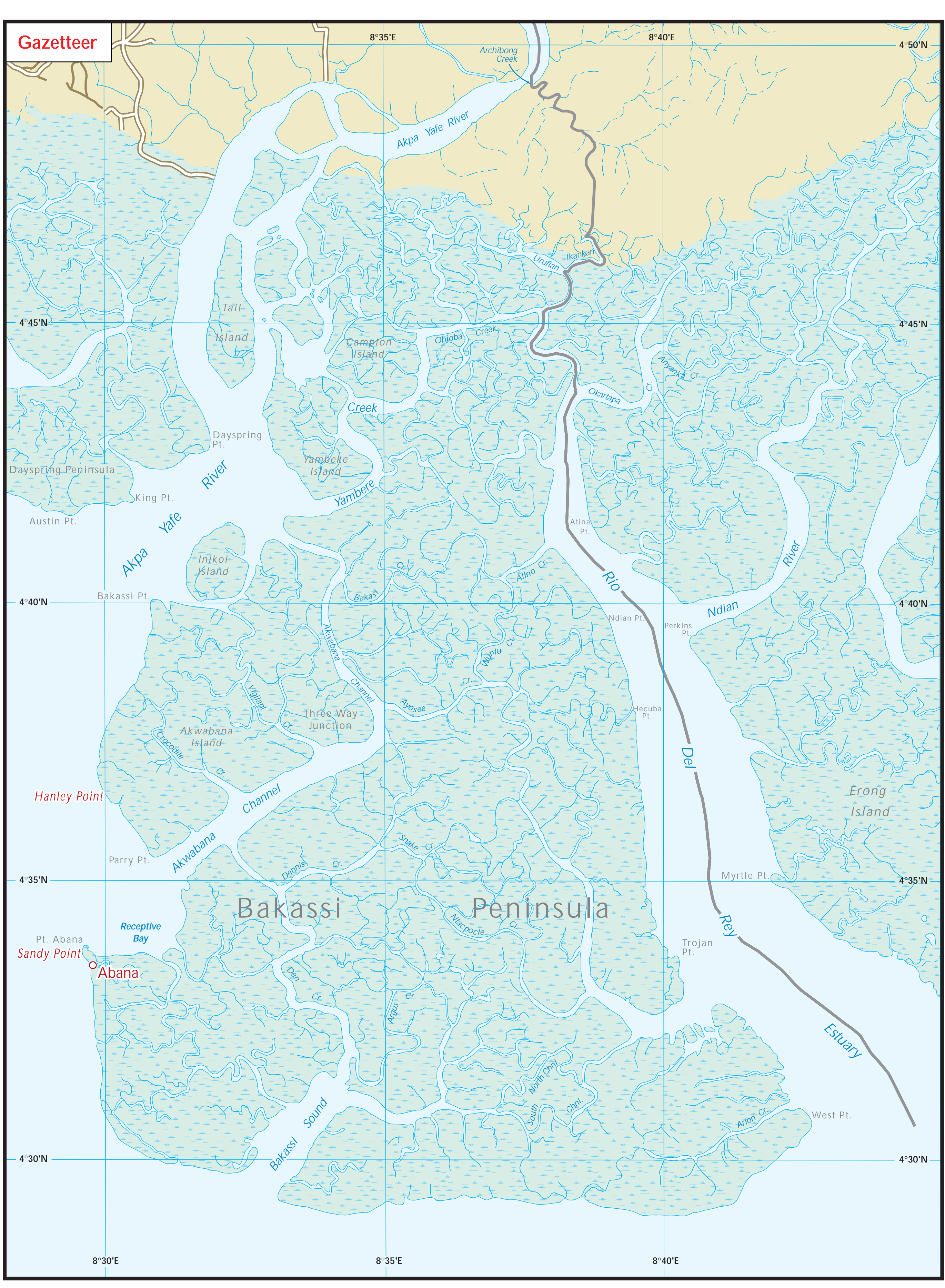


Fig_3_22 5-12-00

Figure 3.23

Extent of OPL 230





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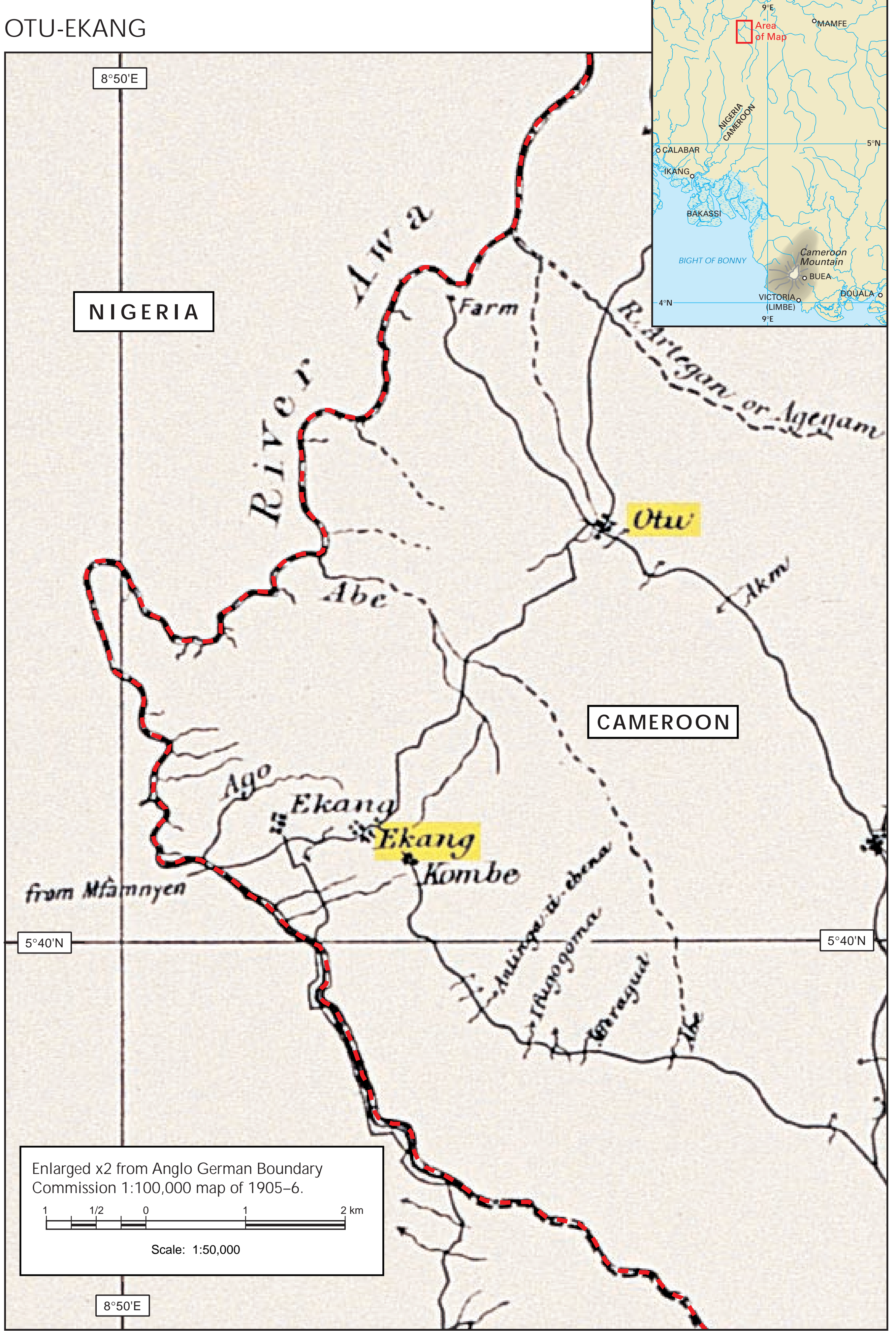

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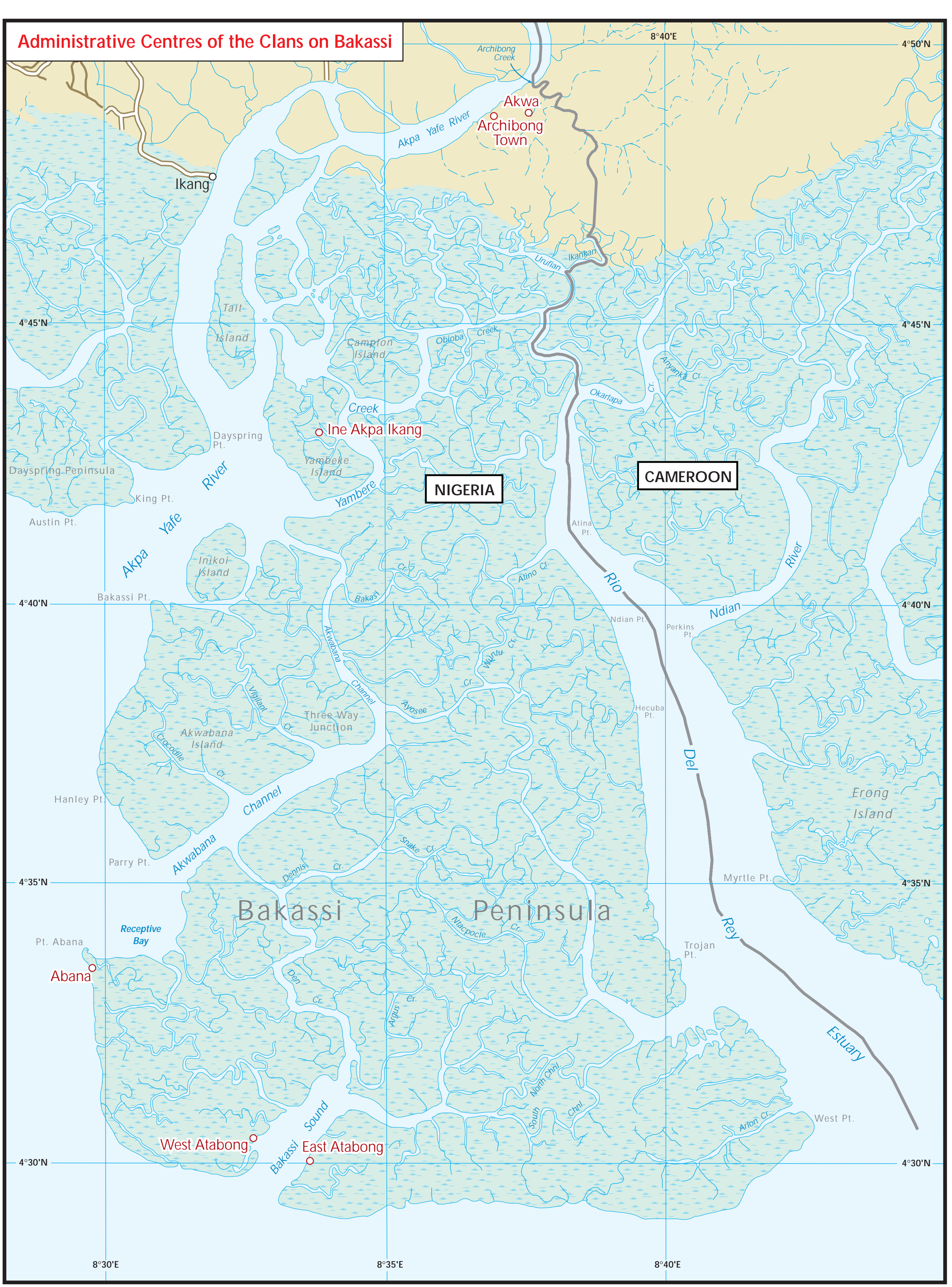

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CONVENTION BETWEEN GREAT BRITAIN AND FRANCE, 14 JUNE 1898

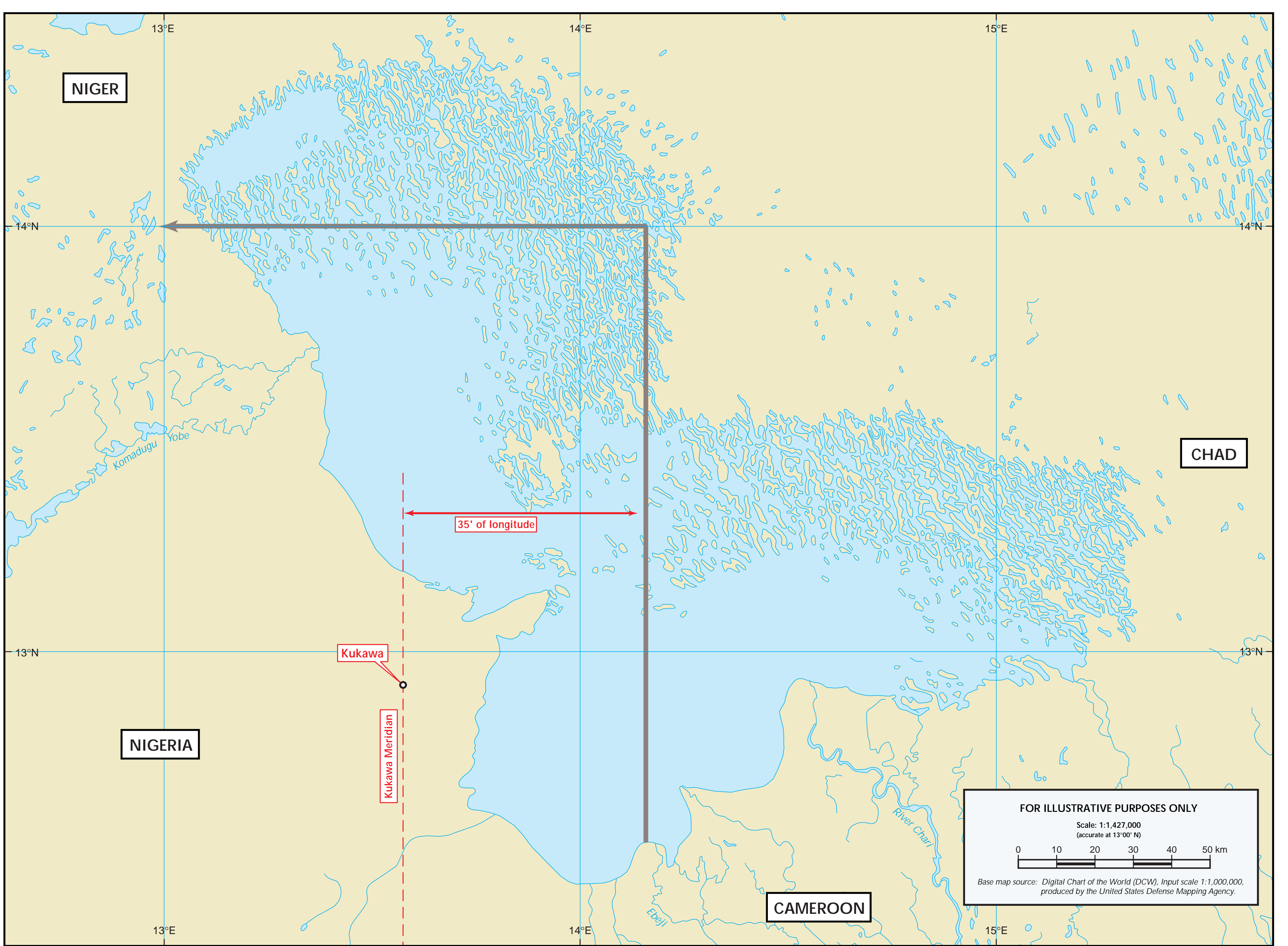


Figure 4.1

ANGLO-FRENCH CONVENTION, 8 APRIL 1904

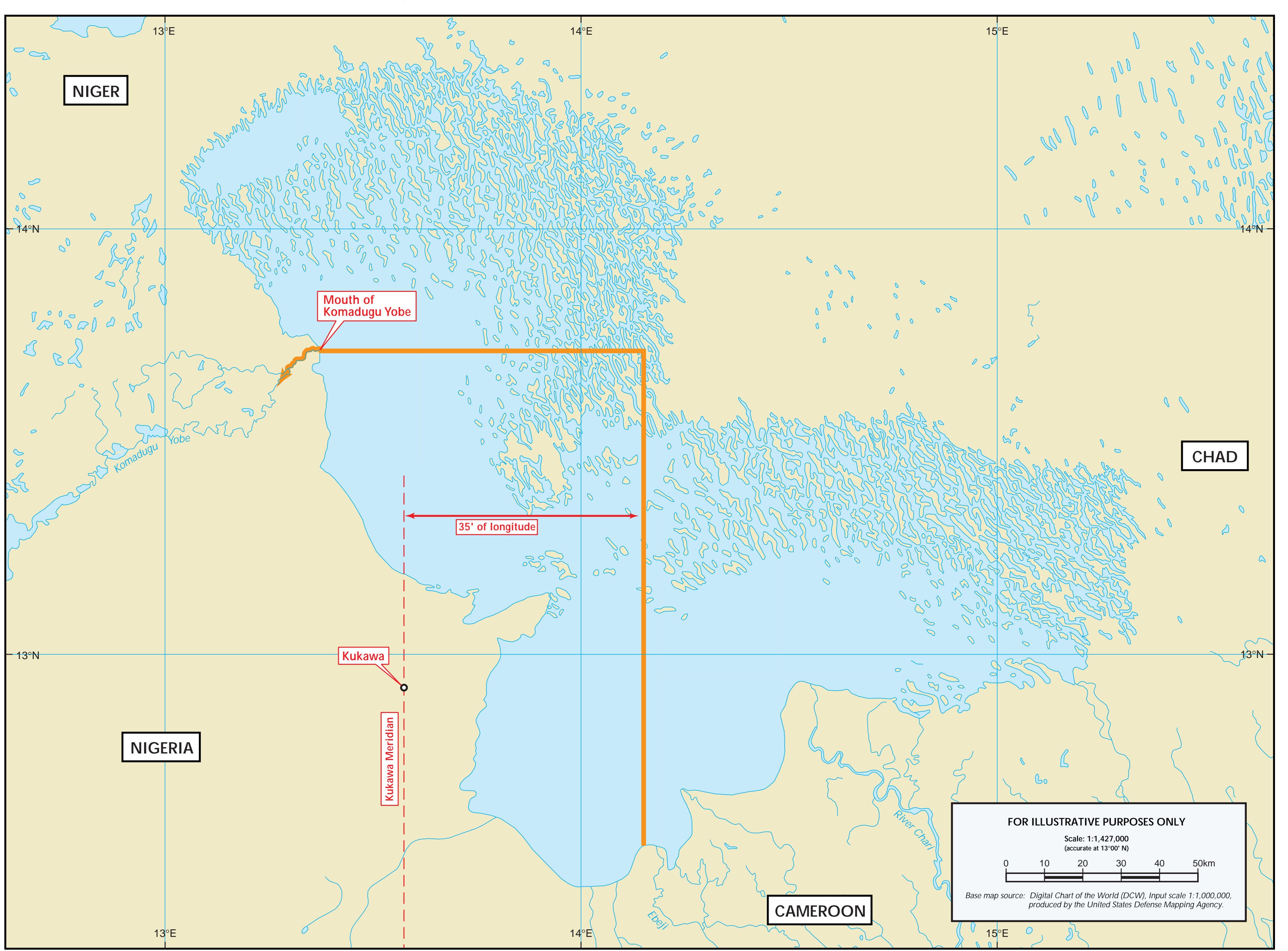


Figure 4.2

AGREEMENT BETWEEN GERMANY AND GREAT BRITAIN, 19 MARCH 1906

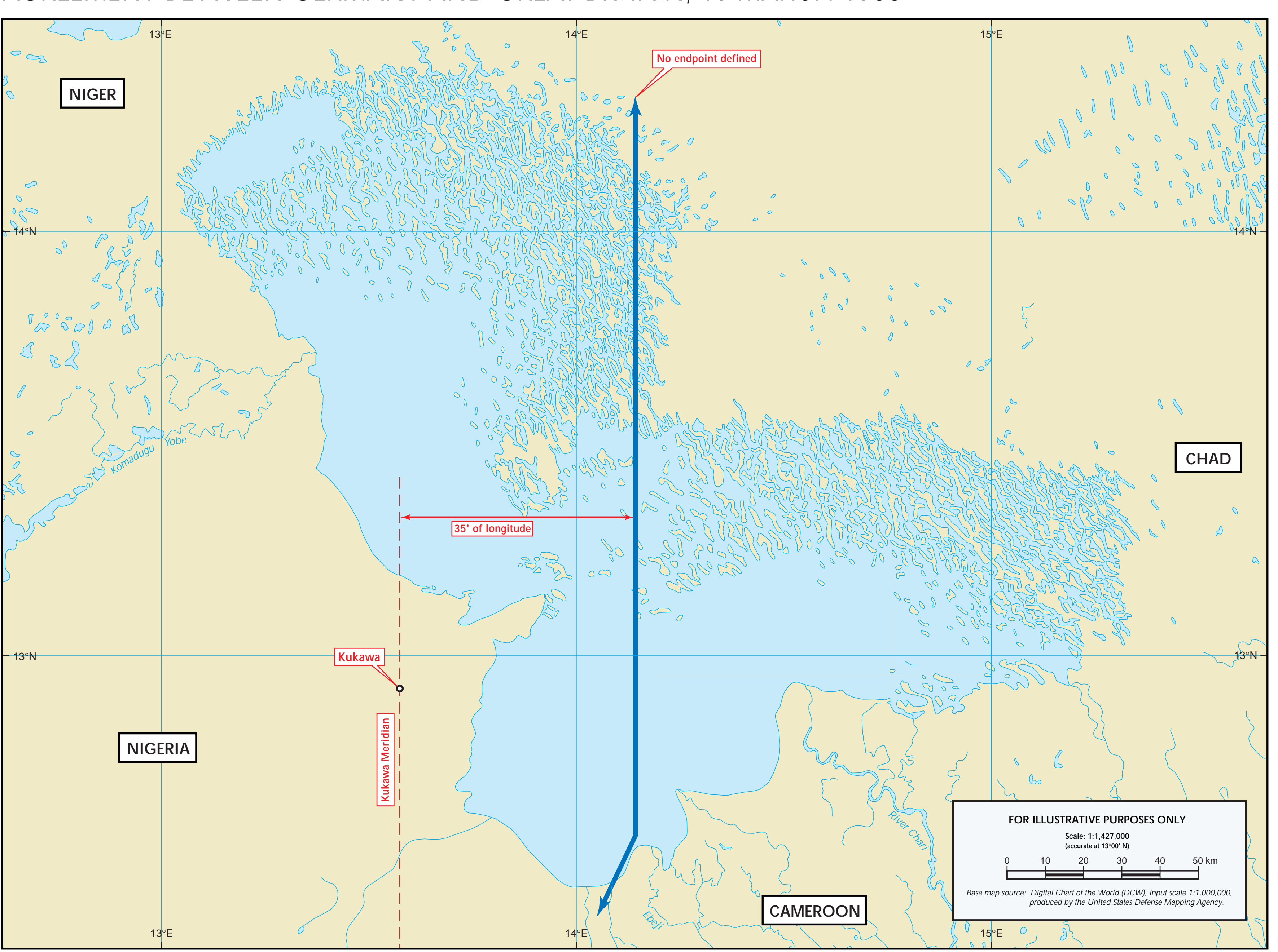


Figure 4.3

CONVENTION BETWEEN THE UNITED KINGDOM AND FRANCE, 29 MAY 1906

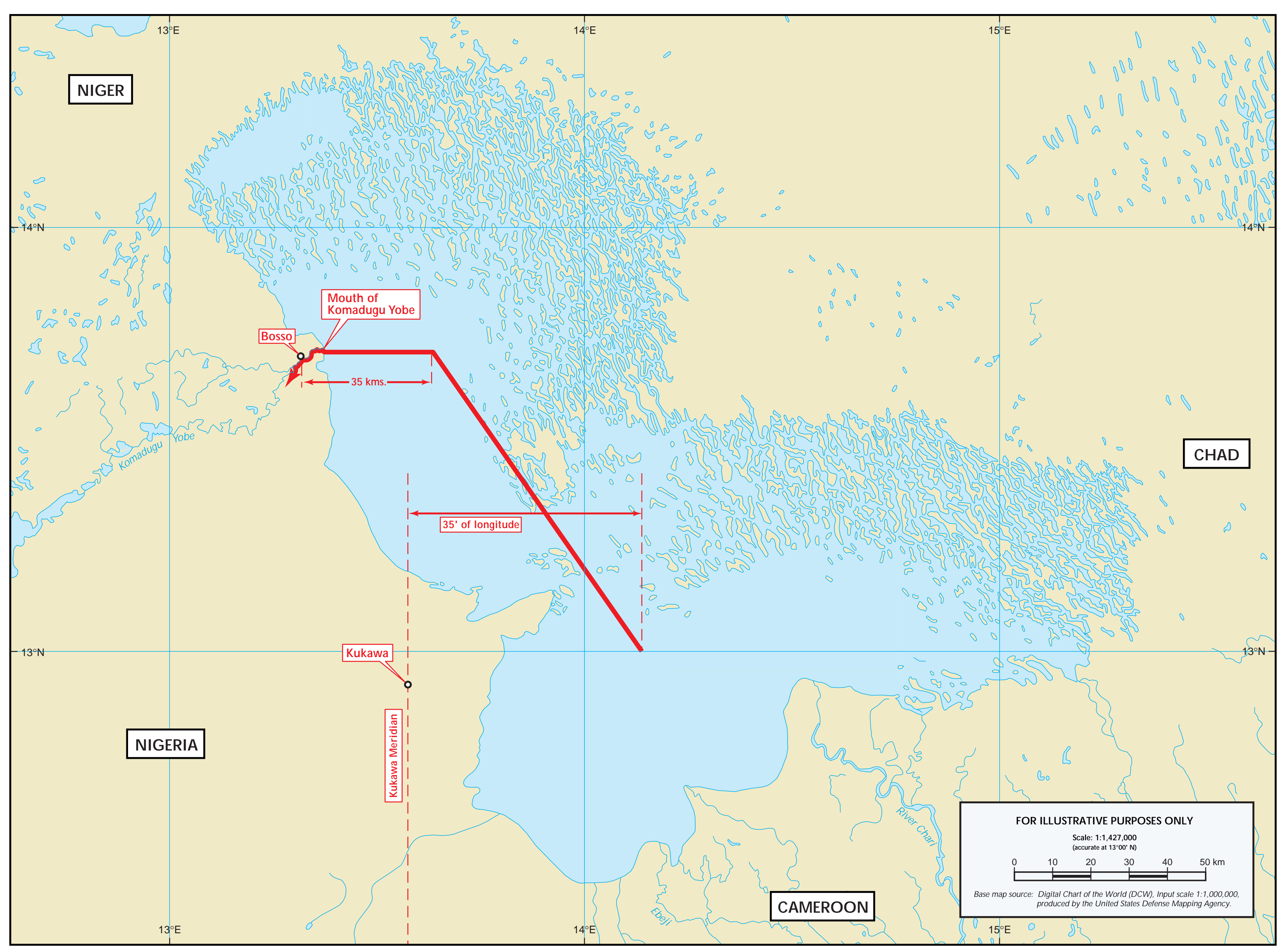


Figure 4.4

FRANCO-GERMAN CONVENTION, 18 APRIL 1908

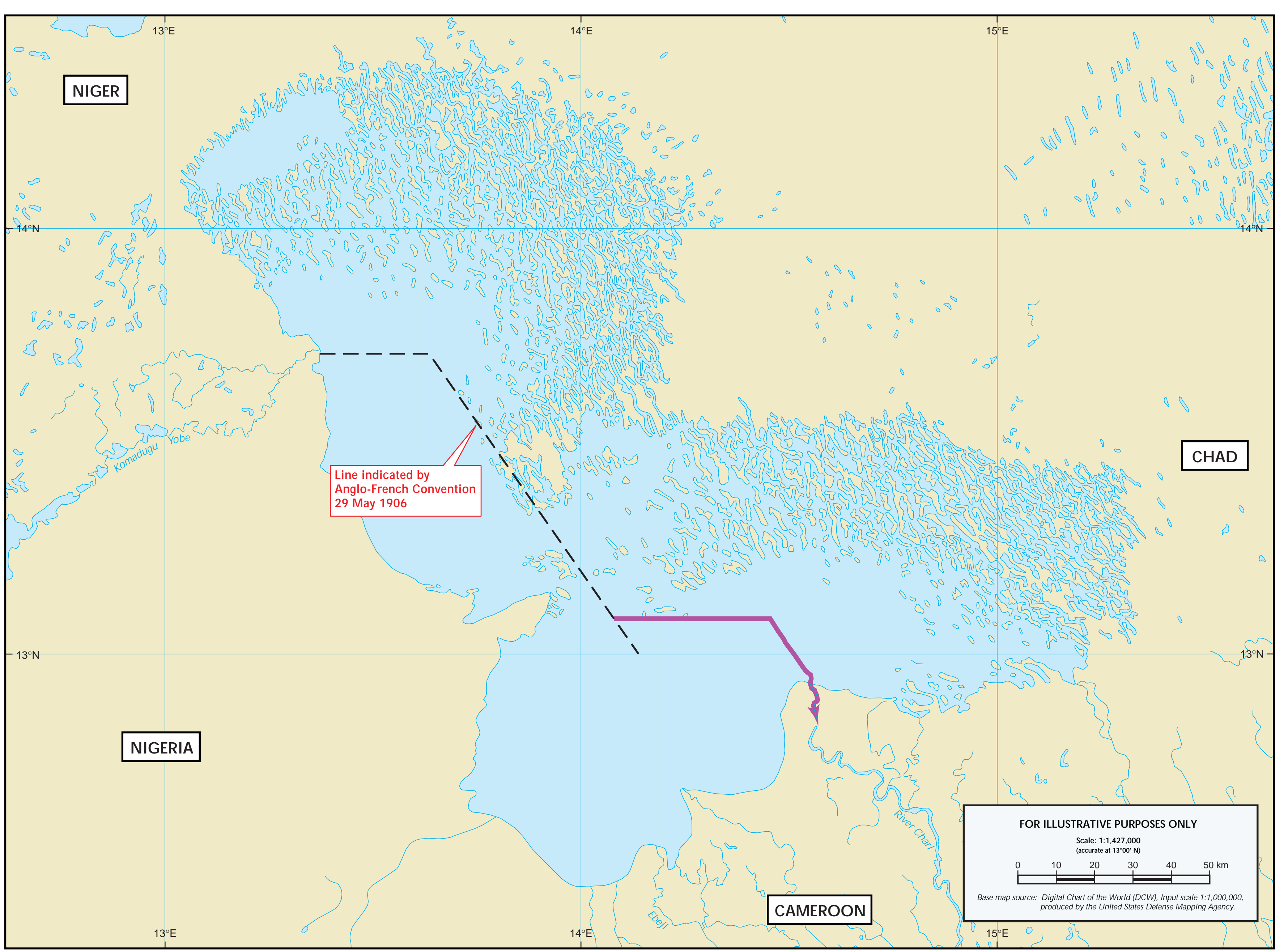


Figure 4.5

PROTOCOL DATED 19 FEBRUARY 1910 BETWEEN THE UNITED KINGDOM AND FRANCE

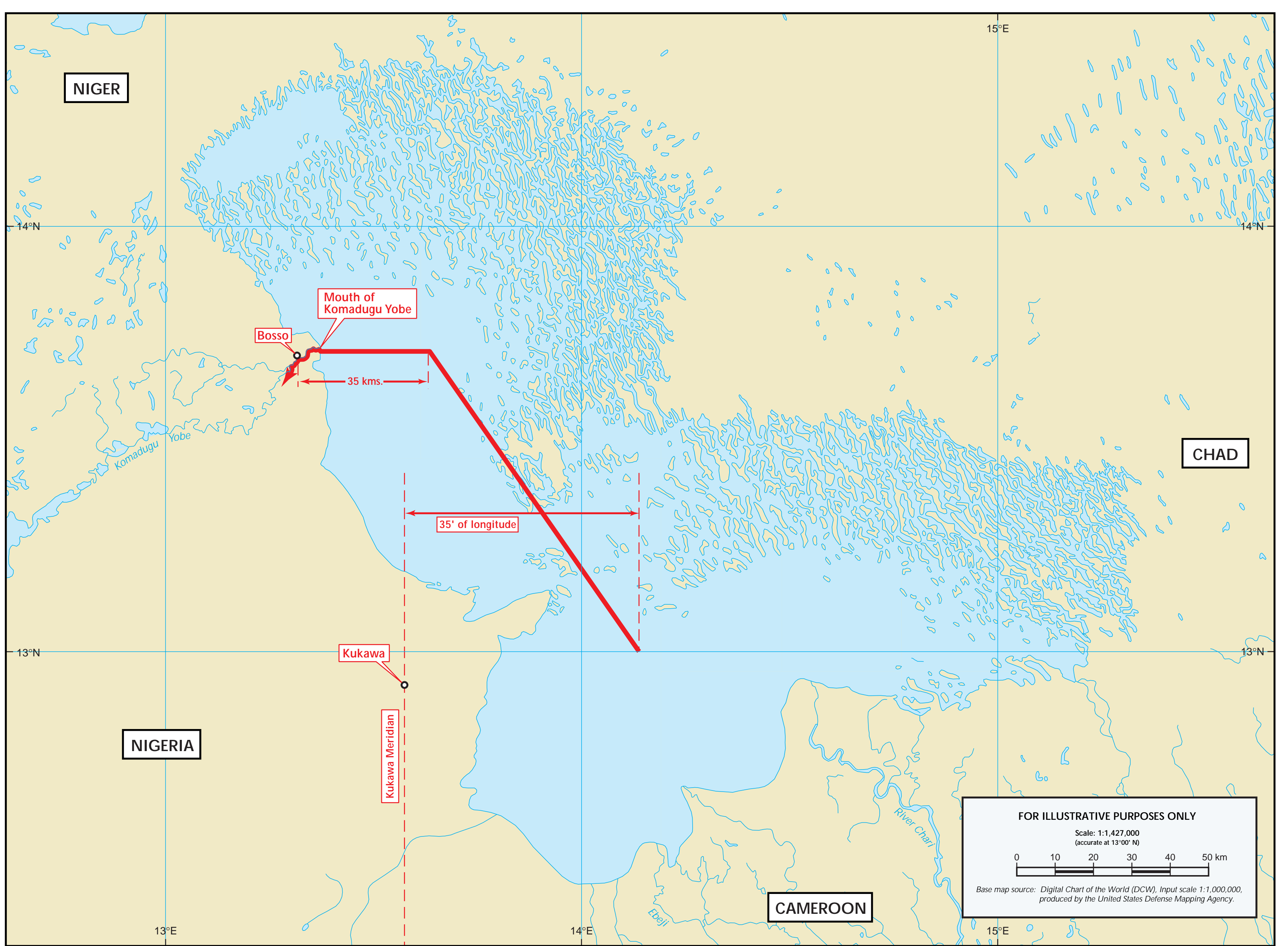


Figure 4.6

MILNER/SIMON DECLARATION, 10 JULY 1919

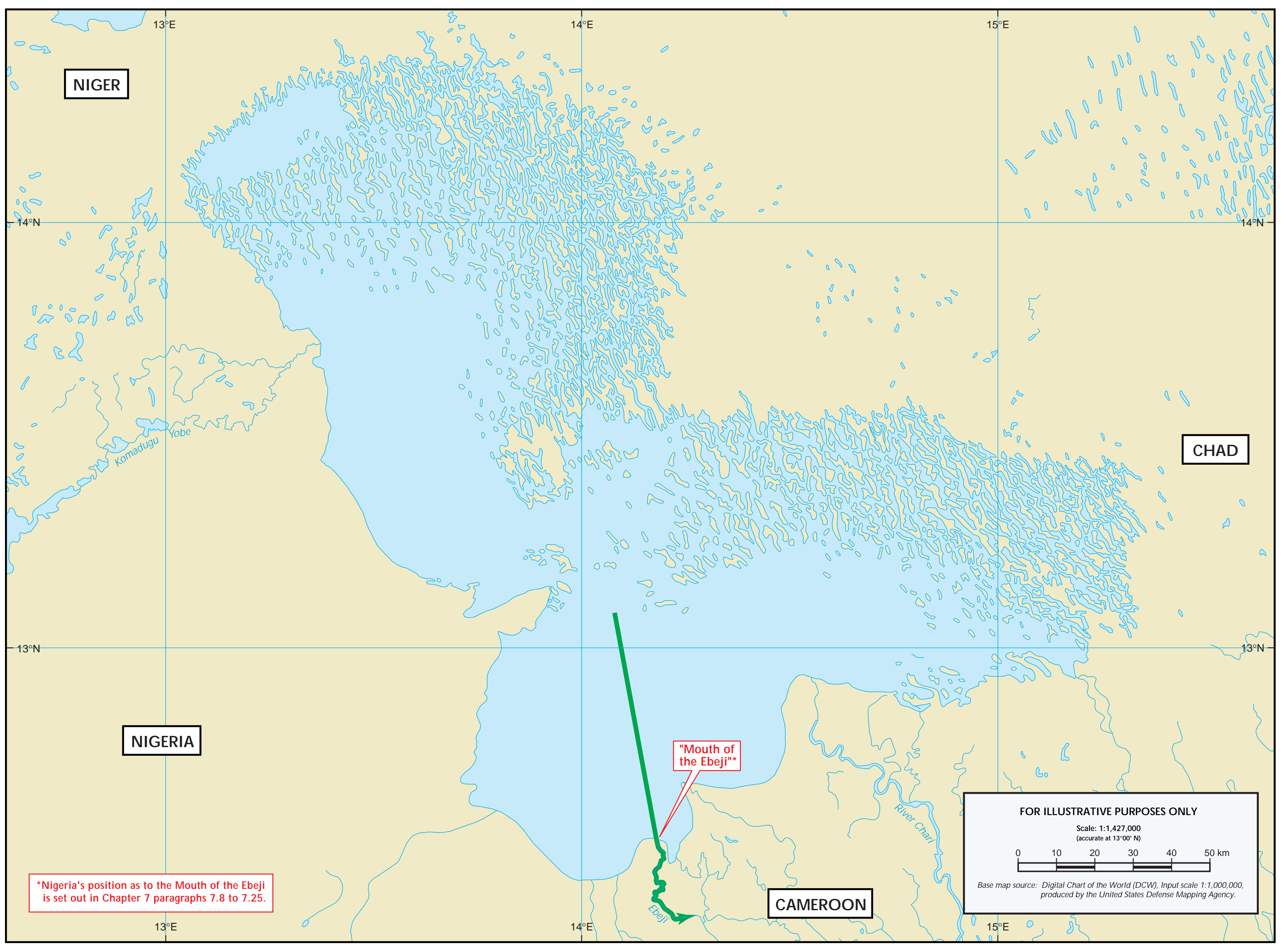


Figure 4.7

LAKE CHAD TREATY LINES 1898–1919

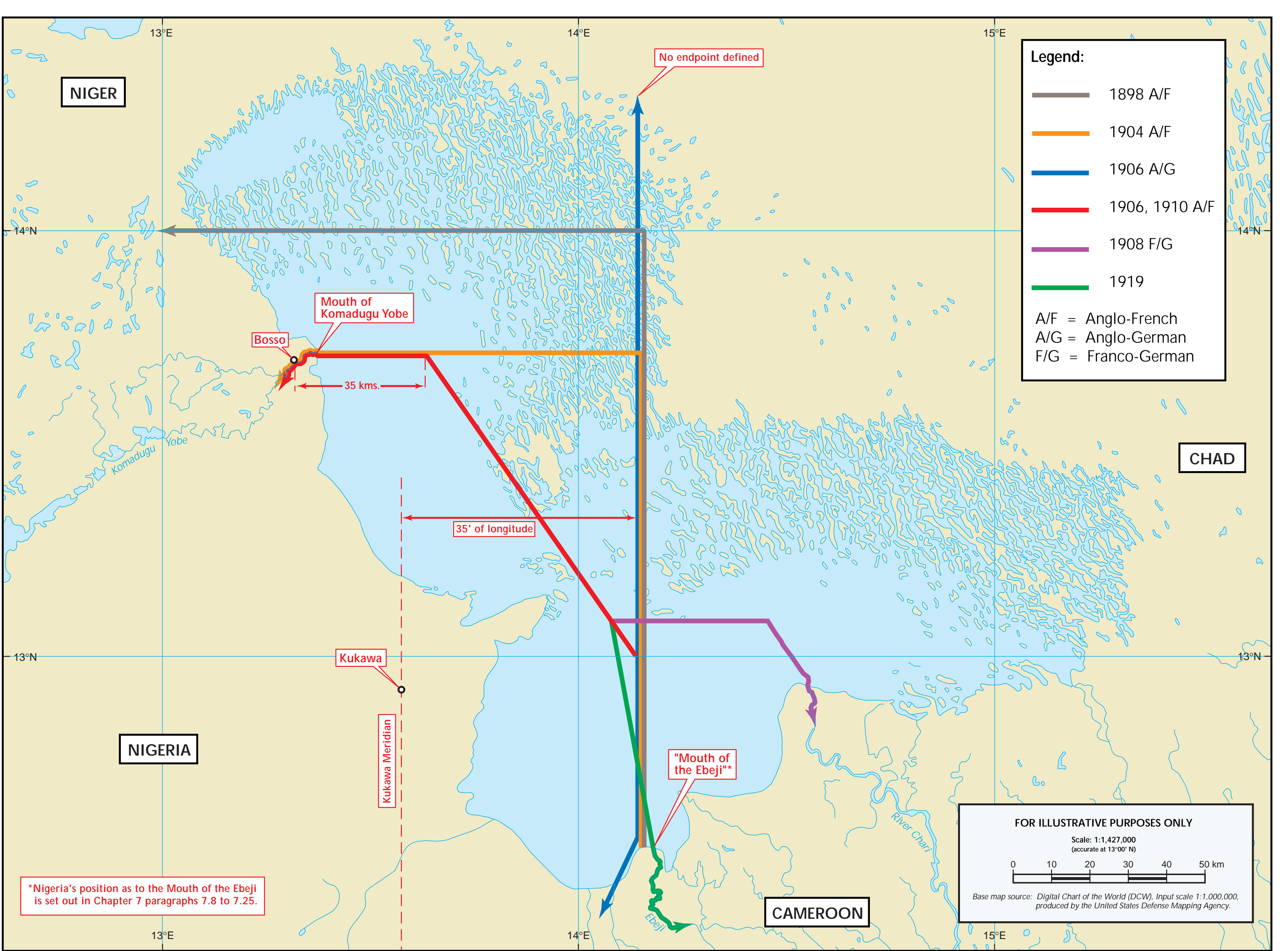


Figure 4.8

ANGLO-FRENCH EXCHANGE OF NOTES, 9 JANUARY 1931

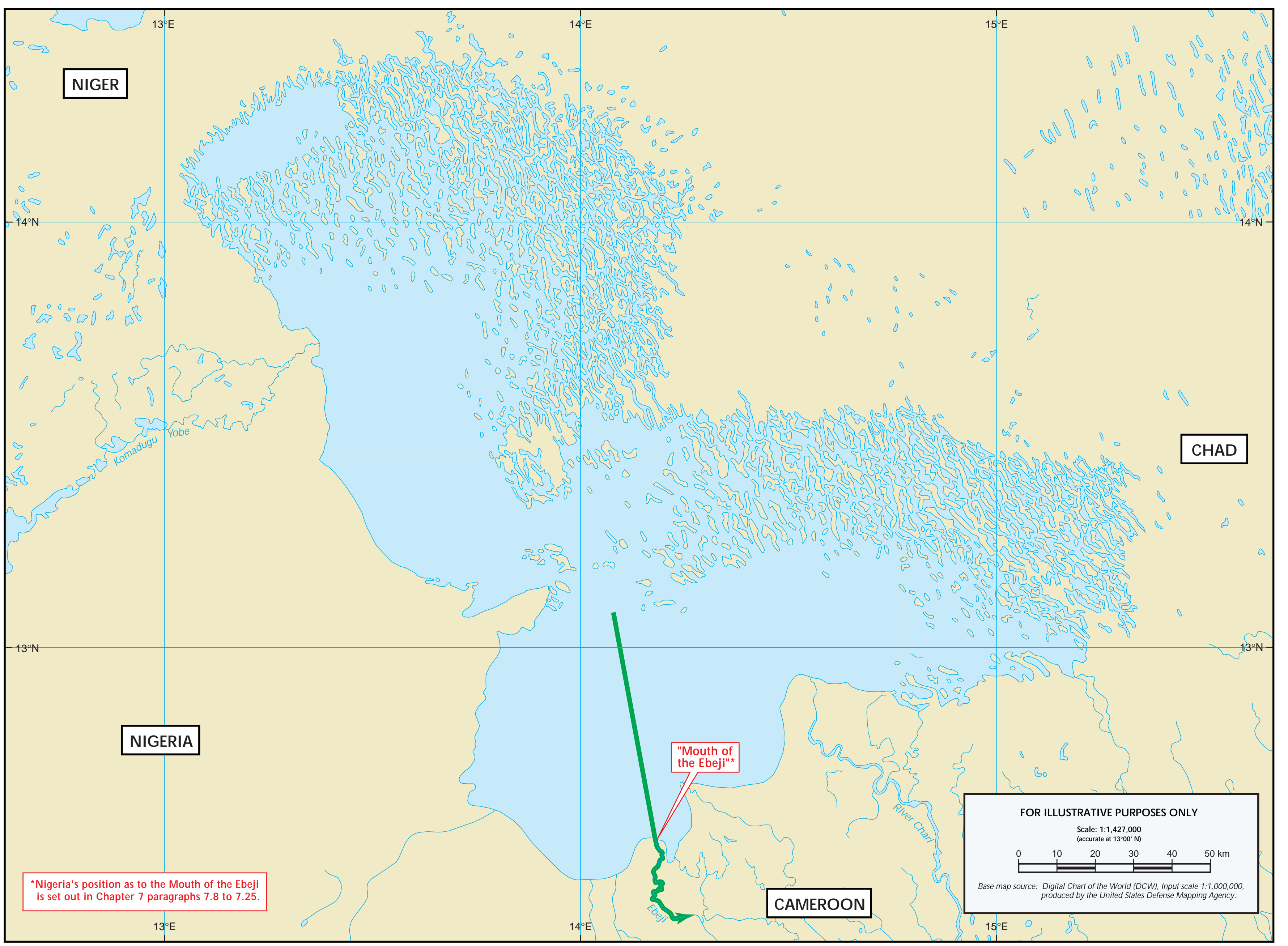
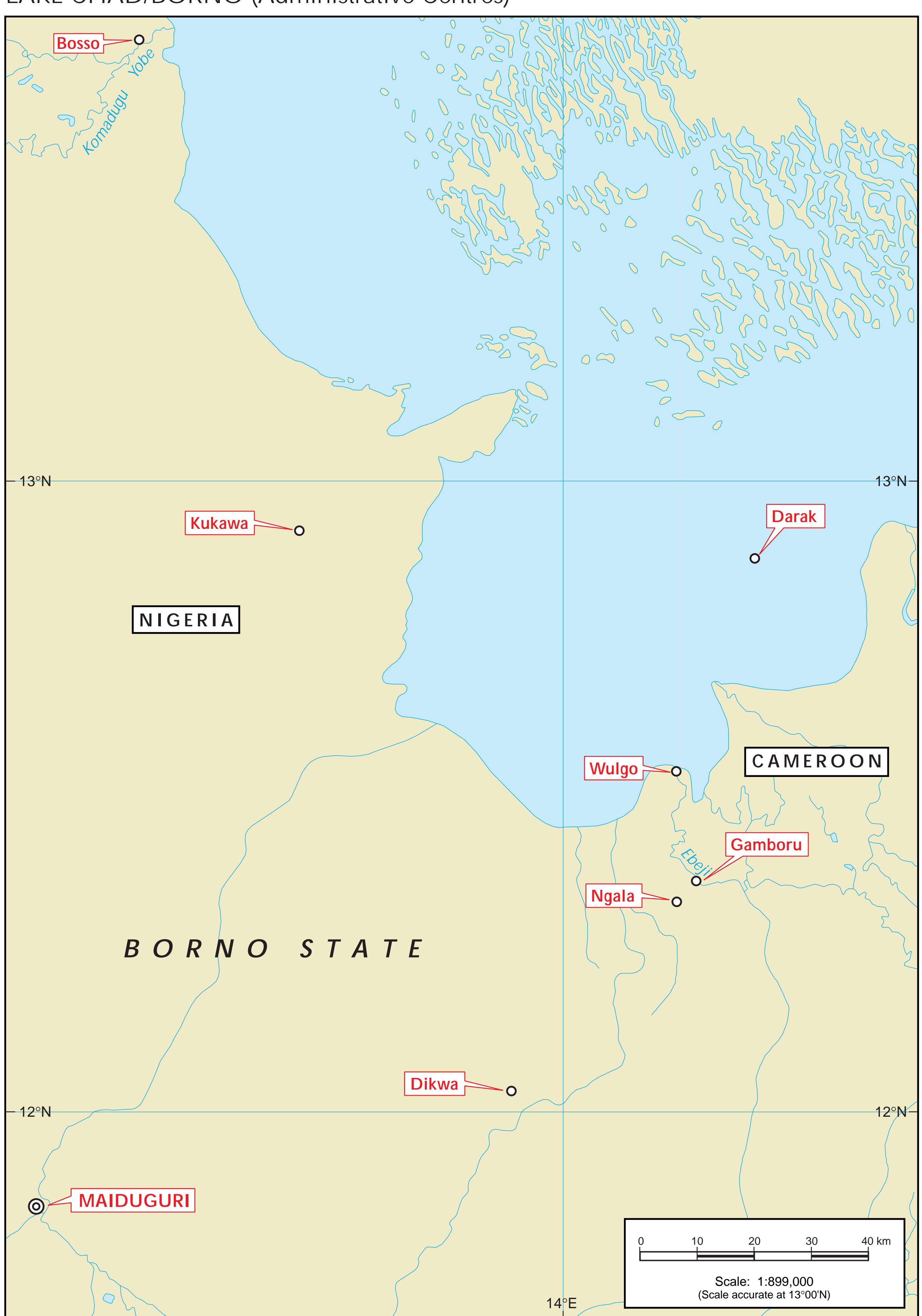


Figure 4.9

Figure 5.1

LAKE CHAD/BORNO (Administrative Centres)



For illustrative purposes only.

NIGERIA'S CLAIM IN LAKE CHAD

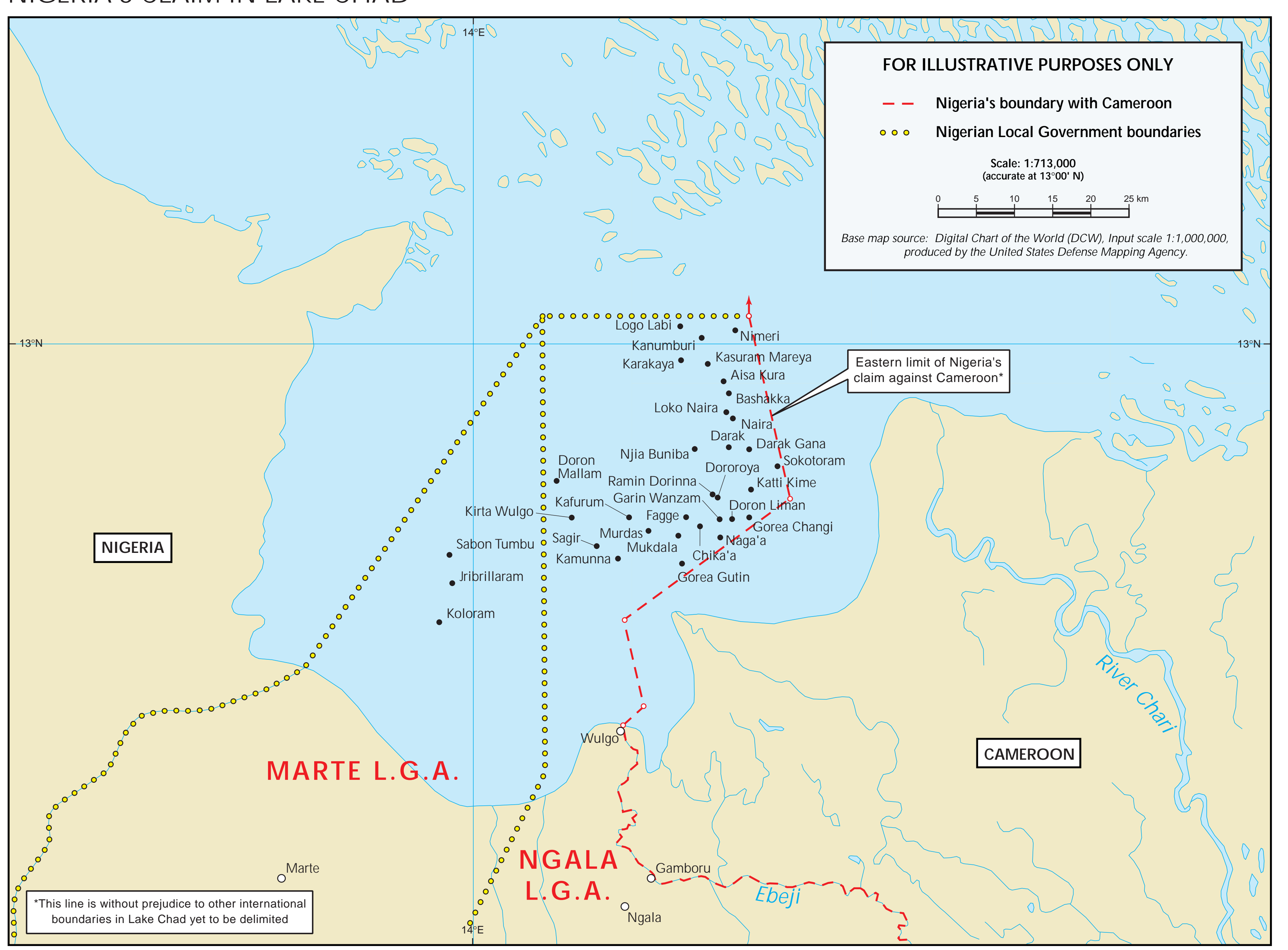


Figure 5.2

NIGERIA'S CLAIM IN LAKE CHAD

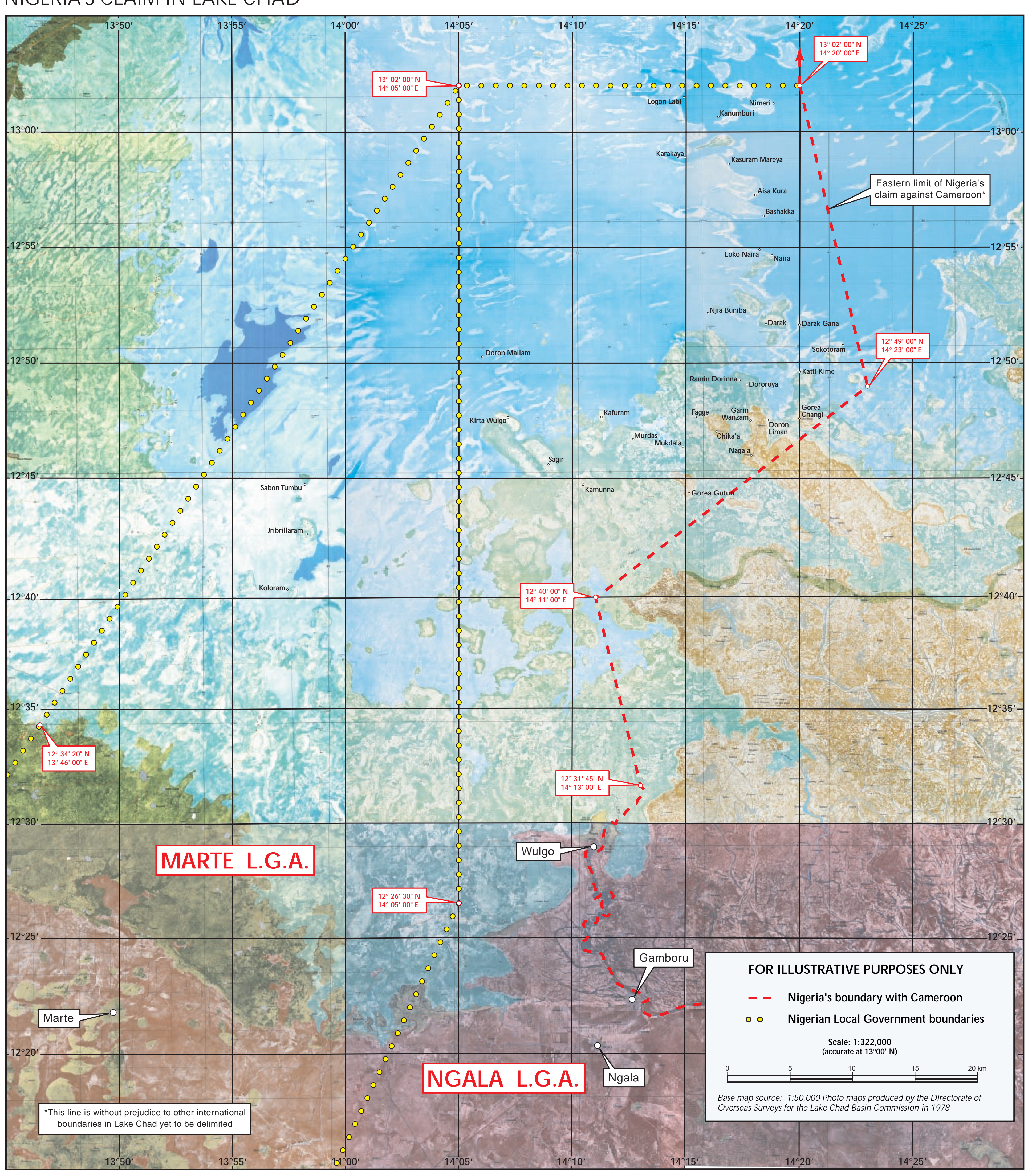
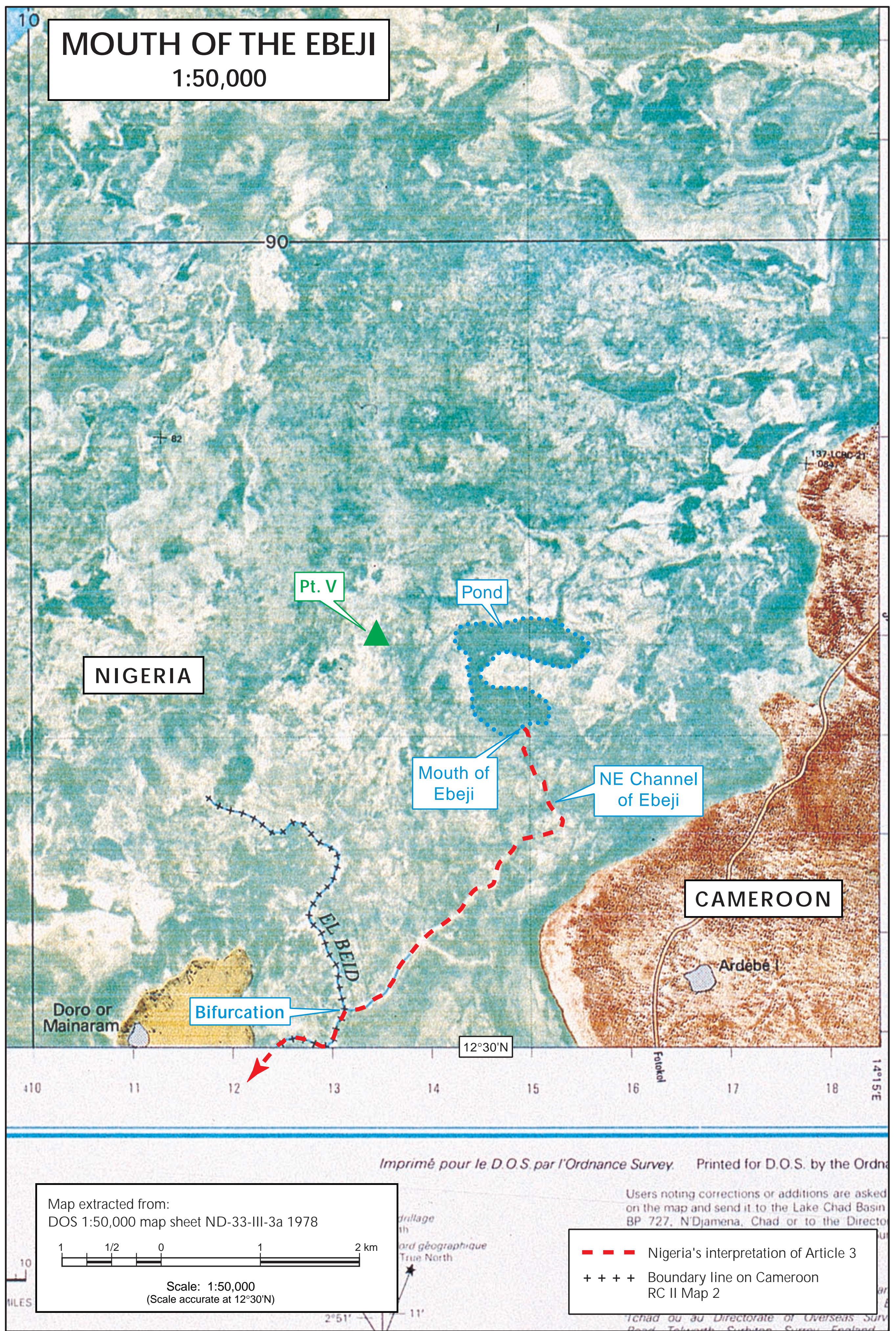


Figure 5.3



For illustrative purposes only

Figure 7.2

MOUTH OF THE EBEJI

Mosaic constructed from air photographs
137-LCBC-13 022-3 (May 1973) and
137-LCBC-21 082-083 (June 1973)

1 1/2 0 1 2 km

Scale: 1:40,000

N

AREA ENLARGED ON RIGHT

NIGERIA

CAMEROON

Pt. V

Pond

Mouth of Ebeji

NW Channel of Ebeji

NE Channel of Ebeji

Bifurcation

1/4 1/8 0 1/4 1/2 km

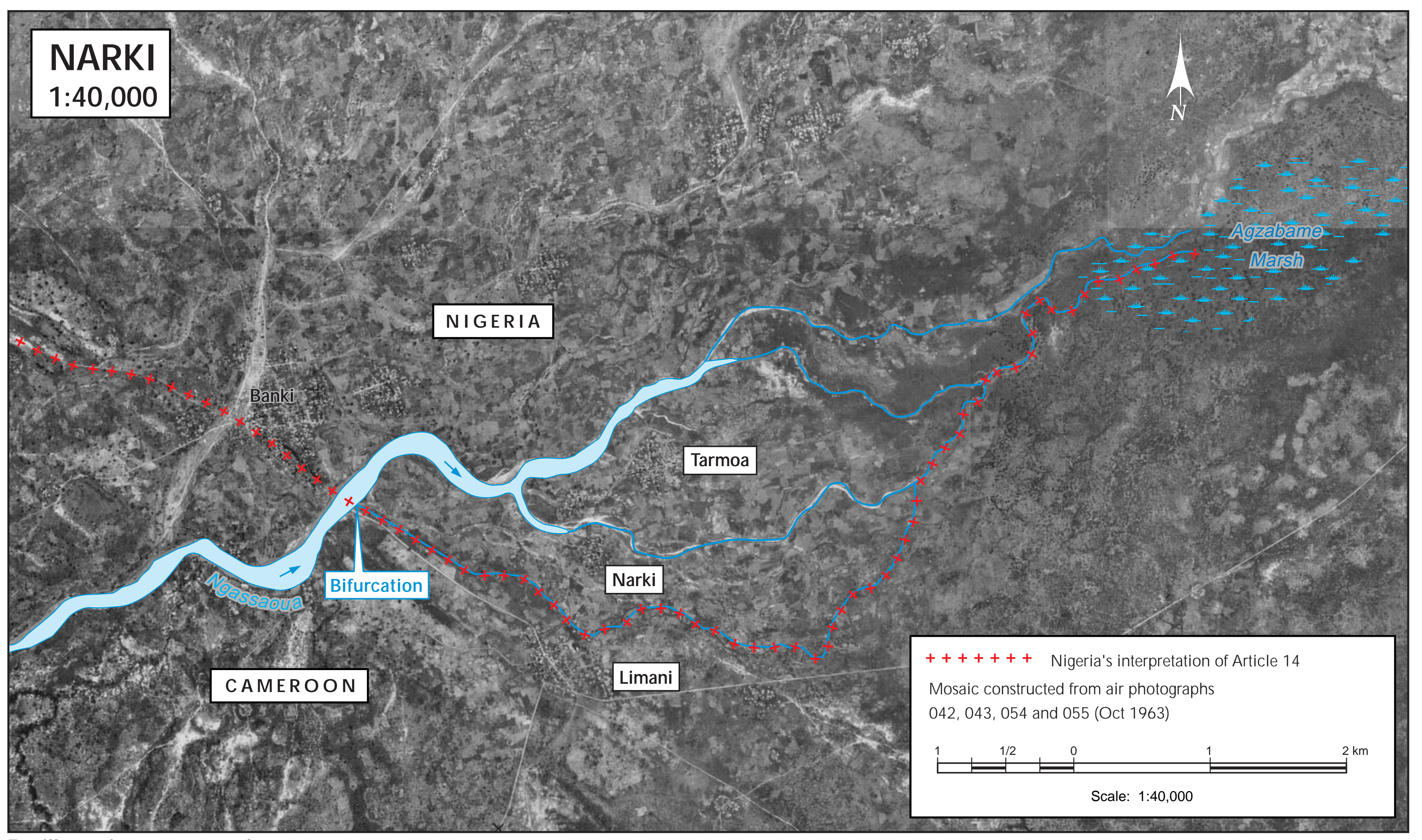
Scale: 1:11,000

Pond

Mouth of Ebeji

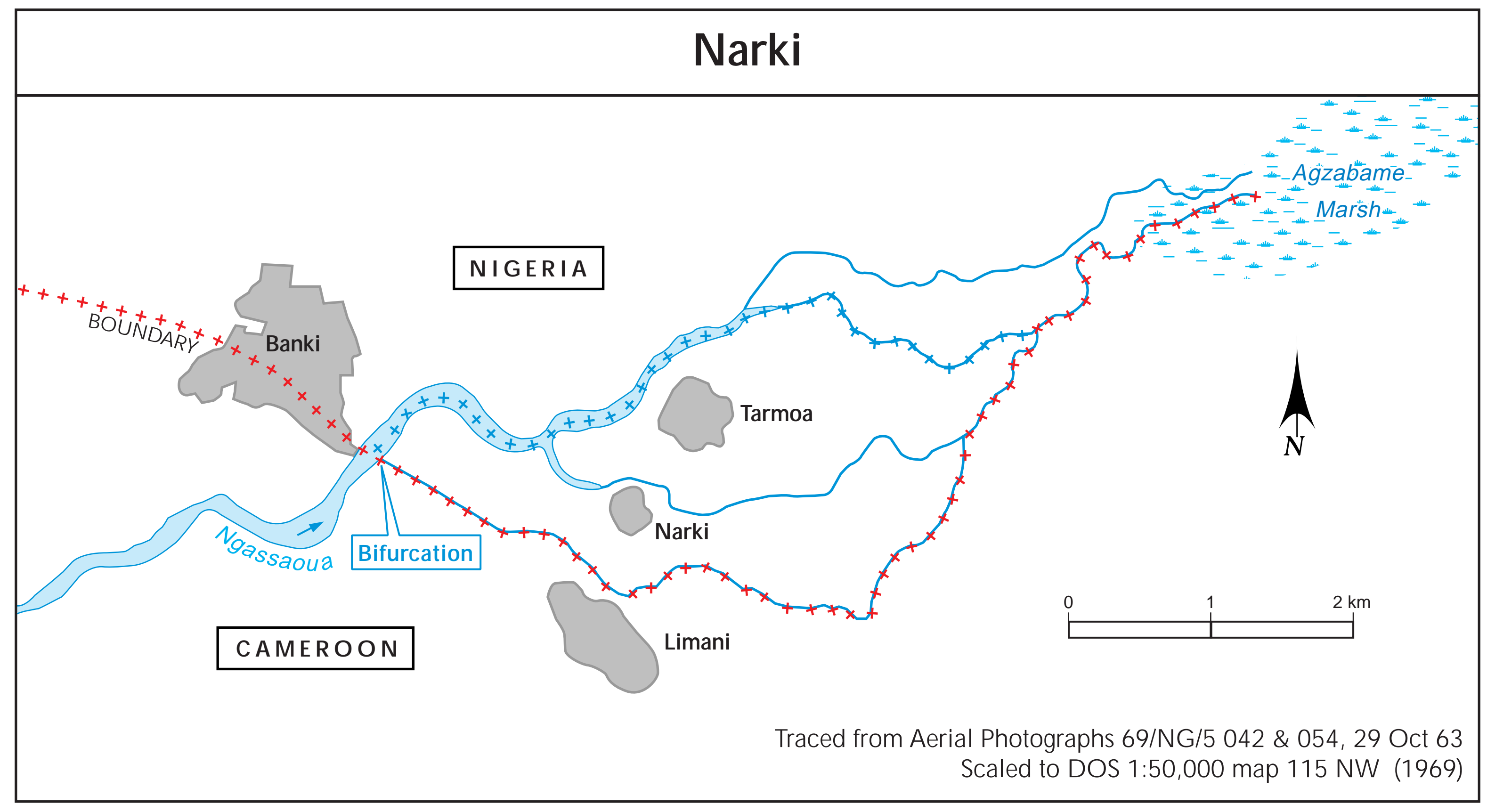
NE Channel of Ebeji

For illustrative purposes only



For illustrative purposes only

Figure 7.3



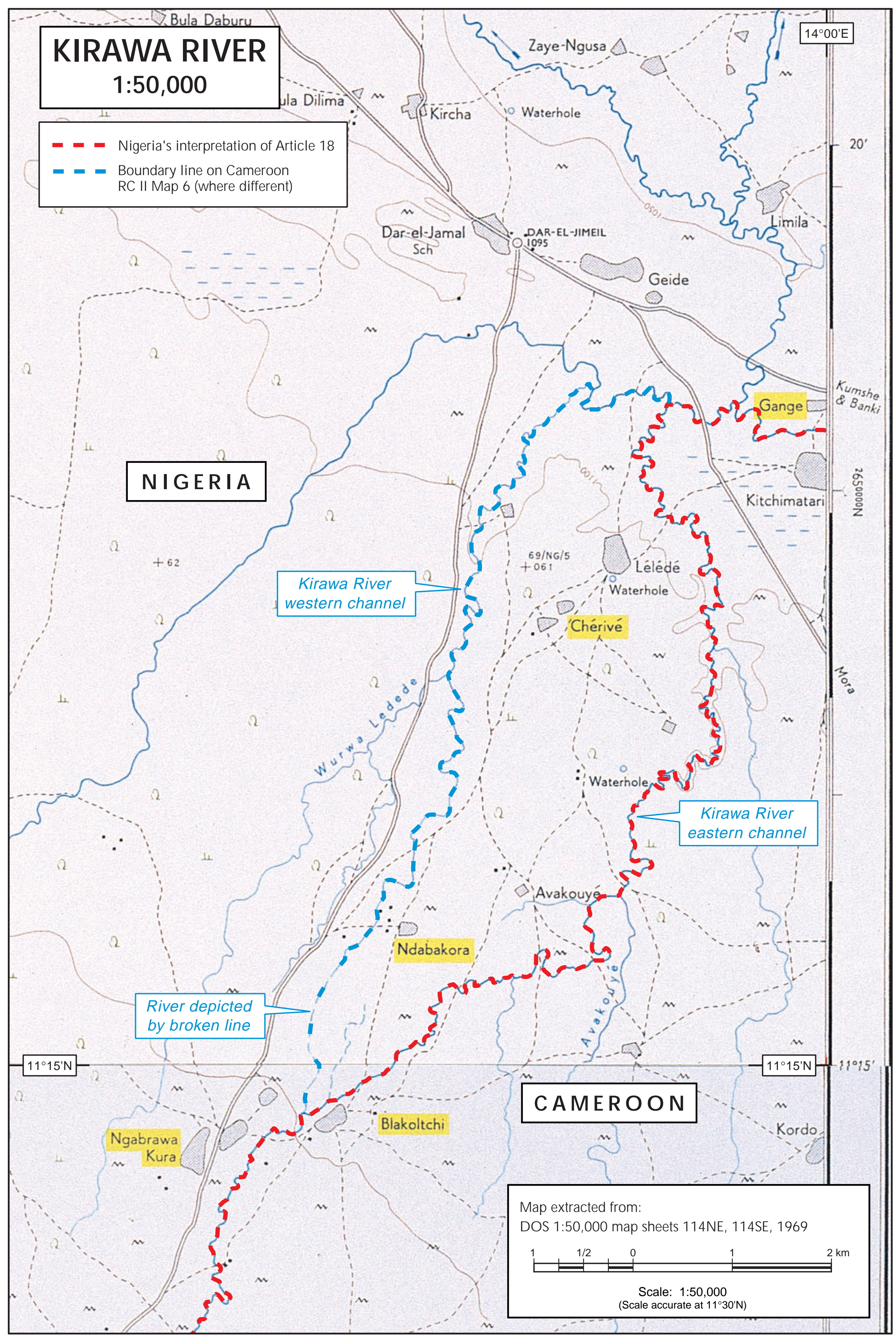
+ + + + + + + Nigeria's interpretation of Article 14

+ + + + + + + Boundary line on Cameroon RC II Map 5 (where different)

For illustrative purposes only

Figure 7.4

Figure 7.5



For illustrative purposes only

KIRAWA RIVER

Gange

N

NIGERIA

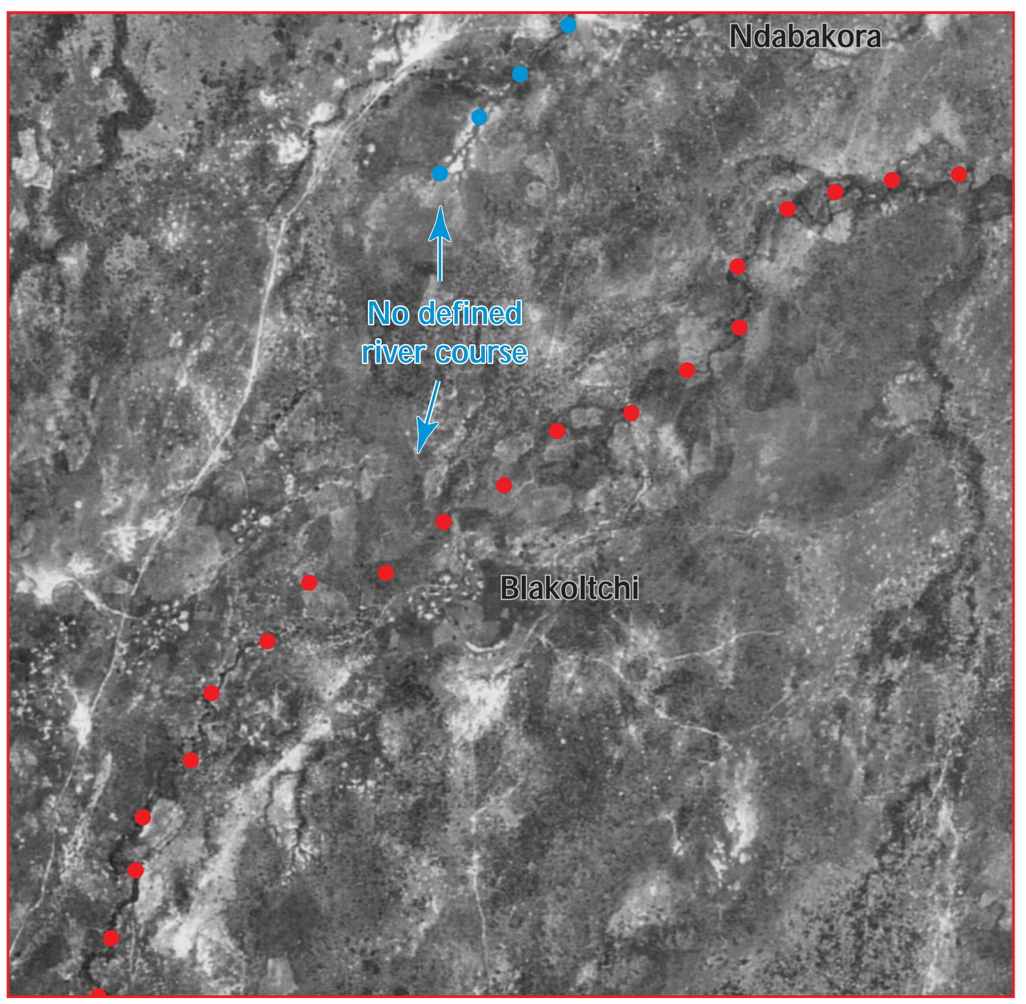
Ndabakora

Blakoltchi

Ngabrawa Kura

CAMEROON

AREA ENLARGED ON RIGHT



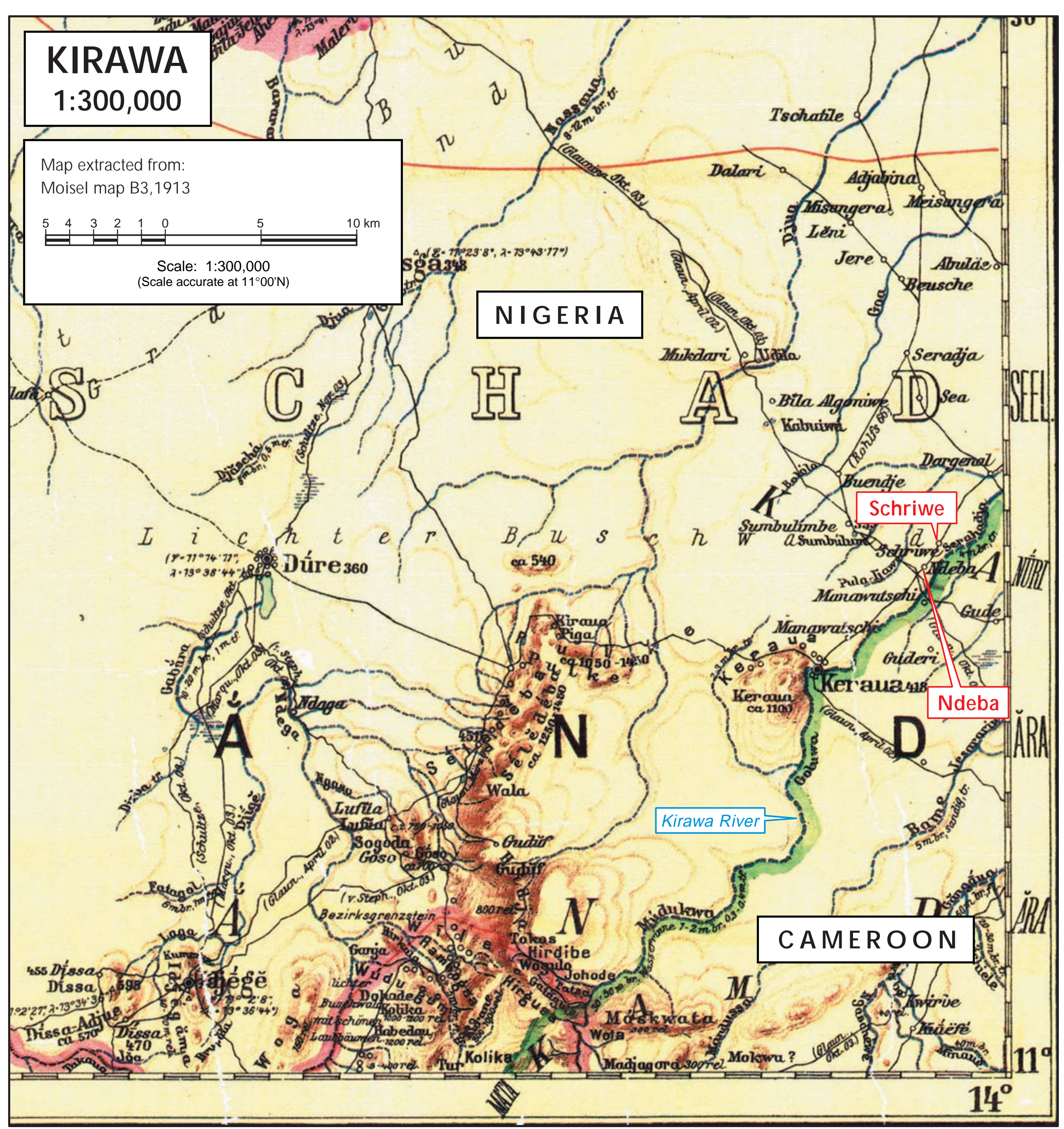
For illustrative purposes only

Course of the eastern channel

Course of the western channel

Mosaic constructed from aerial photographs 69 NG 6 057 and 055, 30 October1963

Figure 7.6



For illustrative purposes only

THE KOHOM RIVER
1:50,000

13°45'E
11°00'N

Heights in feet
Heights in metres

KOLIKA CLAN
EXPREDE CLAN
TURU CLAN
HORESSA CLAN
DEGBAYWA
KOHUM CLAN
Kirawa
Djeleve
Uledda
GPS 10
MM154 Matakam
Roua
Kohom
Kraoua
Confluence of Kohom and Kirawa
NIGERIA
Source of Kohom River
Cameroon Road
Bogaza
Ngossi
Mt. Ngossi
Ridoua
CAMEROON
Rouassa
Rtaoua

Nigeria's interpretation of Articles 19 & 20
Boundary line on Cameroon RC II Map 6 (where different)

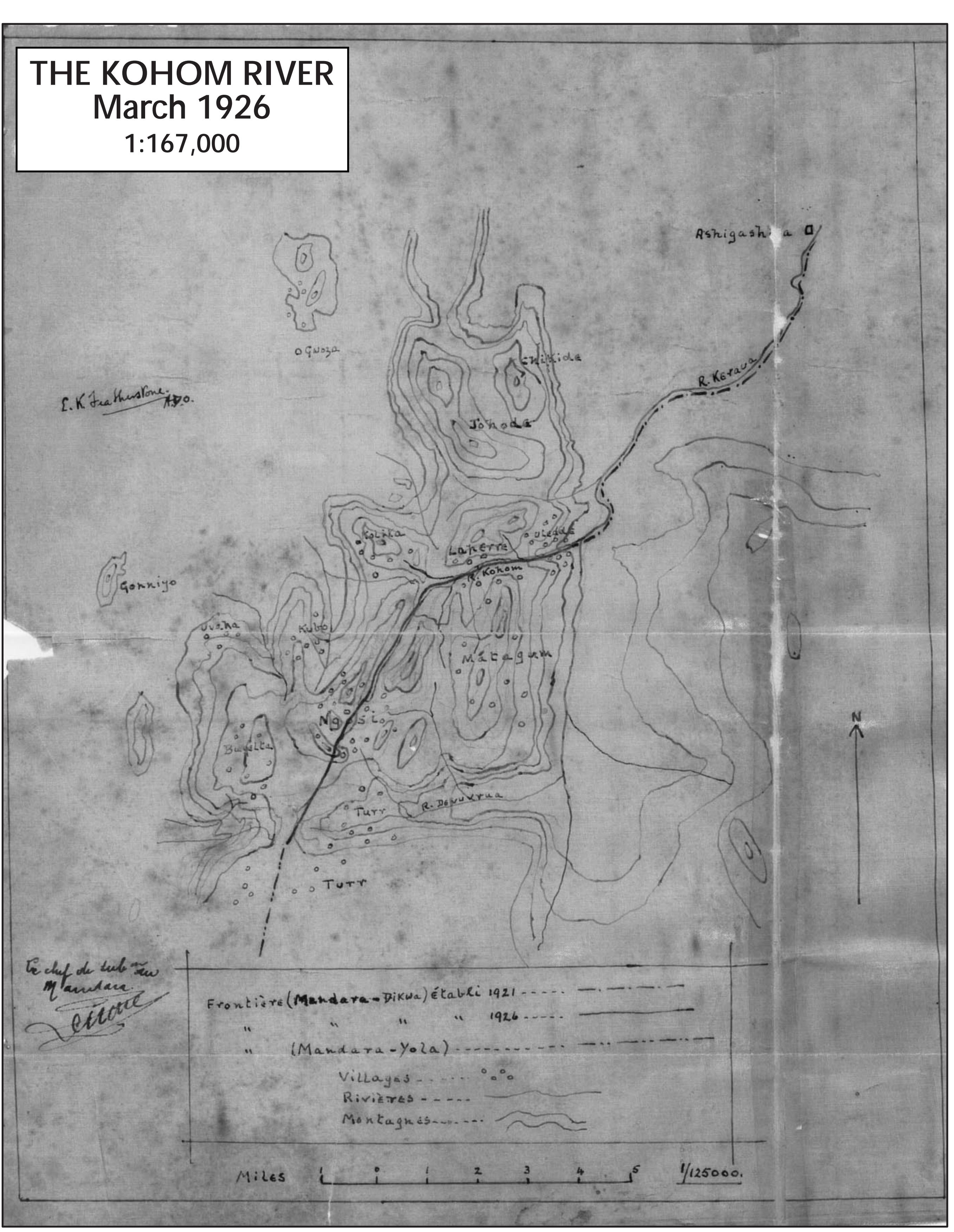
Maps used in the construction of this extract:
DOS 1:50,000 sheets 114SW and 114SE
Cameroon IGN 1:50,000 sheet NC-33-XIV-4c-d (south of 11°N)

1 1/2 0 1 2 km

Scale: 1:50,000
(Scale accurate at 11°00'N)

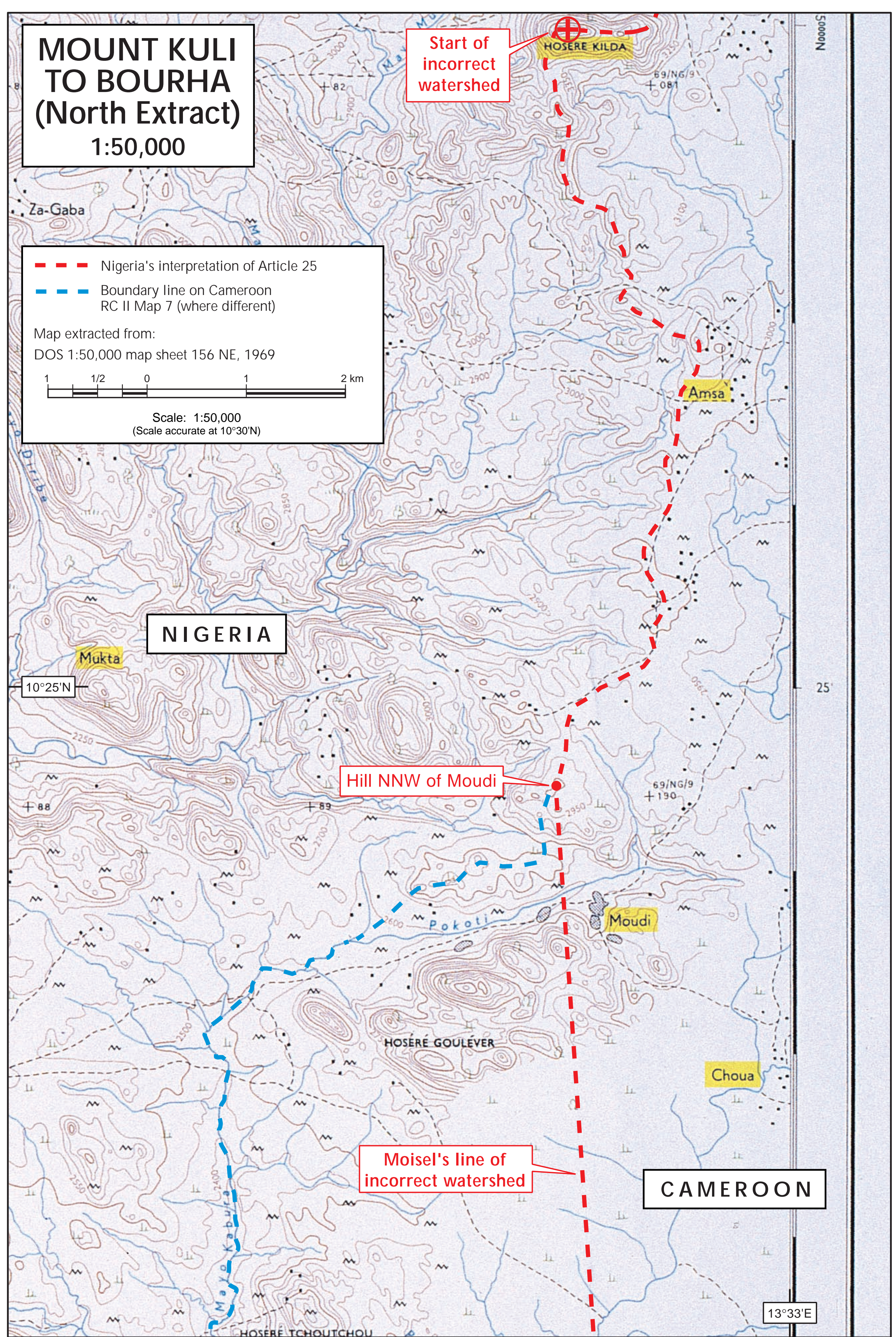
For illustrative purposes only

Figure 7.8



75% reduction from the original document

For illustrative purposes only



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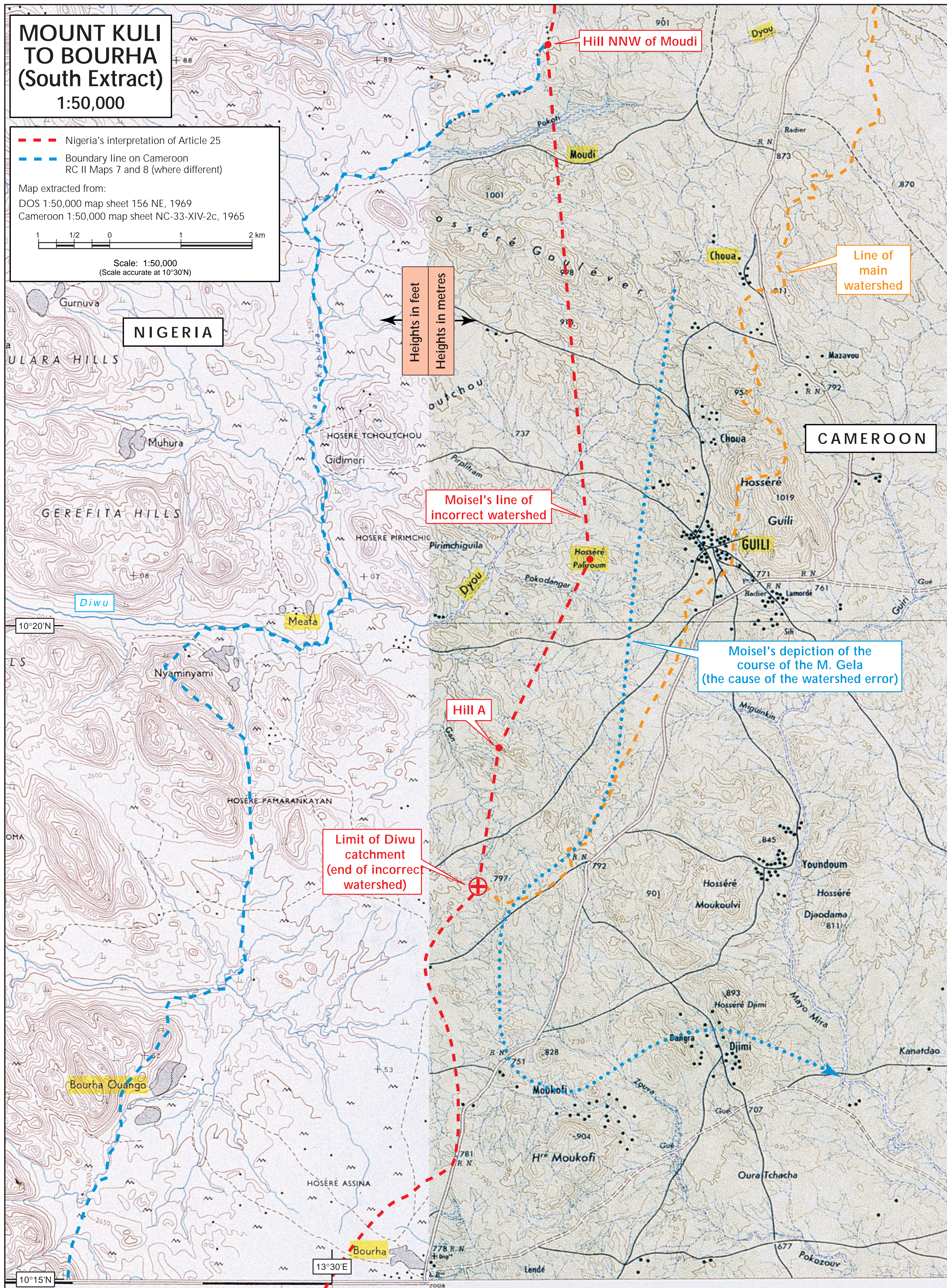
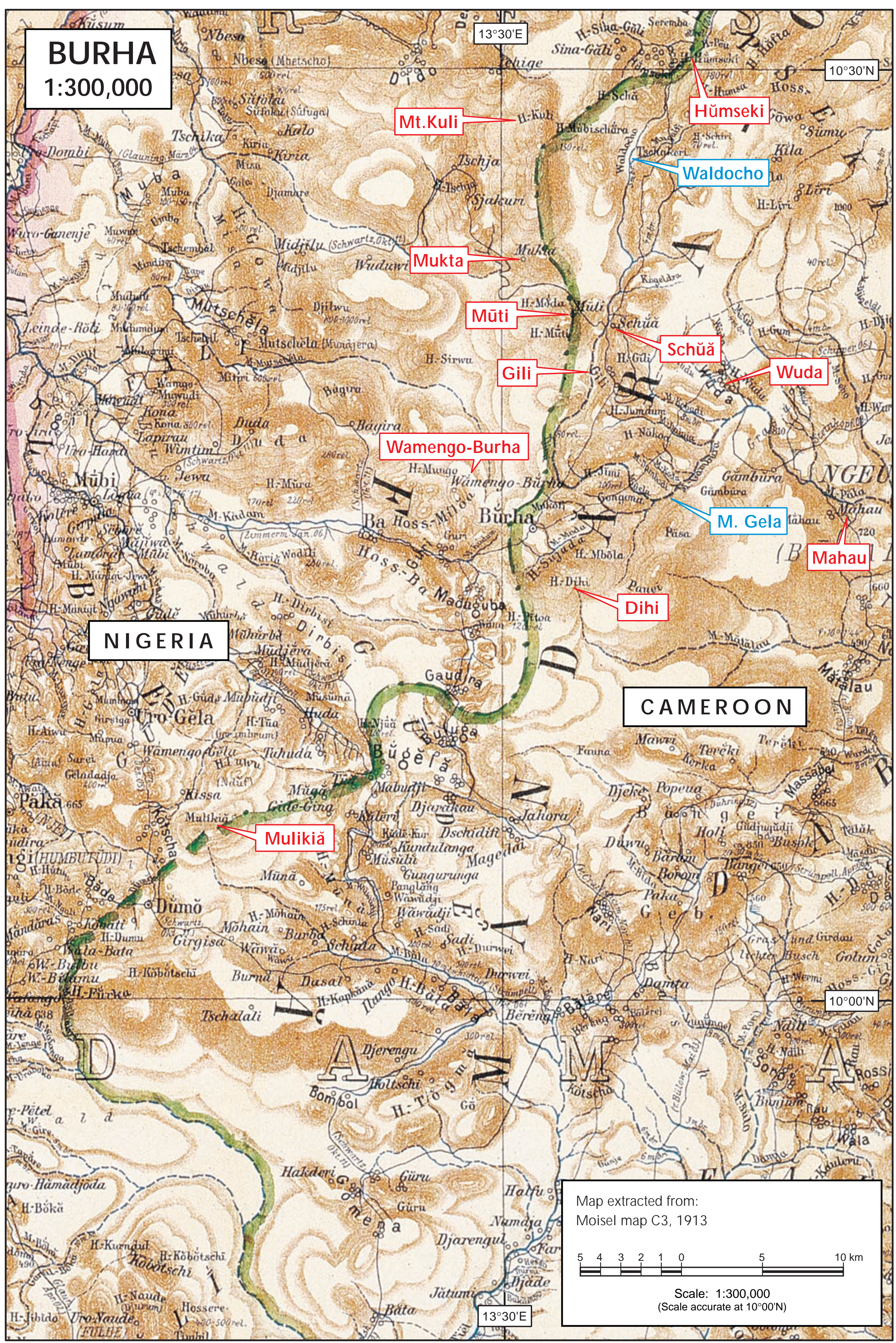


For illustrative purposes only

Figure 7.11



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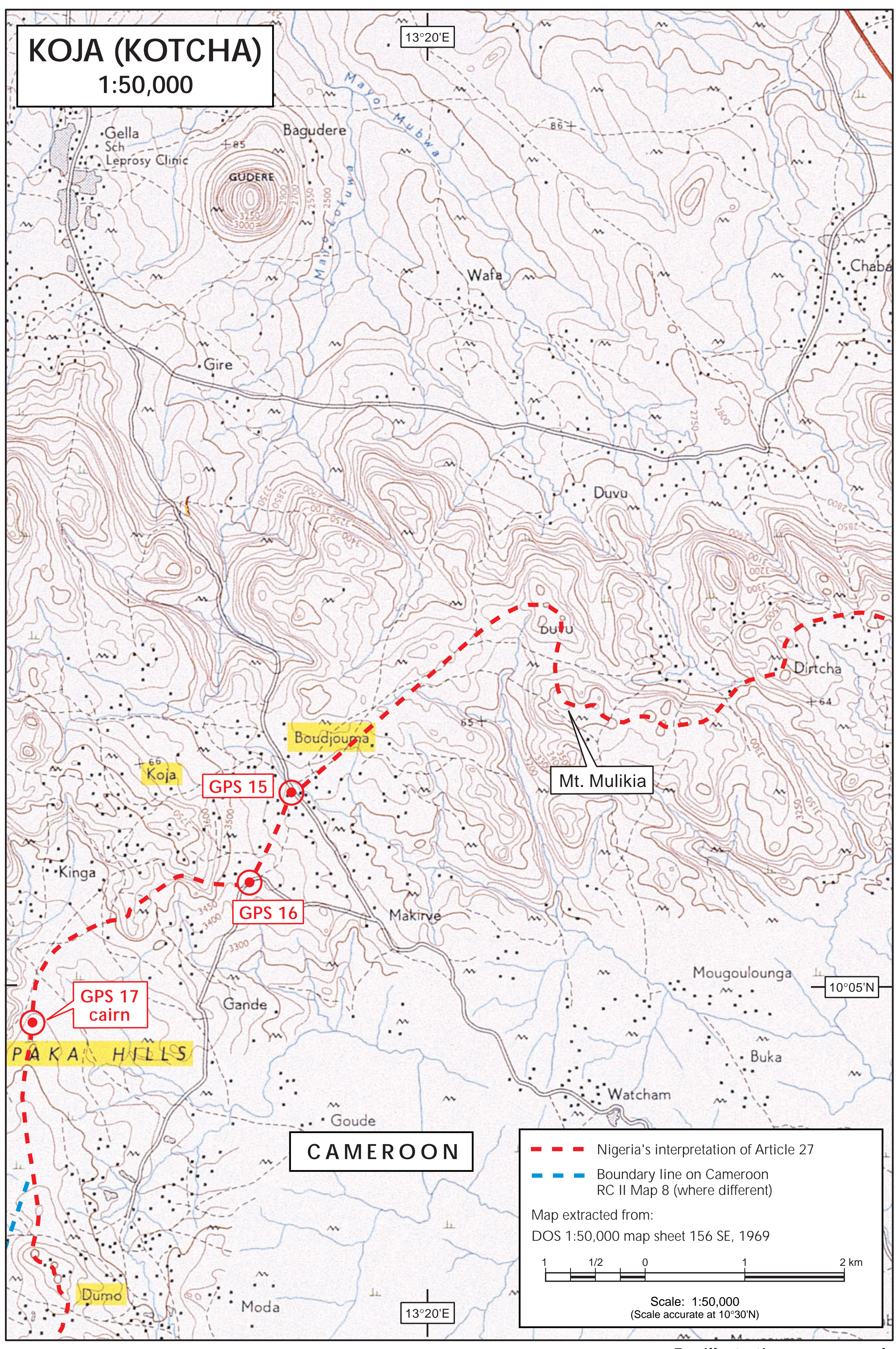

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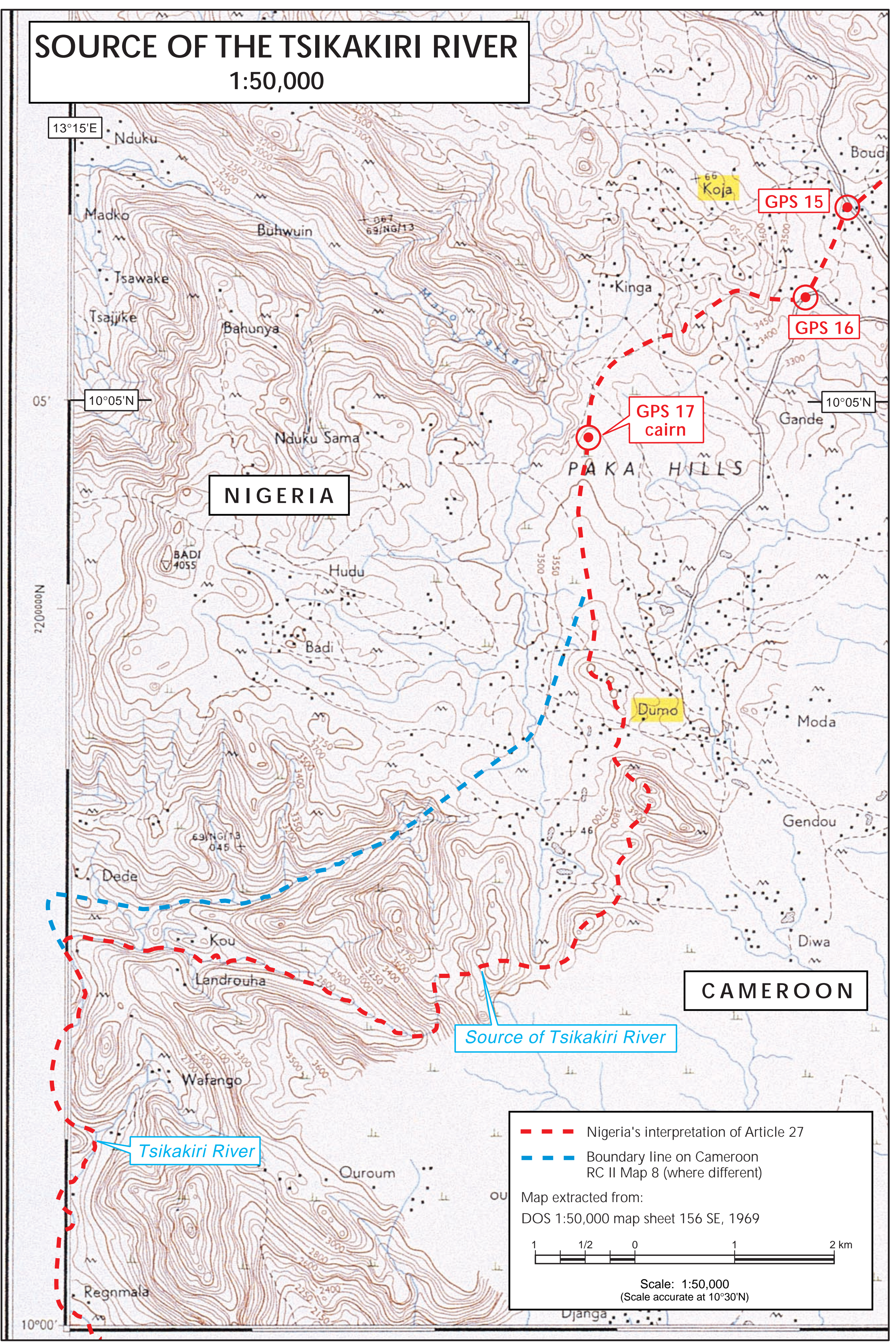

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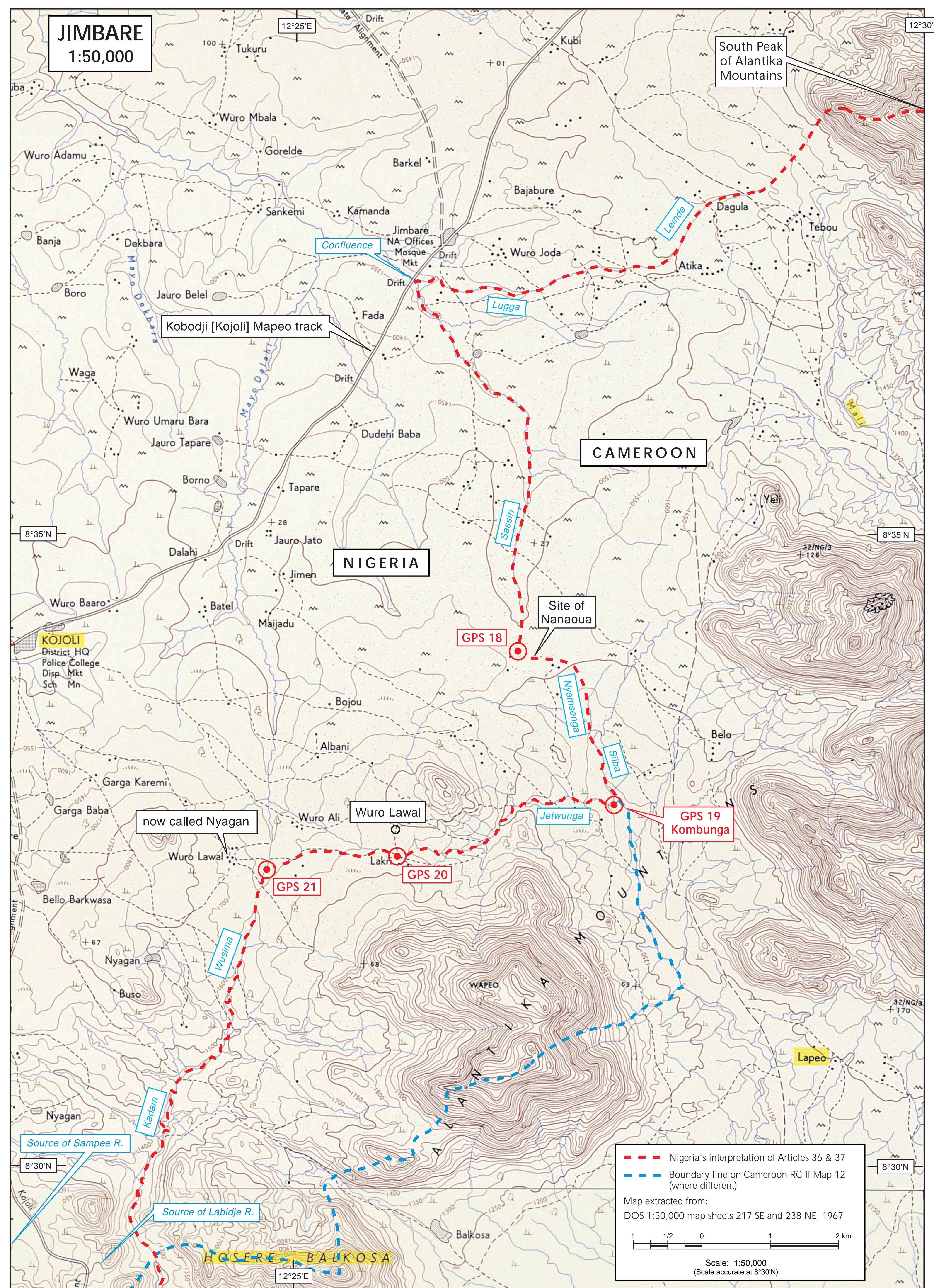
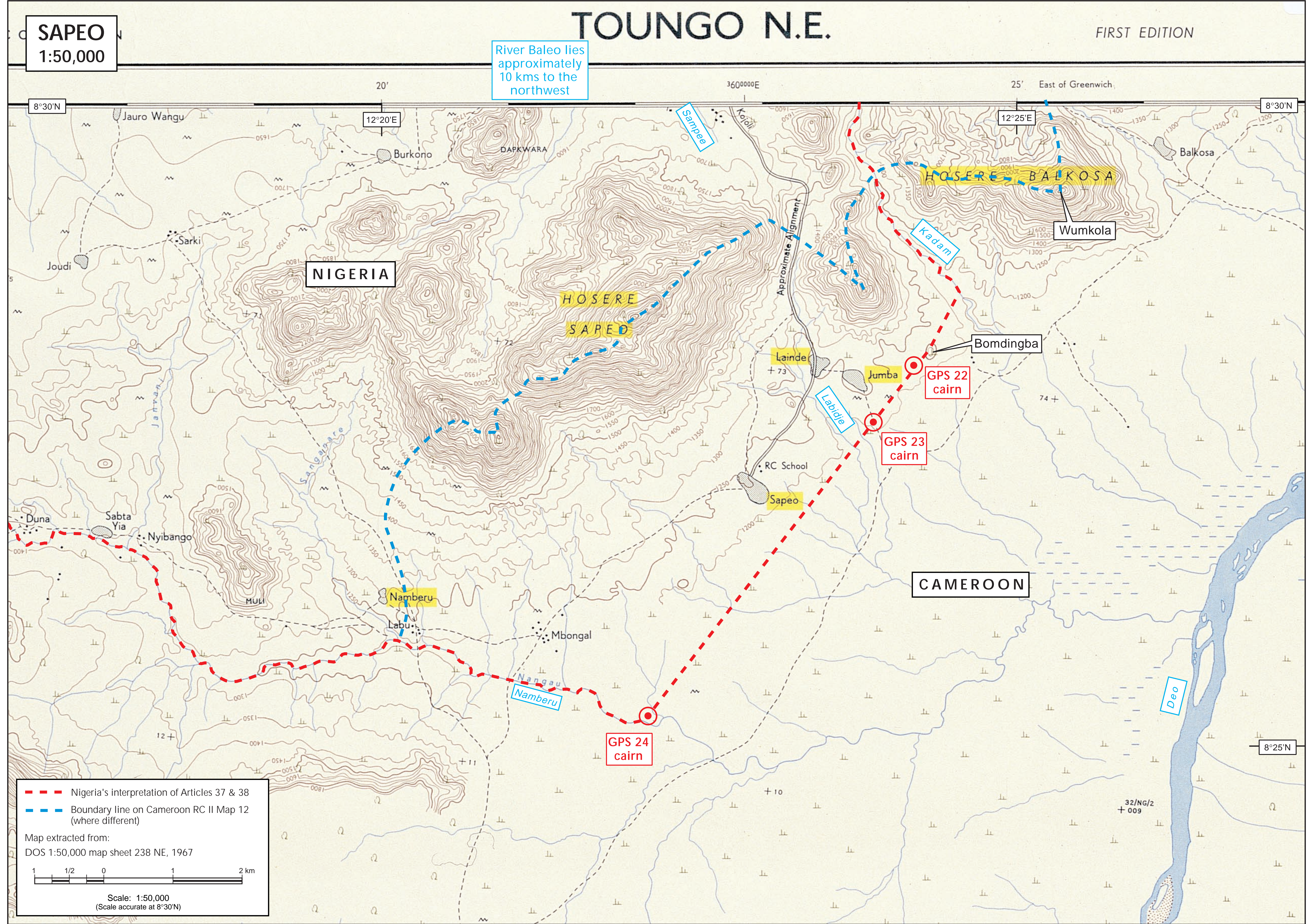


Continuation in Figure 7.16

For illustrative purposes only

Figure 7.15



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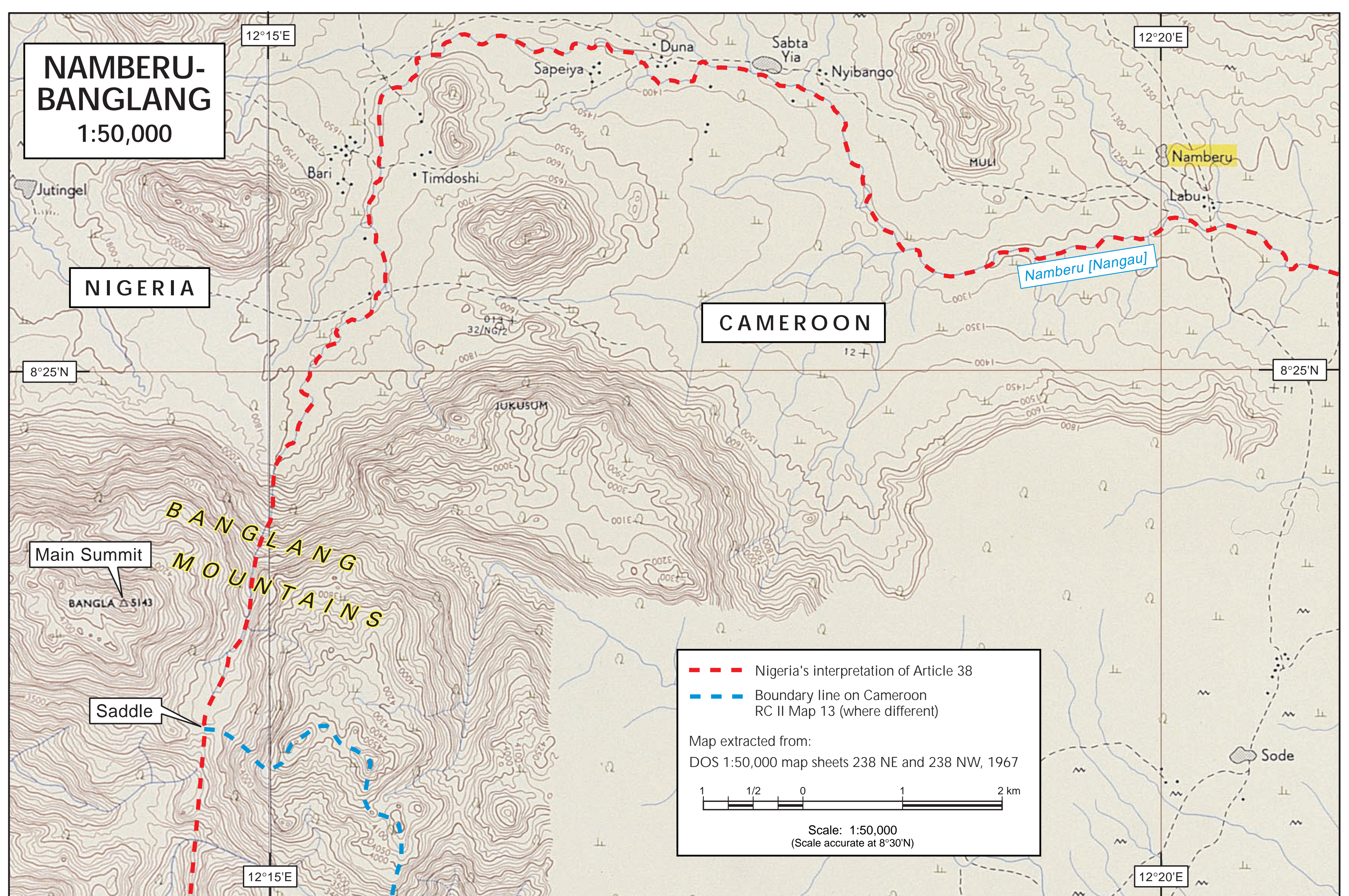
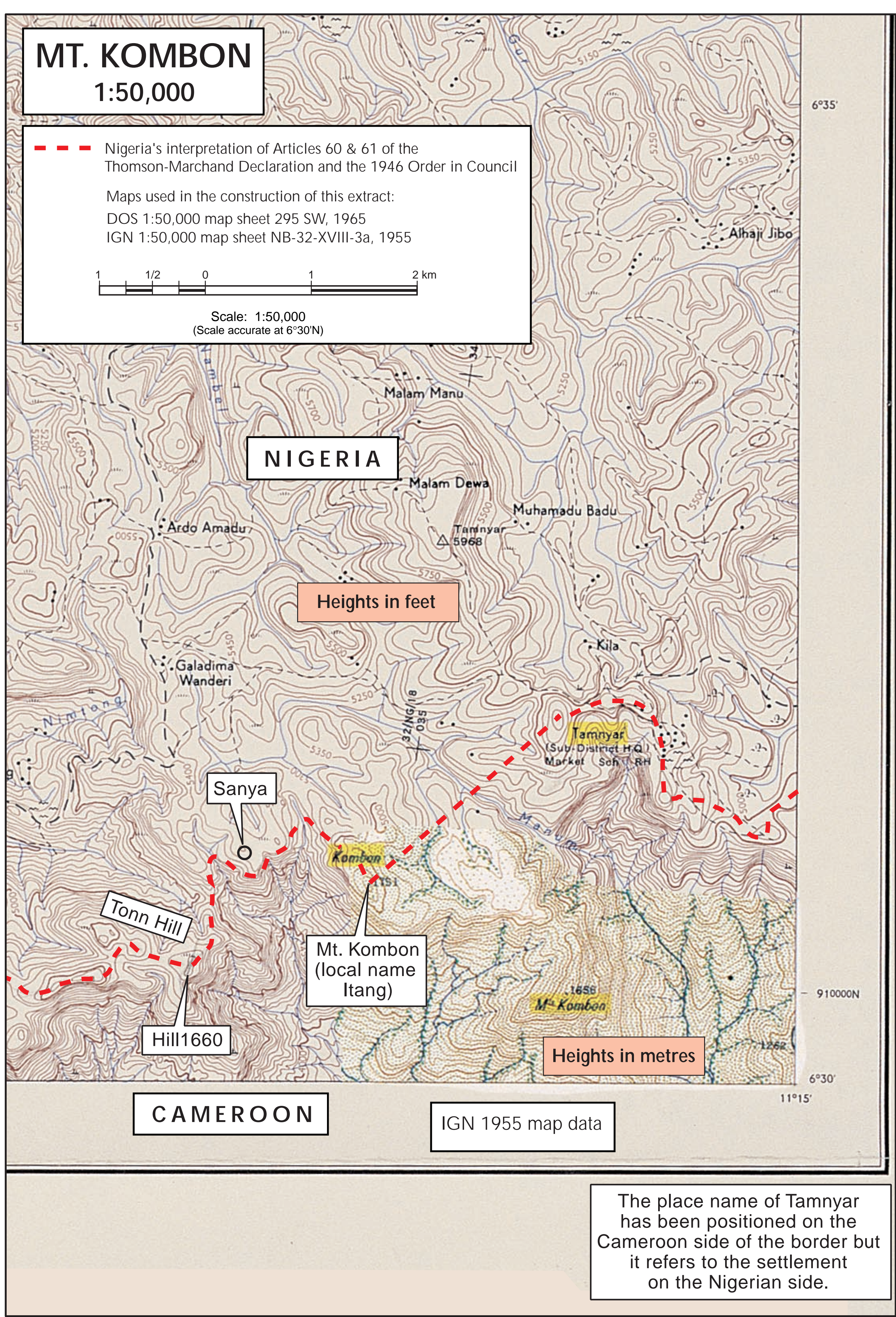
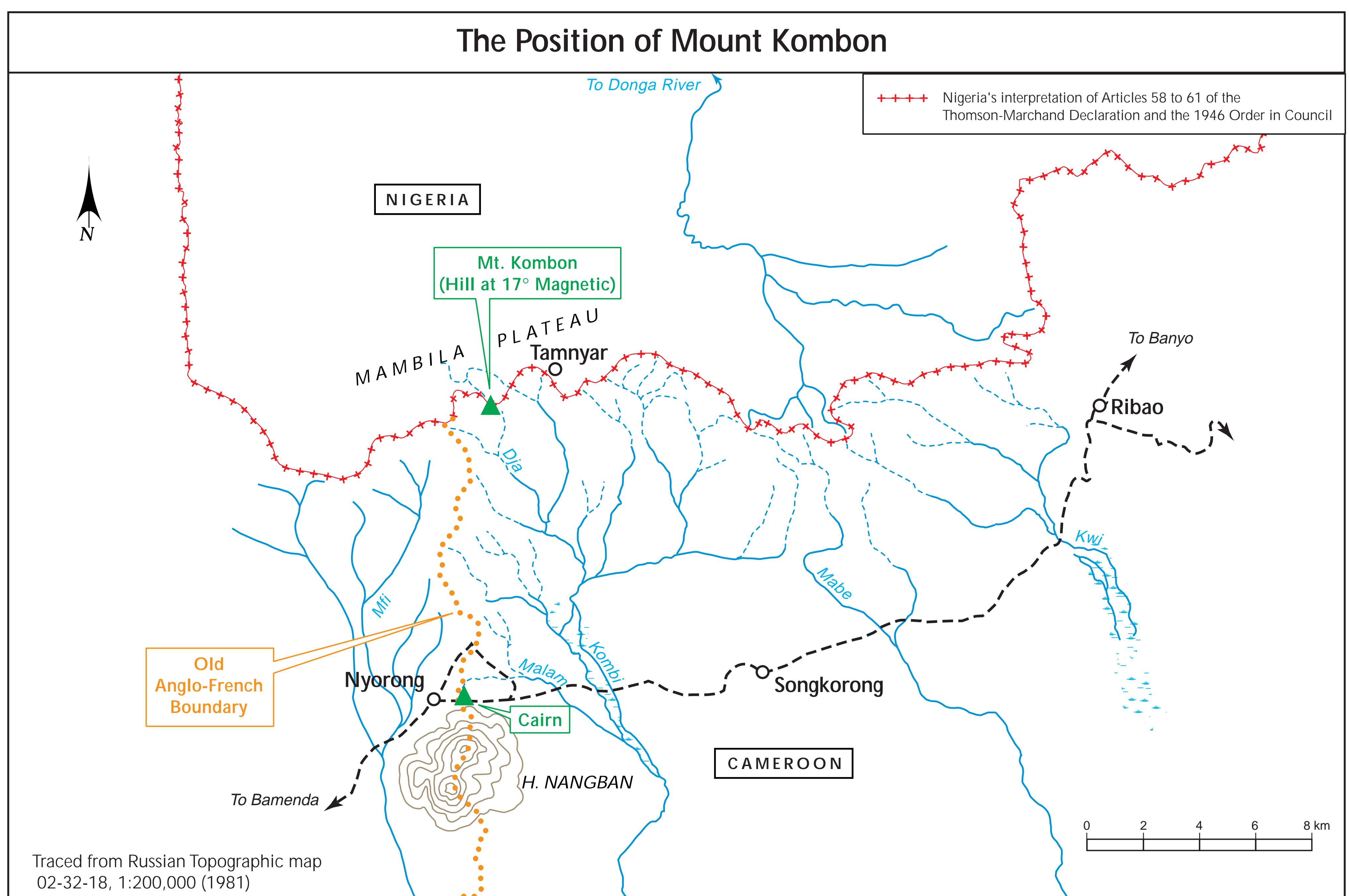


For illustrative purposes only

Figure 7.17



For illustrative purposes only



For illustrative purposes only

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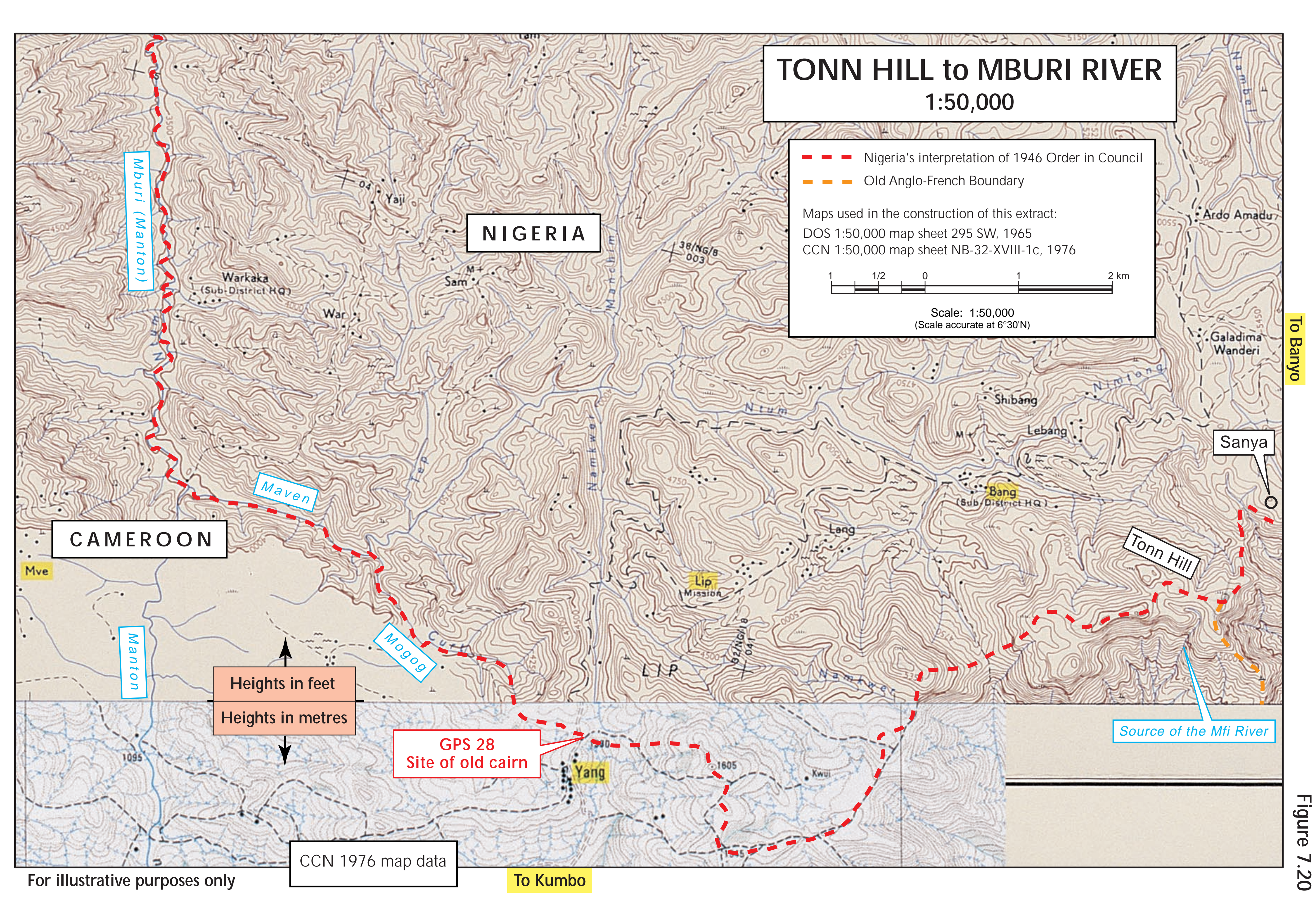

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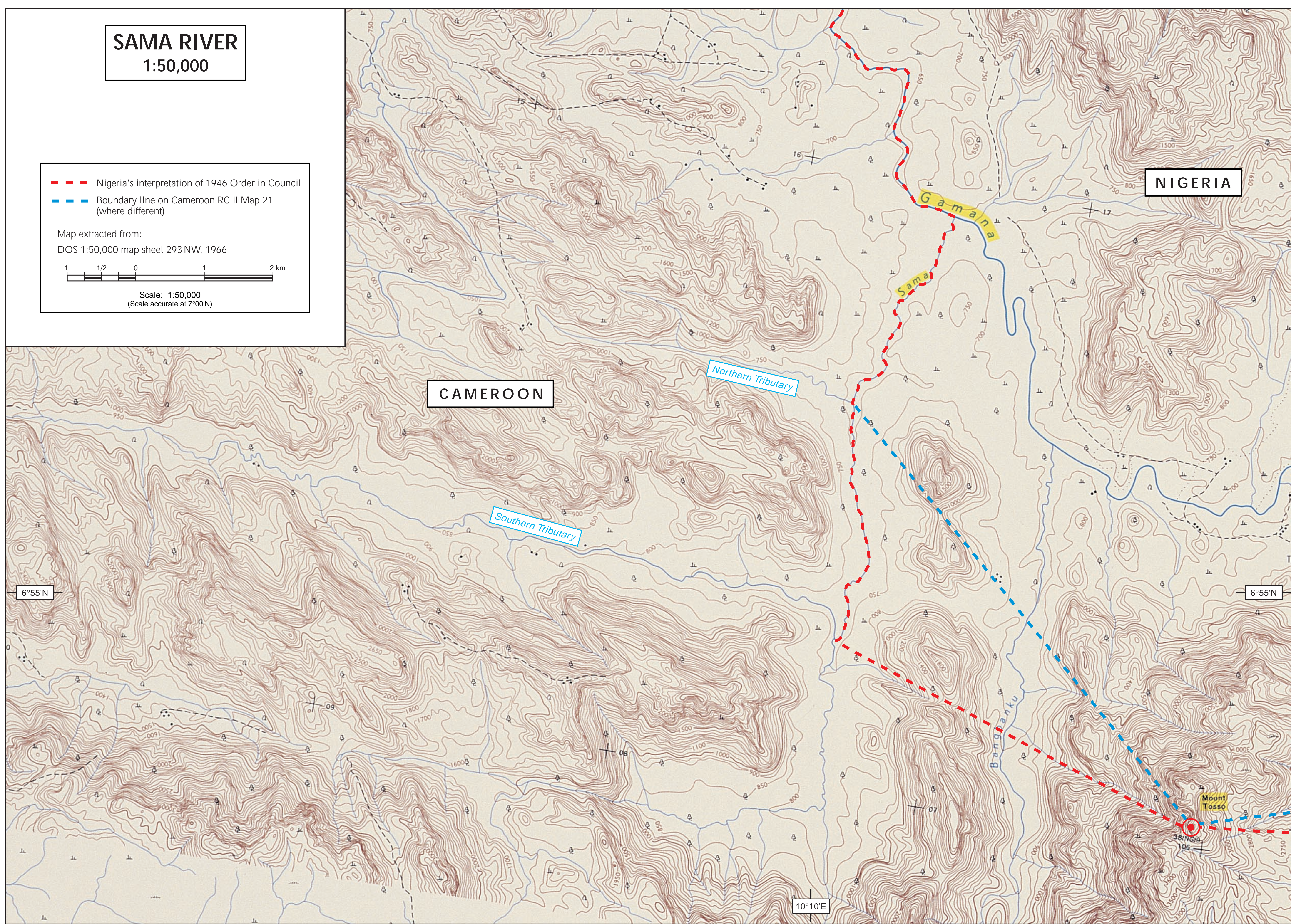

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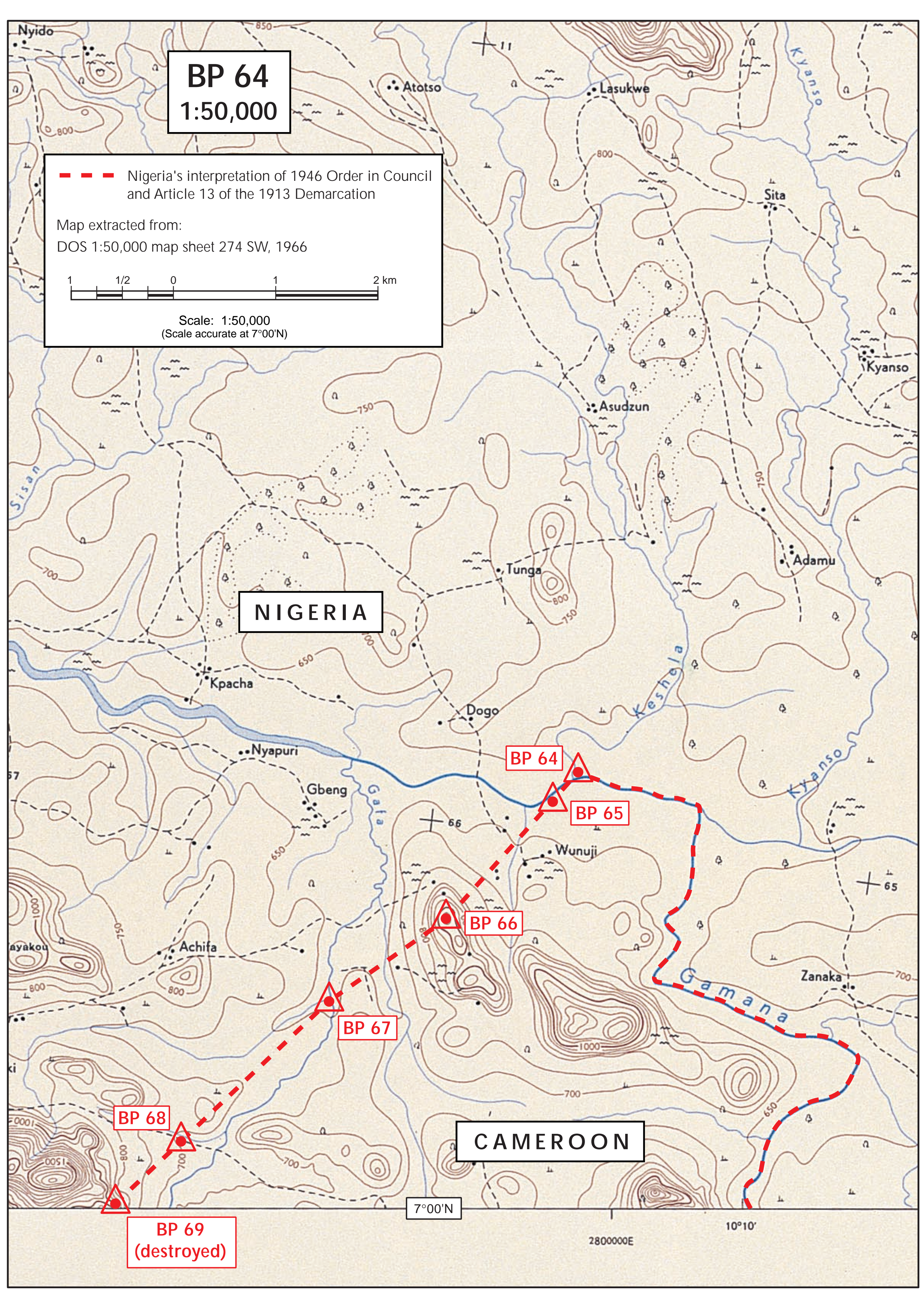

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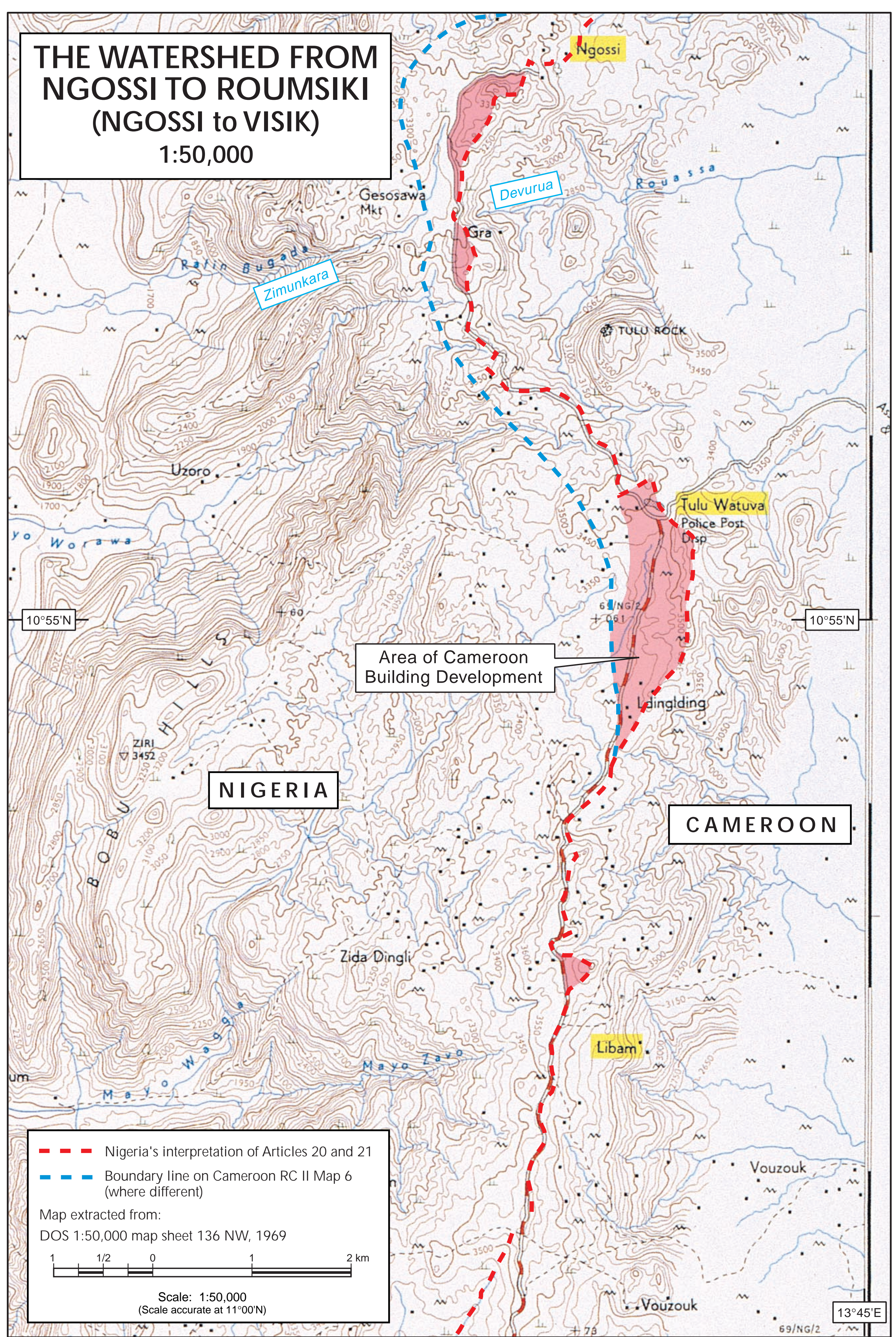

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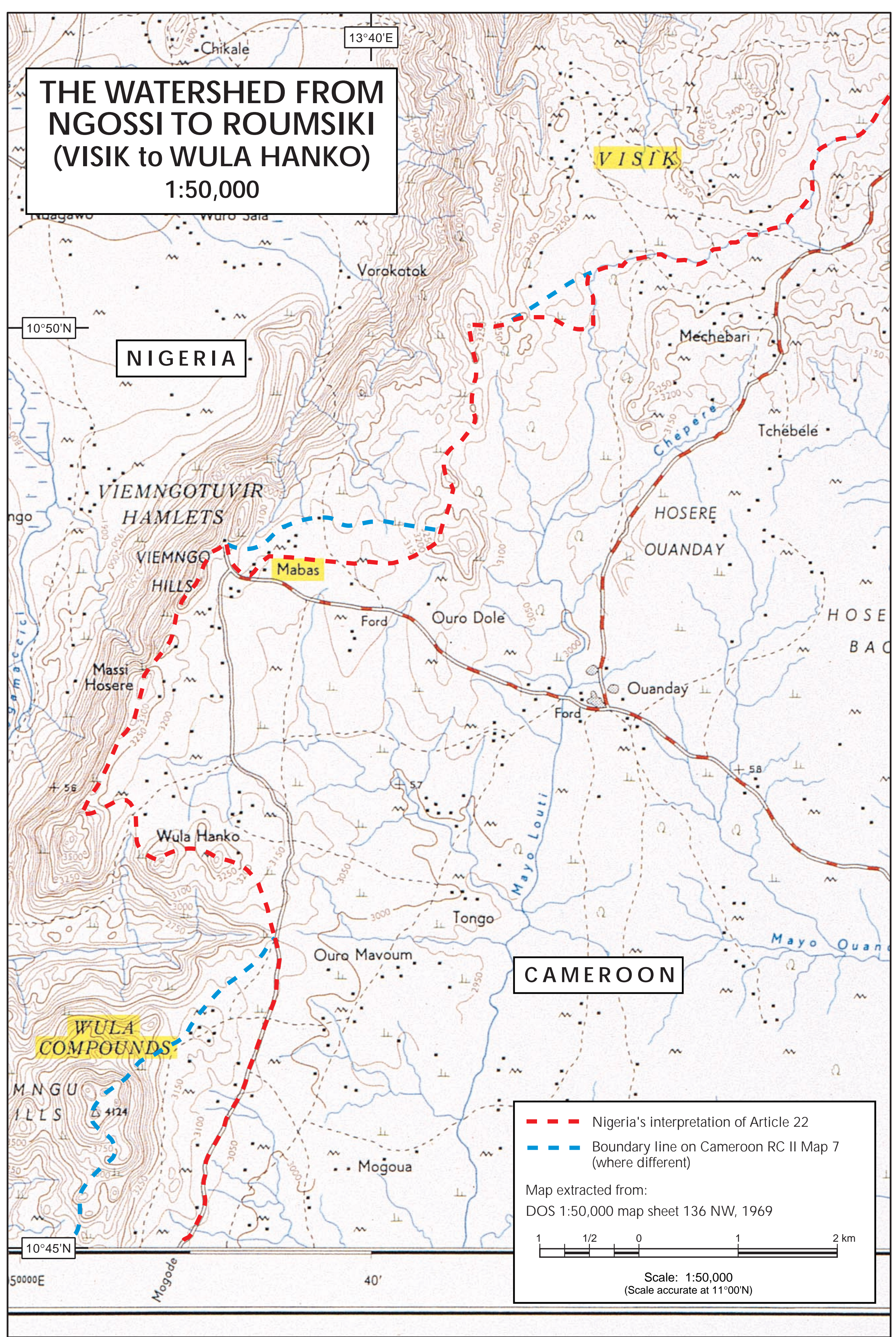

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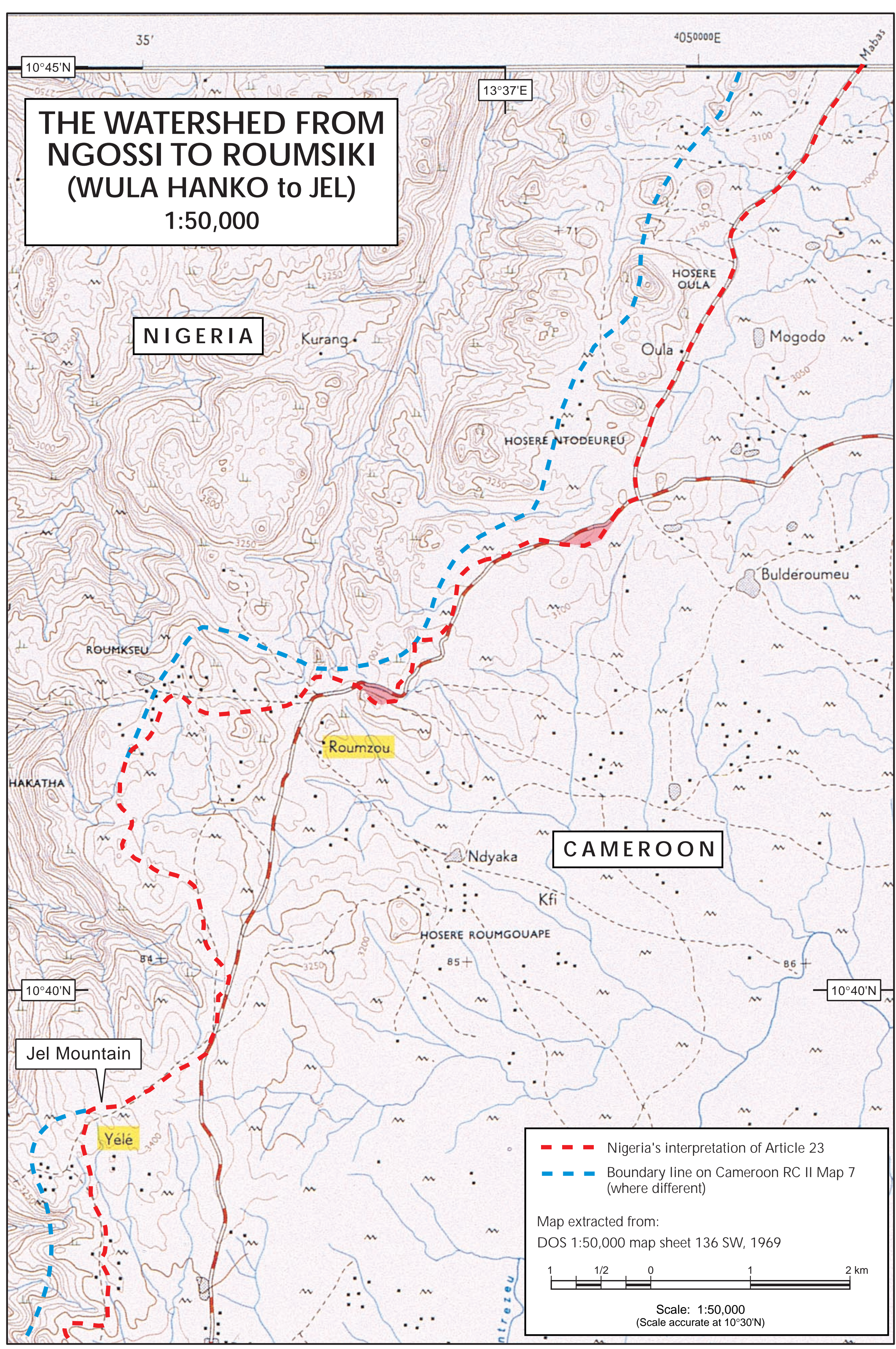

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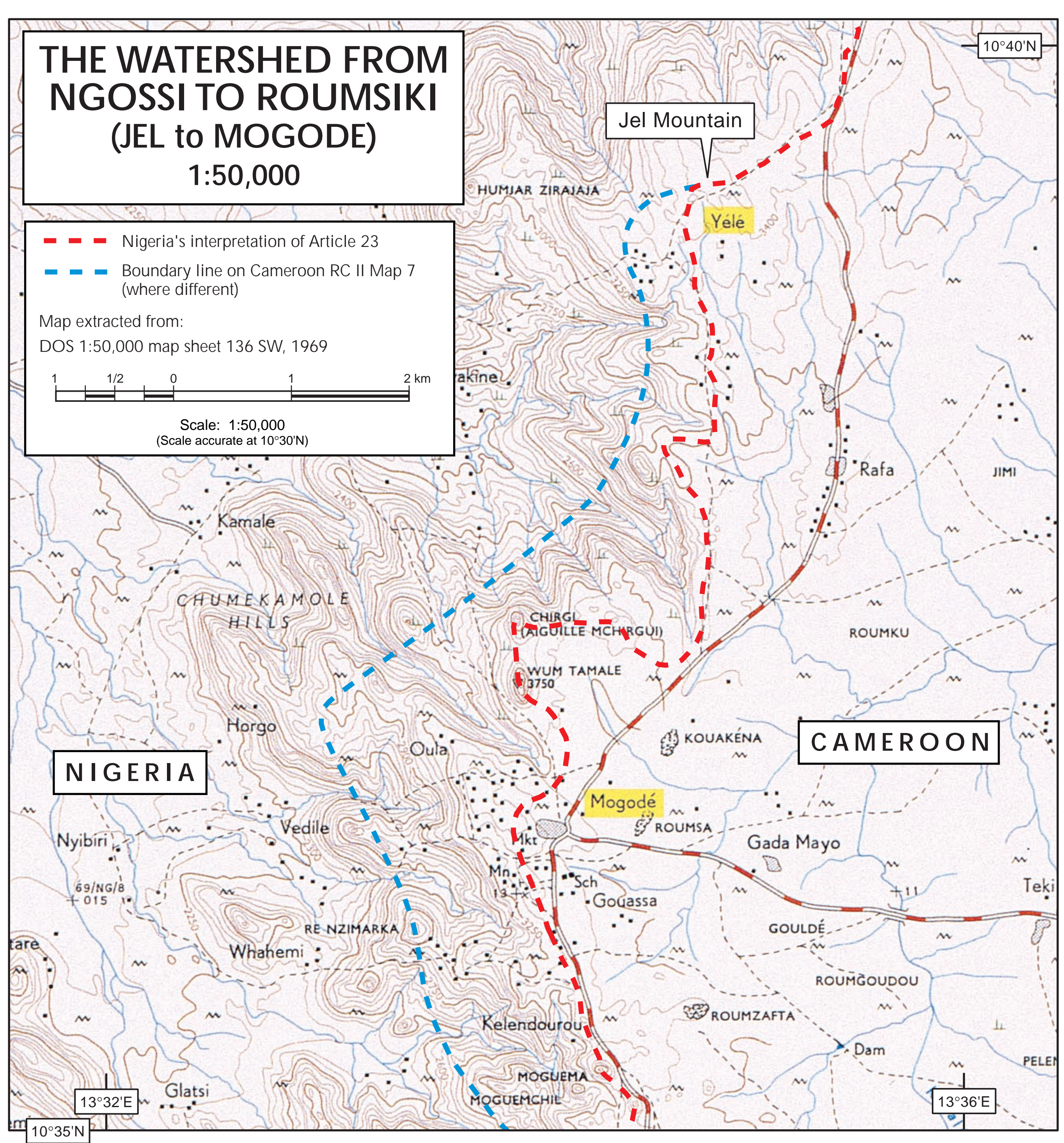

For illustrative purposes only

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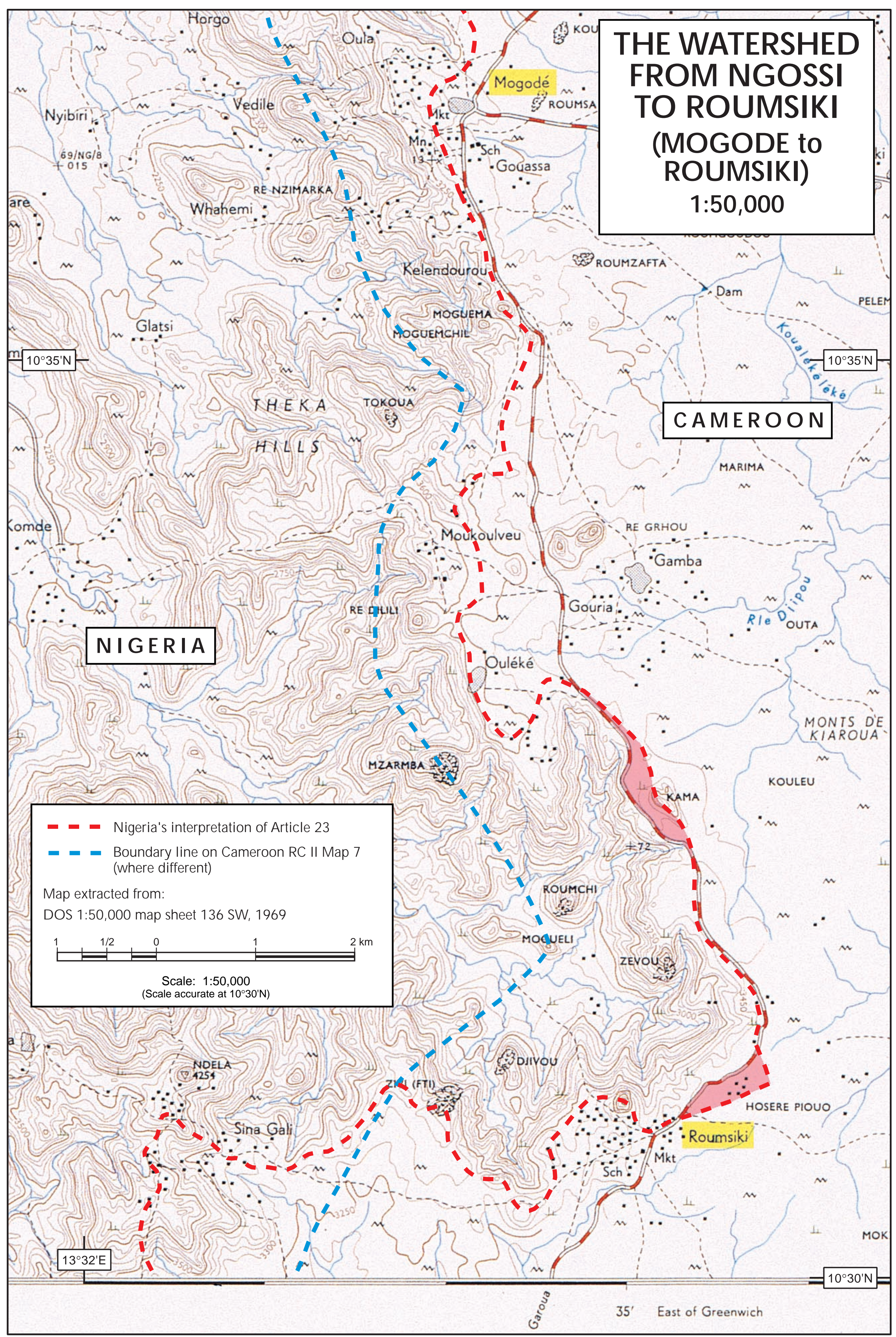

For illustrative purposes only

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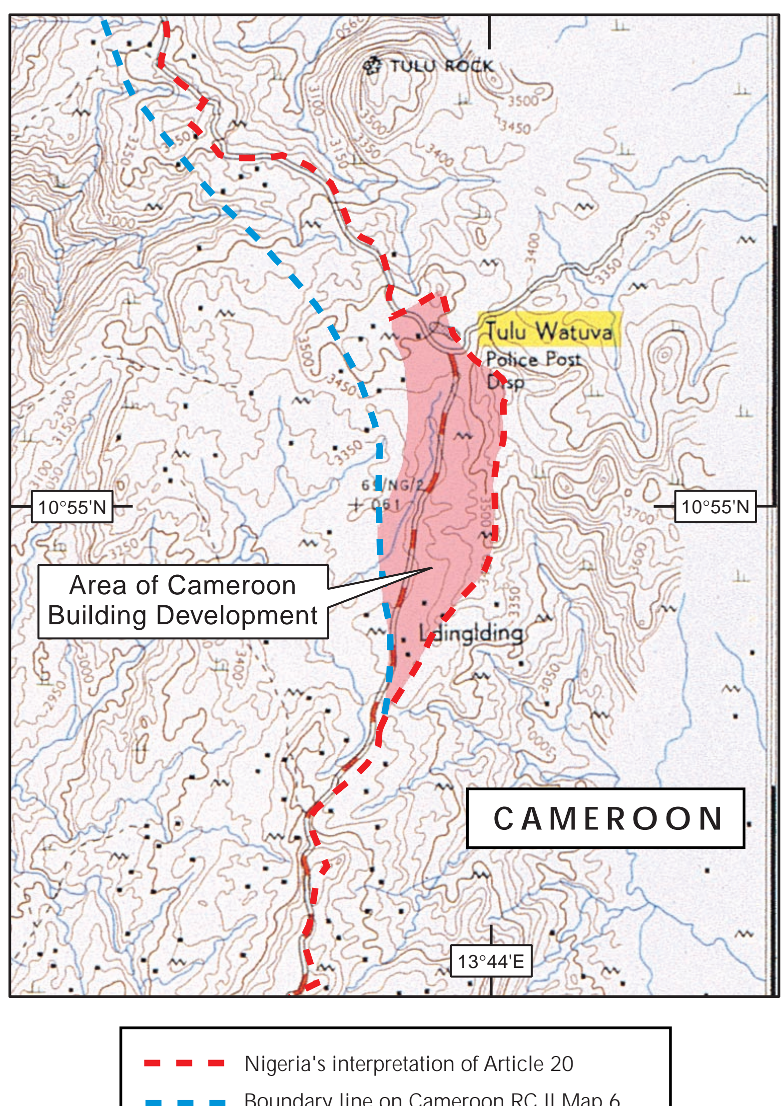

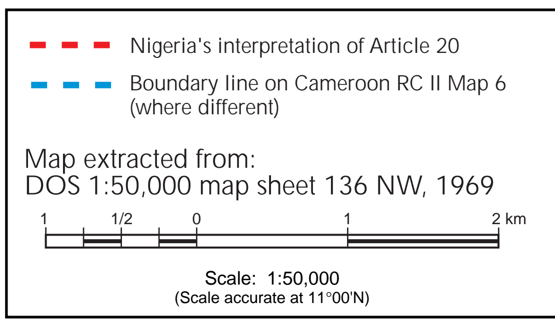

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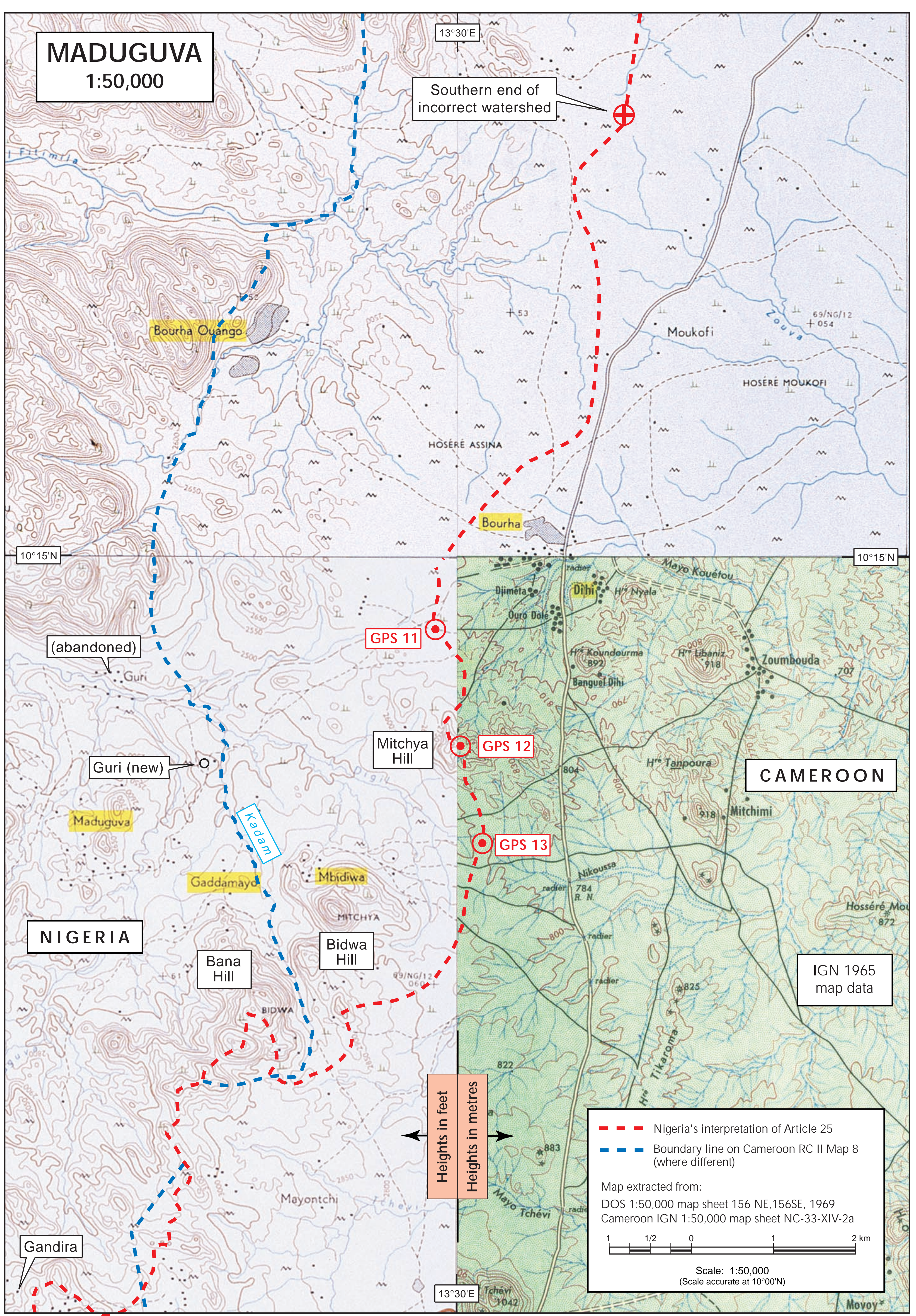

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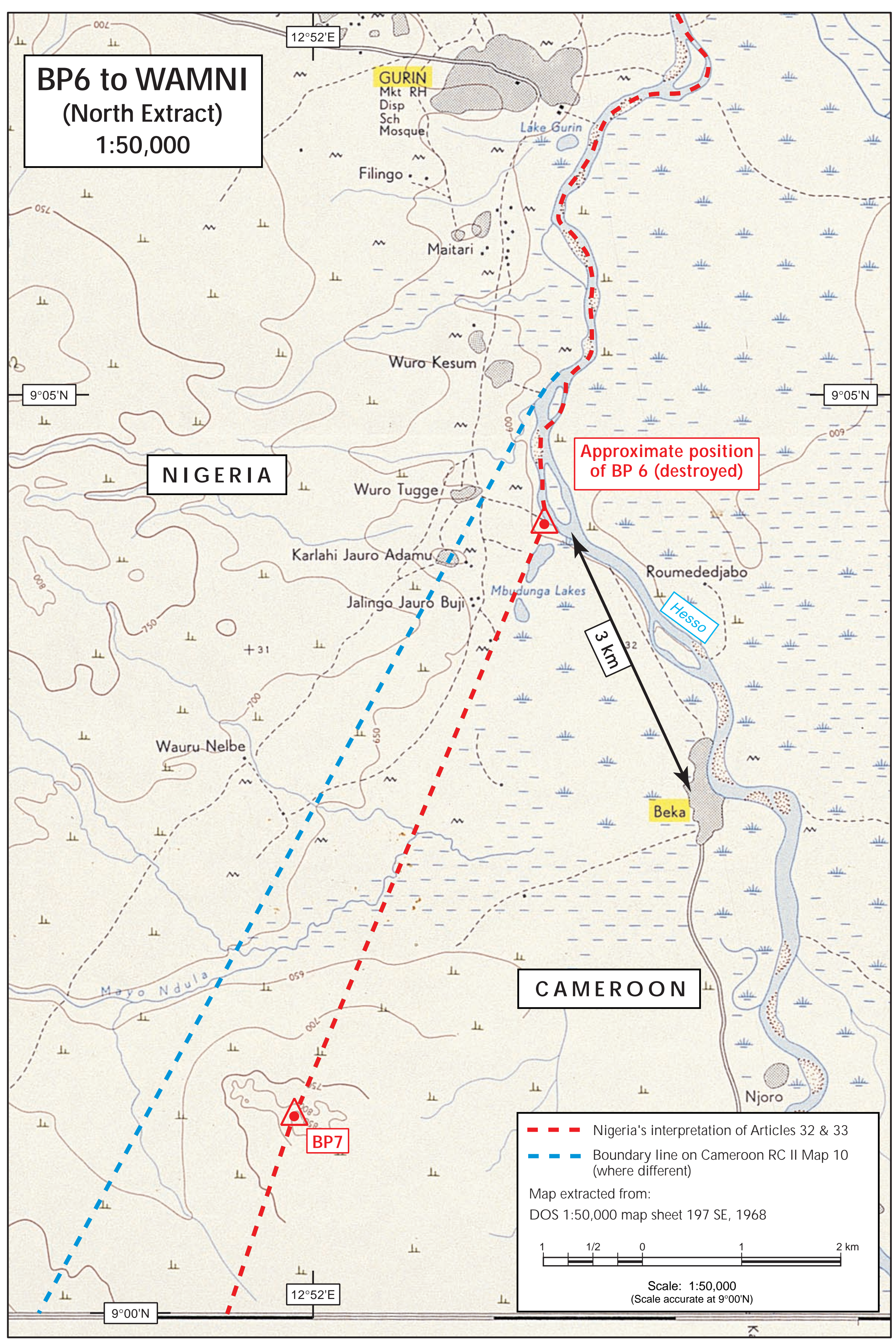

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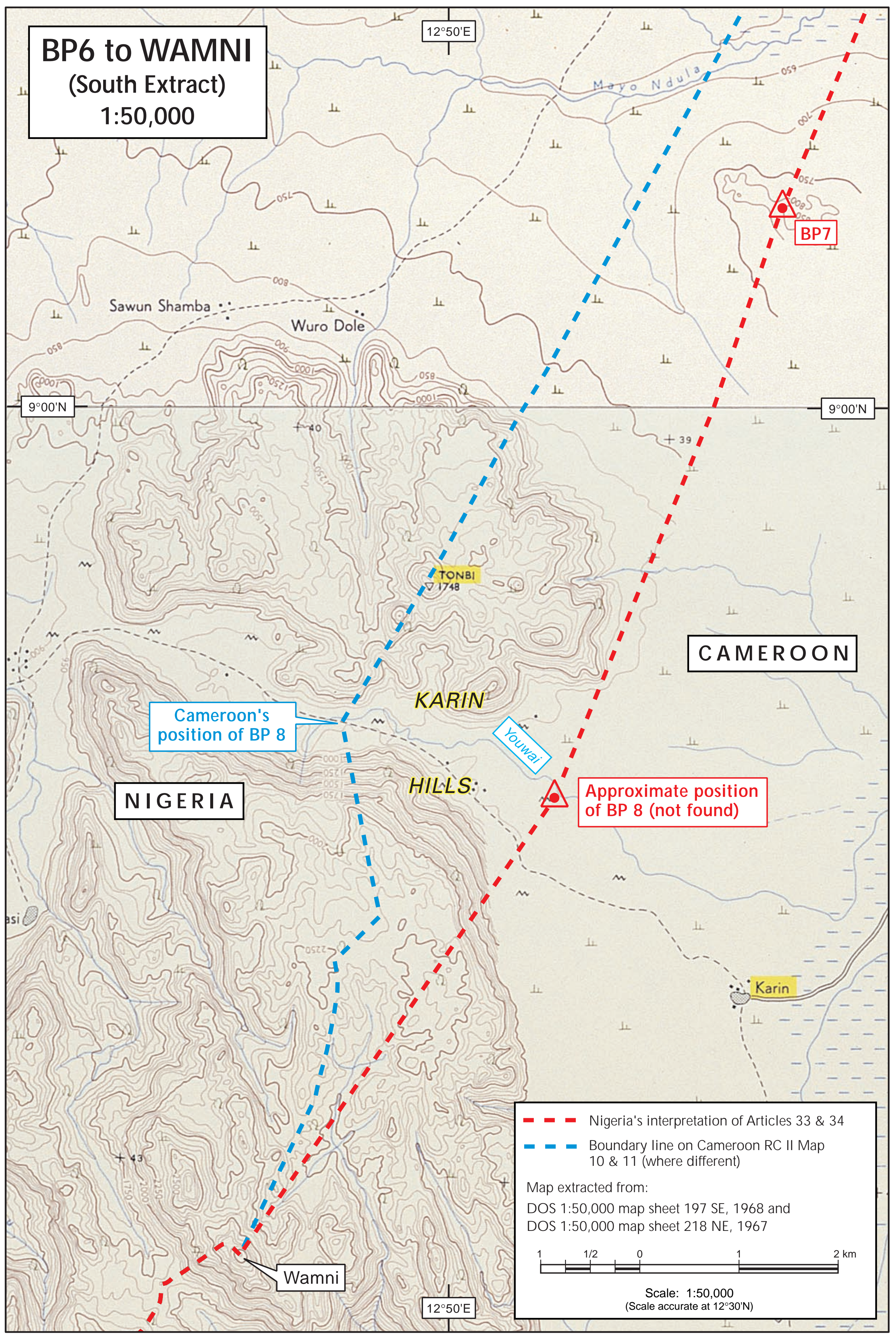
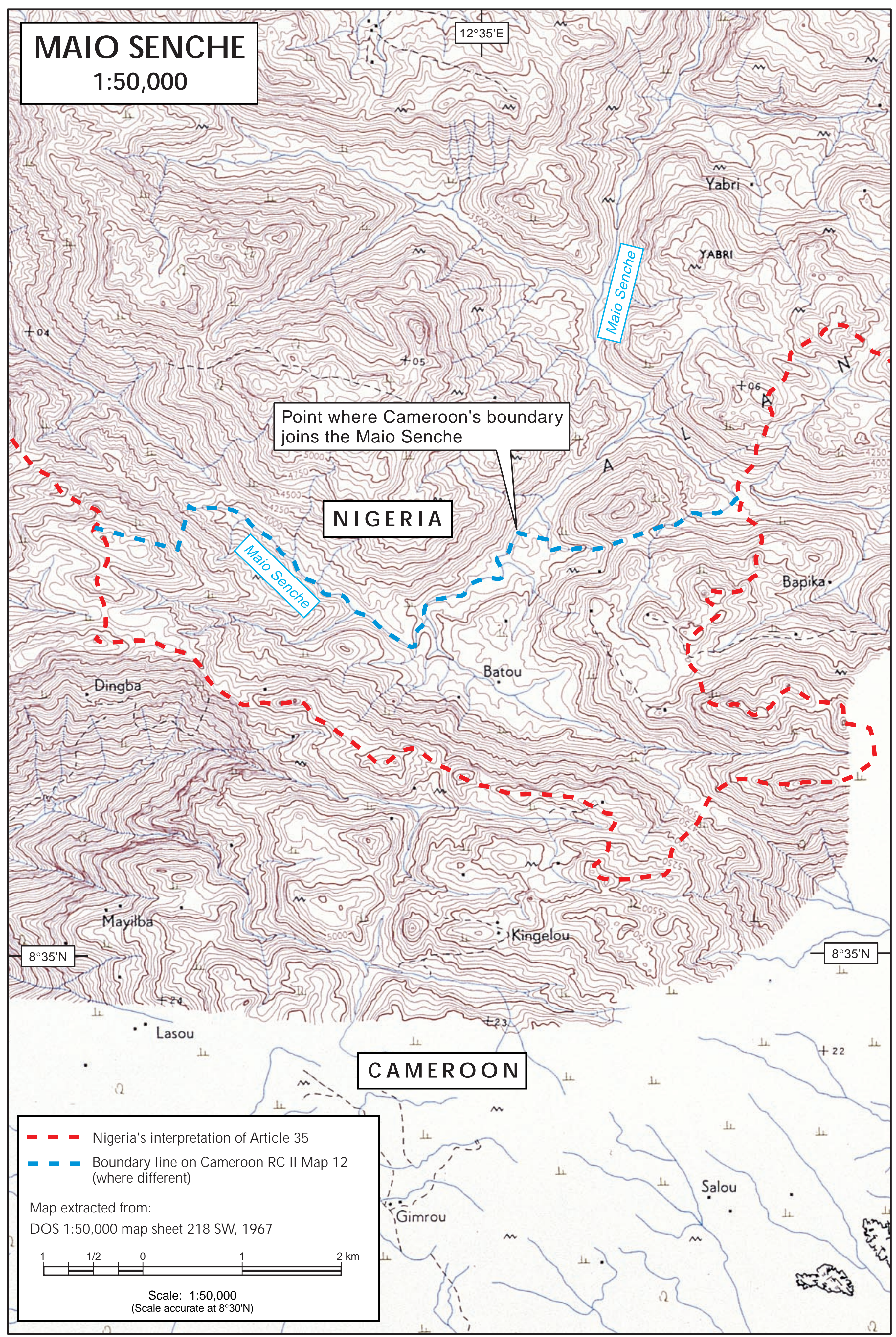


For illustrative purposes only

Figure 7.32

For illustrative purposes only



For illustrative purposes only

TIPSAN
1:50,000

To Toungo

12°10'E

SHENA

2 kms.

Bospan

Butpan

8°00'N

8°00'N

NIGERIA

Track crossing

2 kms.

DÉO

Tipsan
Immigration
Post
GPS 27

KONCHA

CAMEROON

32/NG/6
021

32/NG/6
017

Tipsan

- Nigeria's interpretation of Article 41 & 42
- Boundary line on Cameroon RC II Map 13 & 14 (where different)
- Line of track marked "Faulborn Jan. 08"

Map extracted from:
DOS 1:50,000 map sheets 238 SW and 258 NW, 1965-67

1 1/2 0 1 2 km

Scale: 1:50,000
(Scale accurate at 8°00'N)

For illustrative purposes only

Figure 7.34

TIPSAN
1:150,000

Note: Broken green line represents the 1919 Milner-Simon line. This was moved by the 1931 Thompson-Marchand Declaration which placed the boundary along "a line parallel to and distant 2 kilometres to the west from this road [which is approximately that marked Faulborn, January 1908, on Moisel's map] to a point on the Maio Tipsal (Tiba....on Moisel's map)".

The curved red line represents an administrative boundary under the German administration and is of no relevance in this case.

NIGERIA

CAMEROON

Map extracted and enlarged x2 from: Moisel map sheets D3 and E3

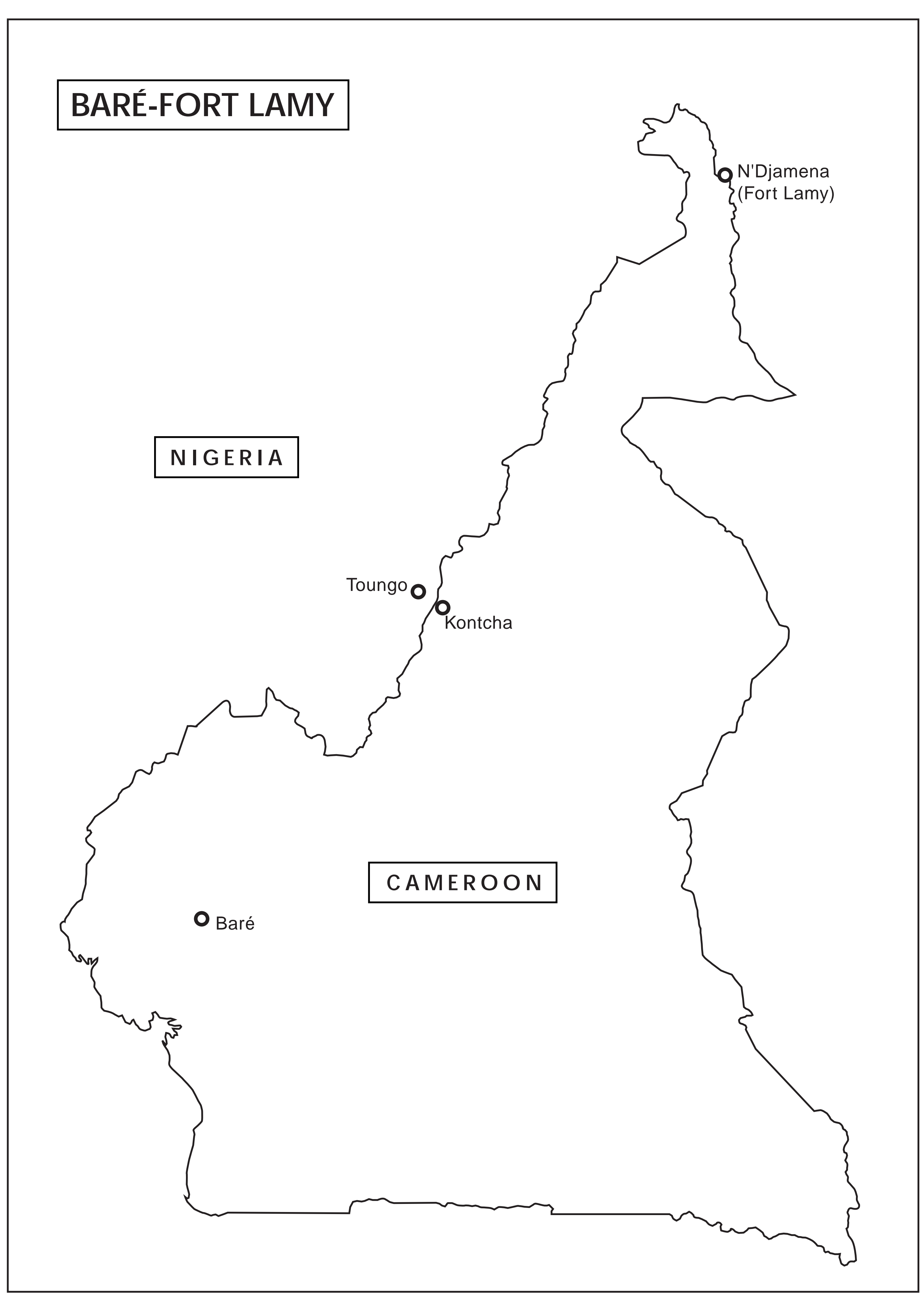
2 1 0 2 4 km

Scale: 1:150,000
(Scale accurate at 8°00'N)

Tipsan

For illustrative purposes only

Figure 7.35



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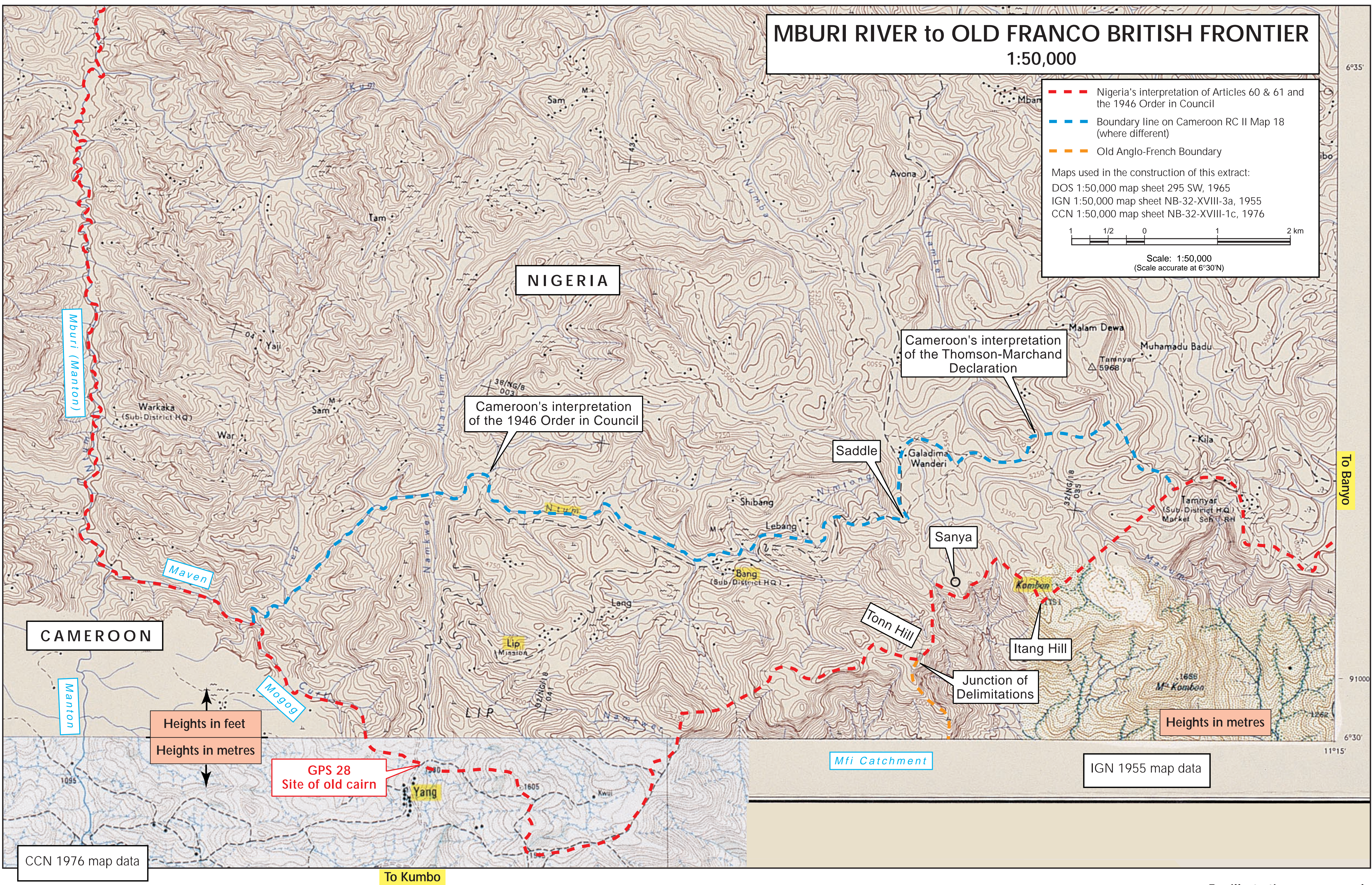
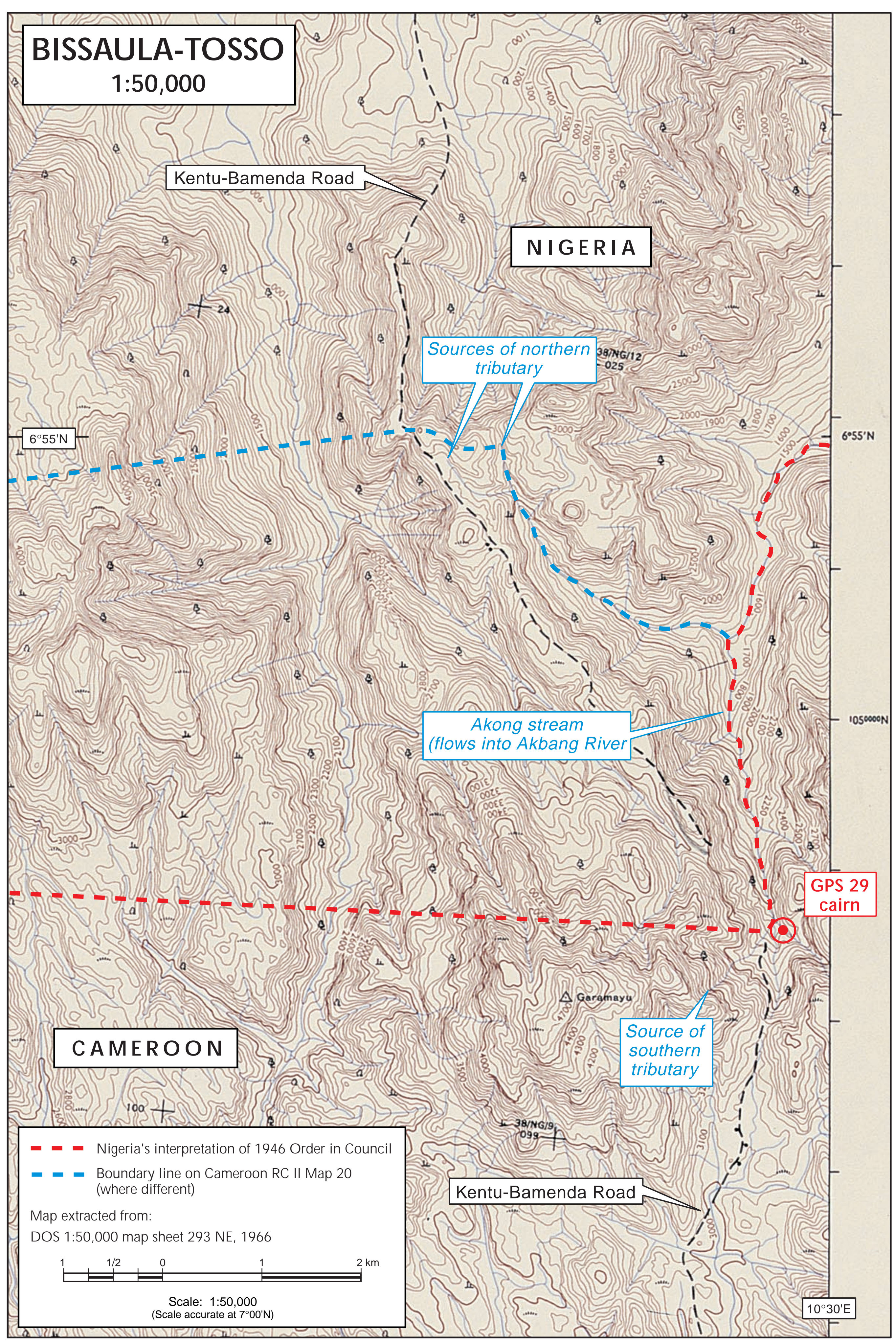
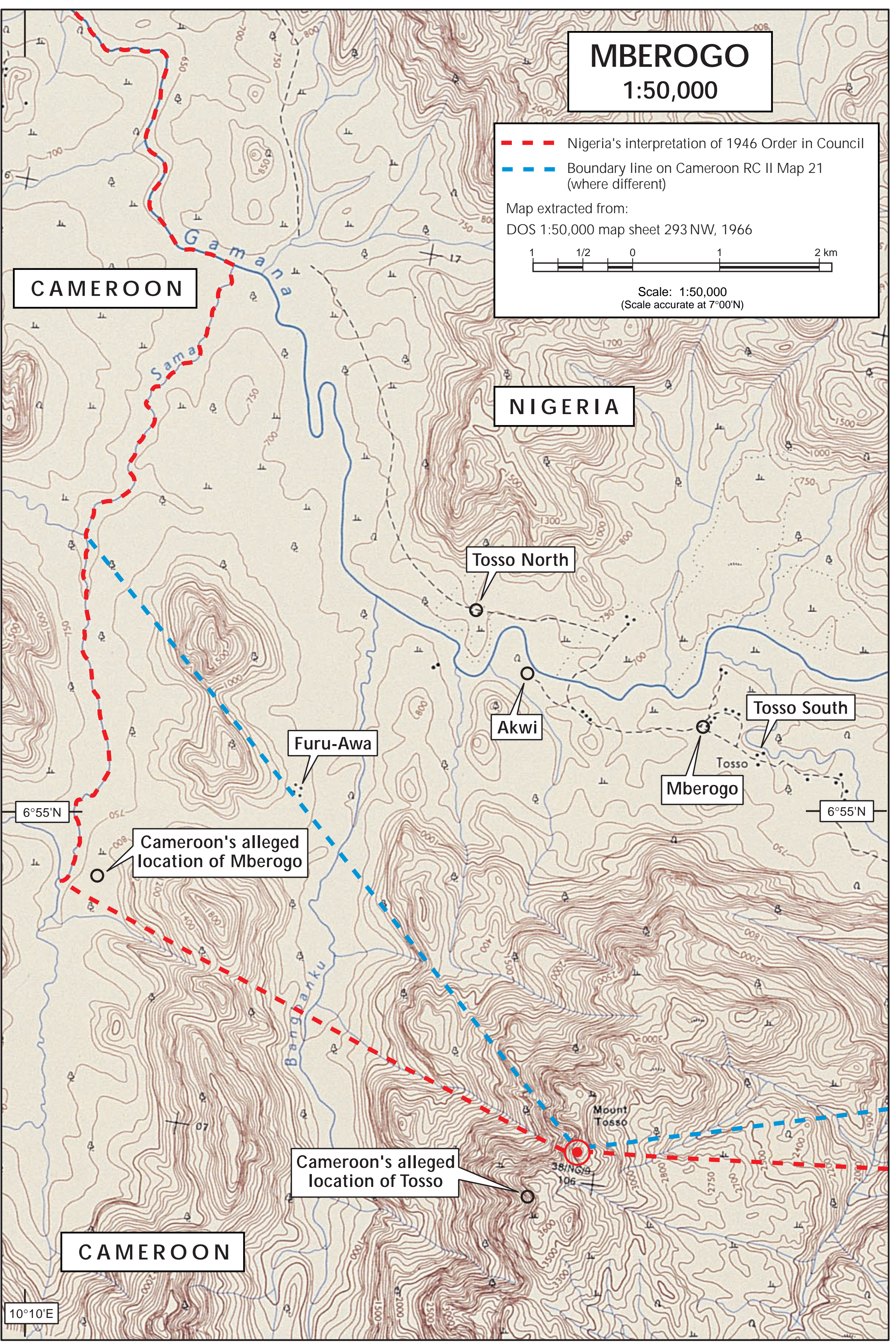


For illustrative purposes only



For illustrative purposes only

Figure 7.39

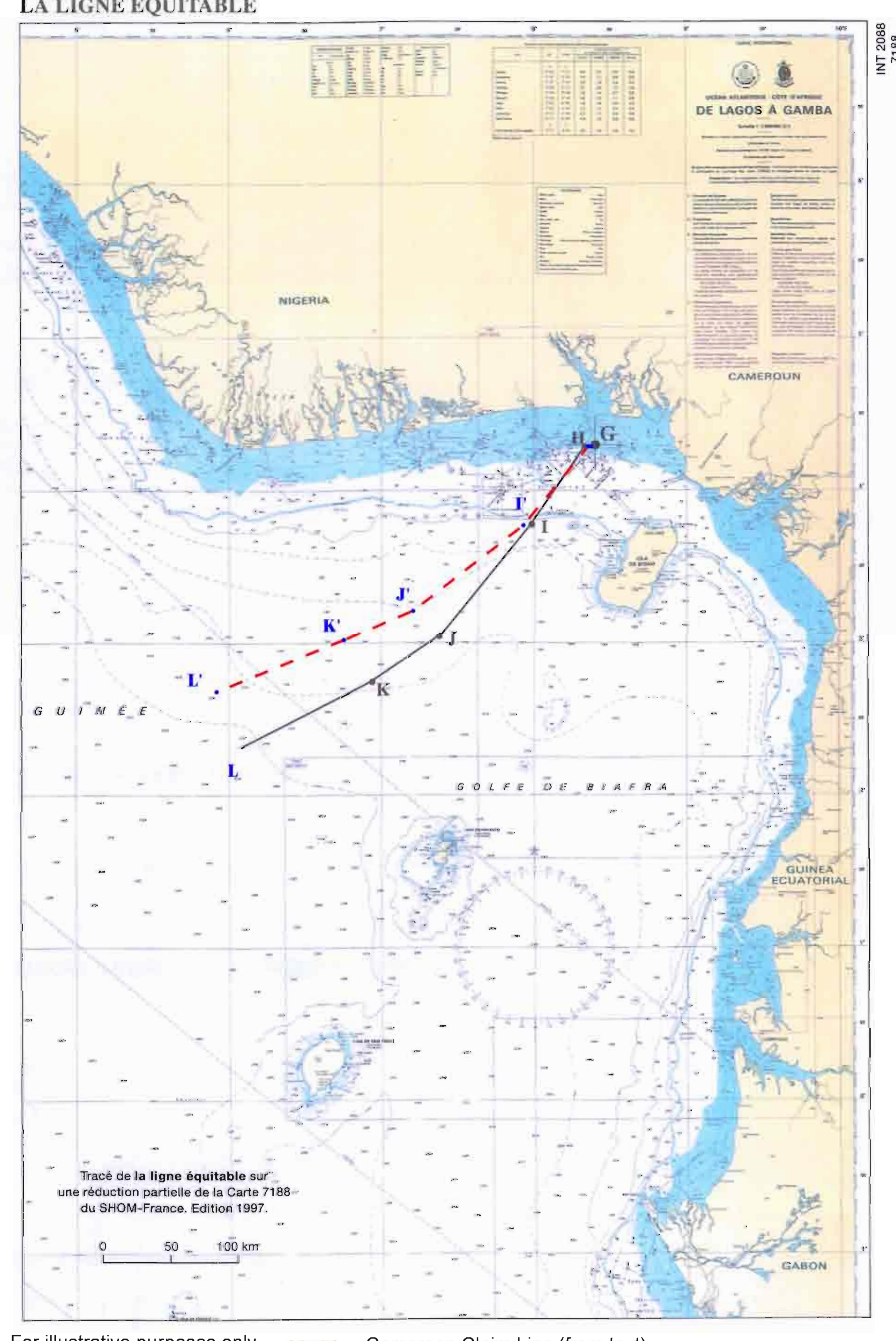


For illustrative purposes only

Fig. 9.1

R 21

LA LIGNE EQUITABLE



For illustrative purposes only.

Cameroon Claim Line (from text)

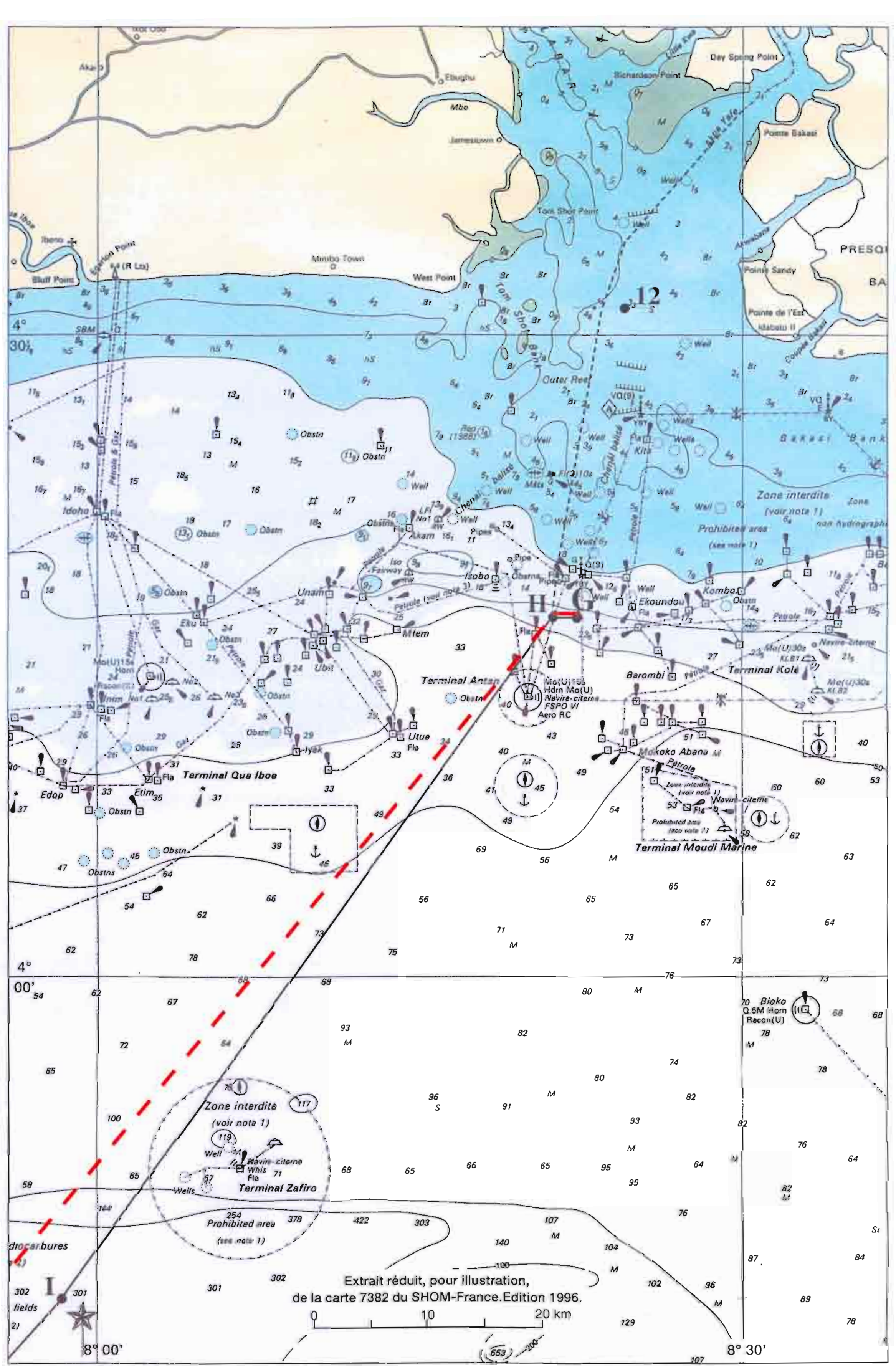
A Points from original Map R21

A Points from text

Cameroon's Map R21

Fig_9_1 24-11-00

R 22



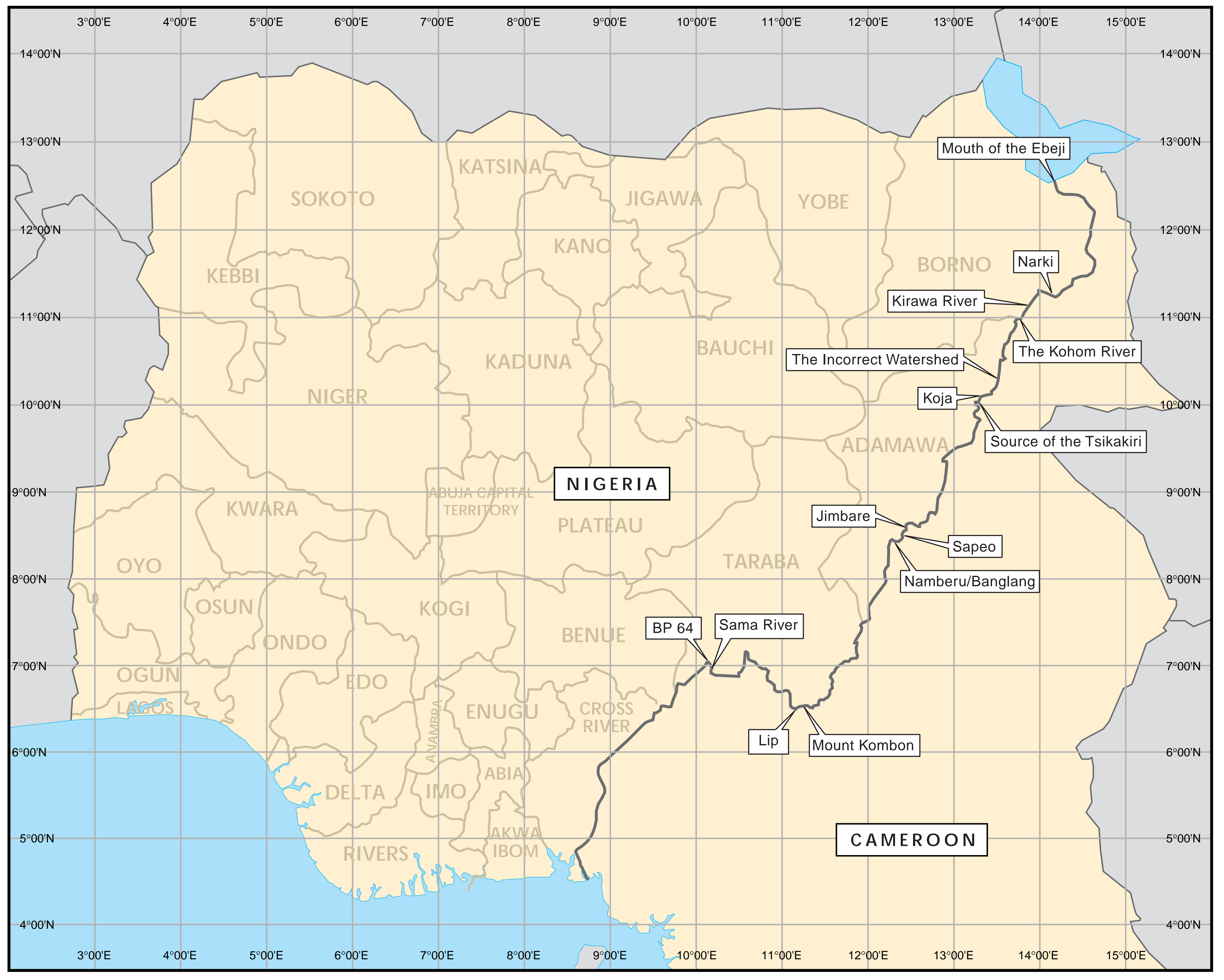
For illustrative purposes only

Cameroon Claim Line (from text)

Cameroon's Map R22

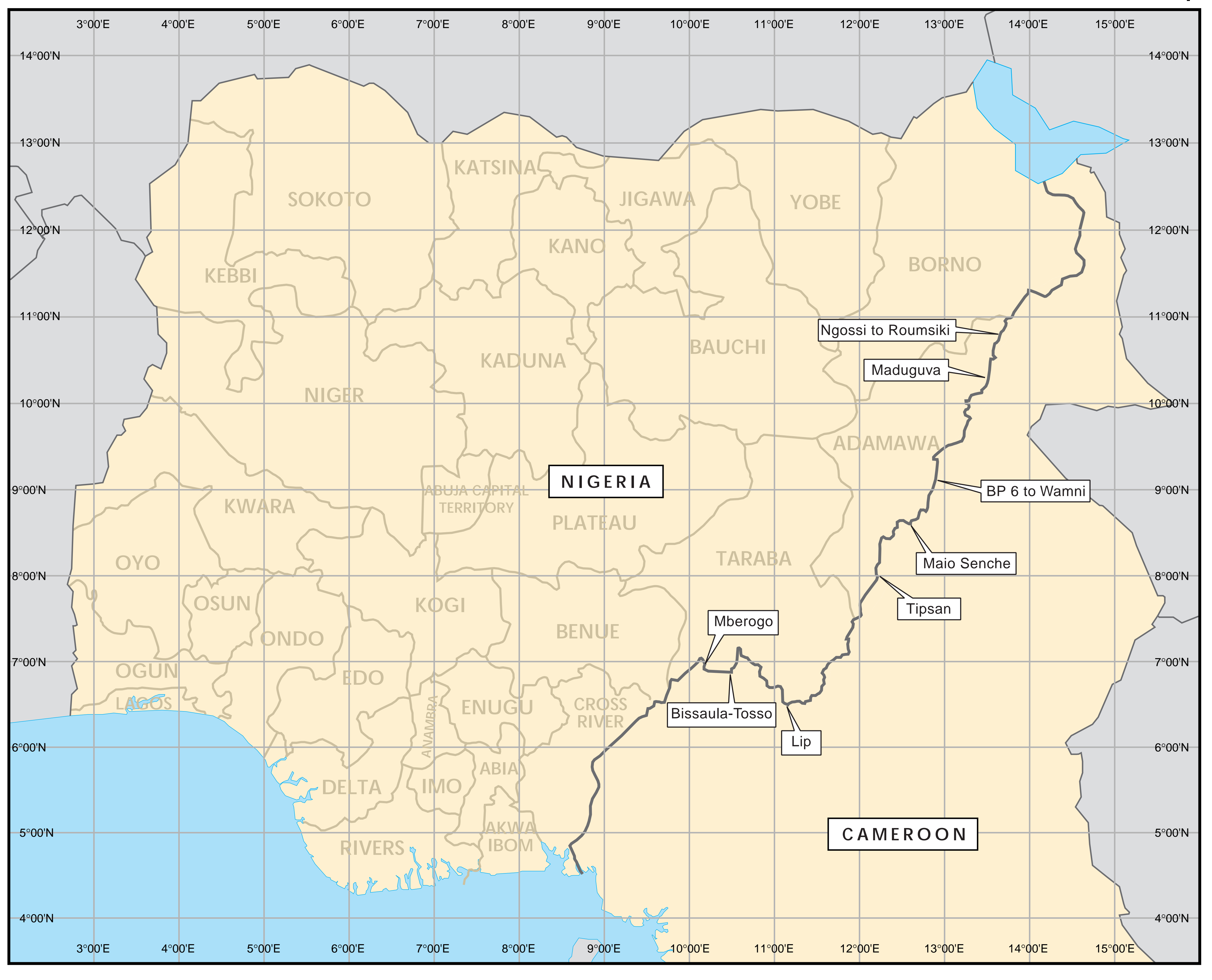
AREAS OF DEFECTIVE DELIMITATION

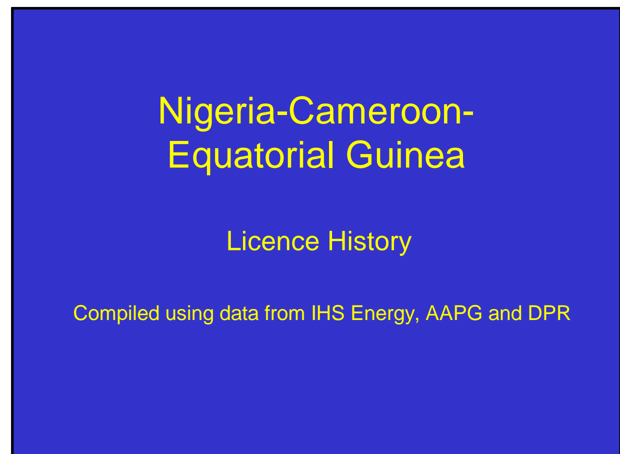
Locator Map

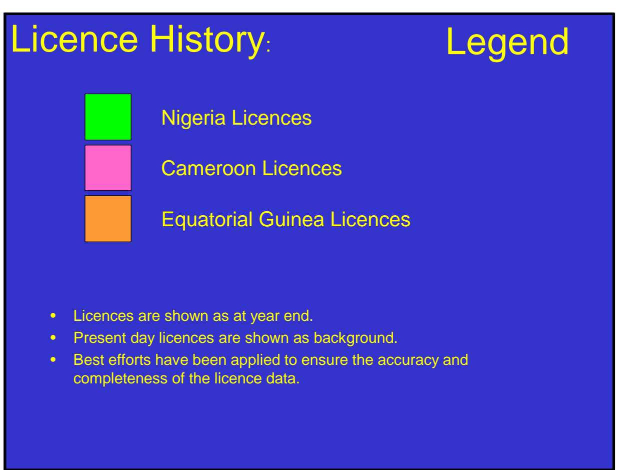


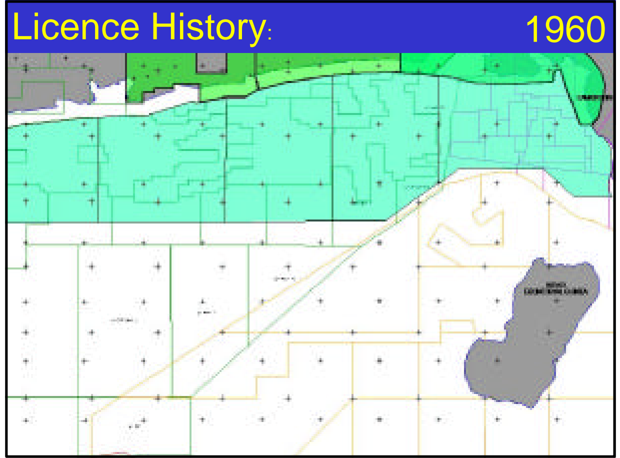
CAMEROON'S INCORRECT APPLICATION OF THE DELIMITATIONS

Locator Map




Nigeria-Cameroon-
Equatorial Guinea
Licence History
Compiled using data from IHS Energy, AAPG and DPR


Licence History:
Legend
Nigeria Licences
Cameroon Licences
Equatorial Guinea Licences
Licences are shown as at year end.
Present day licences are shown as background.
Best efforts have been applied to ensure the accuracy and completeness of the licence data.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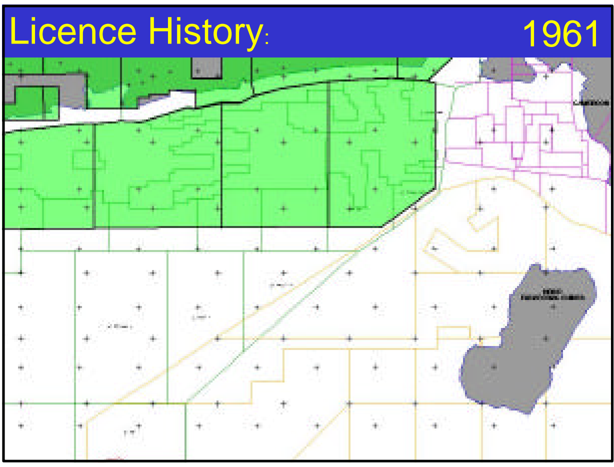
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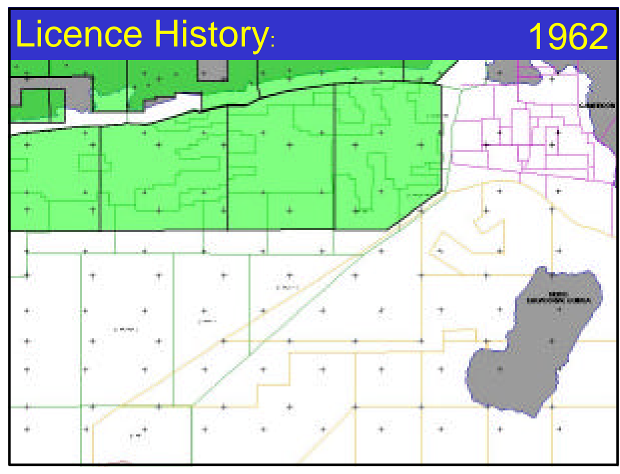
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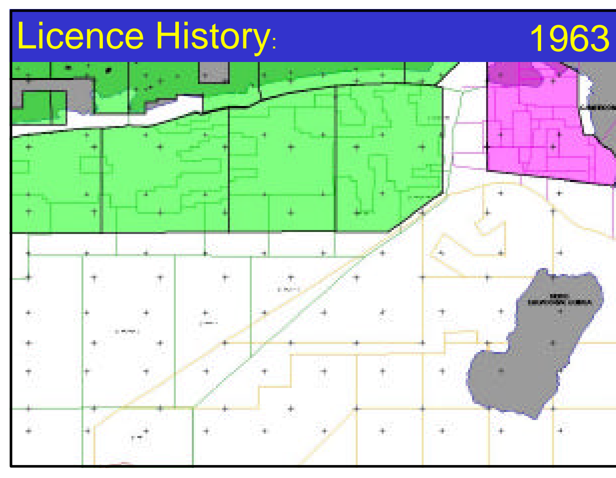
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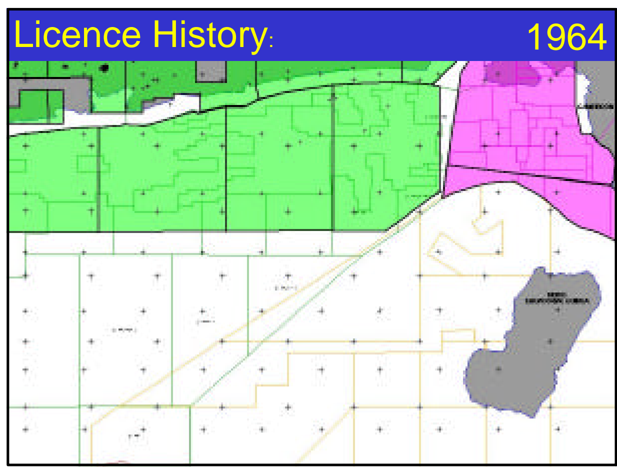
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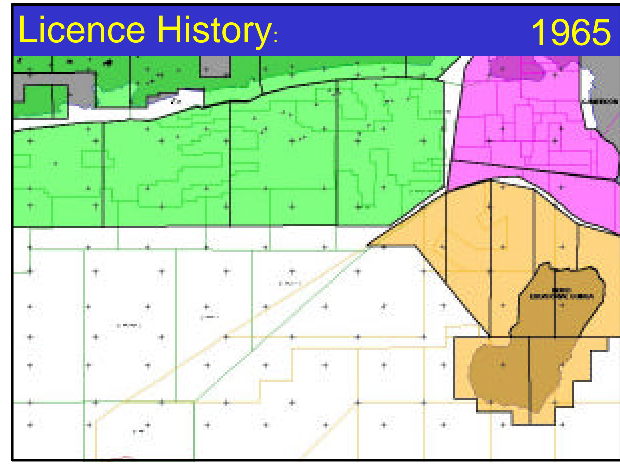
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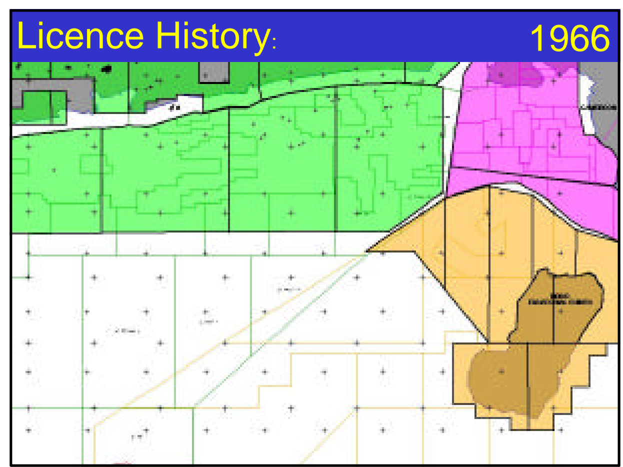
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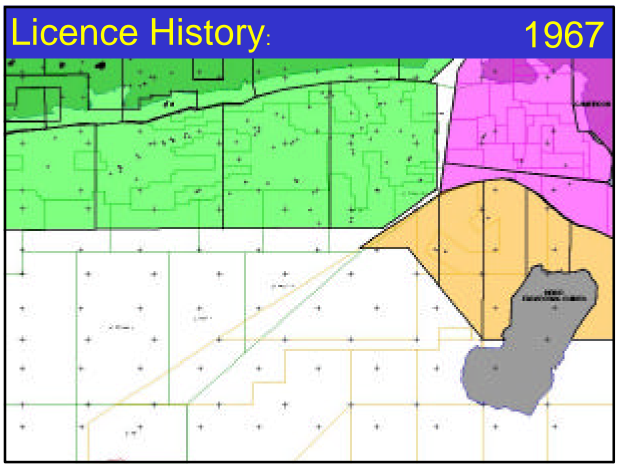
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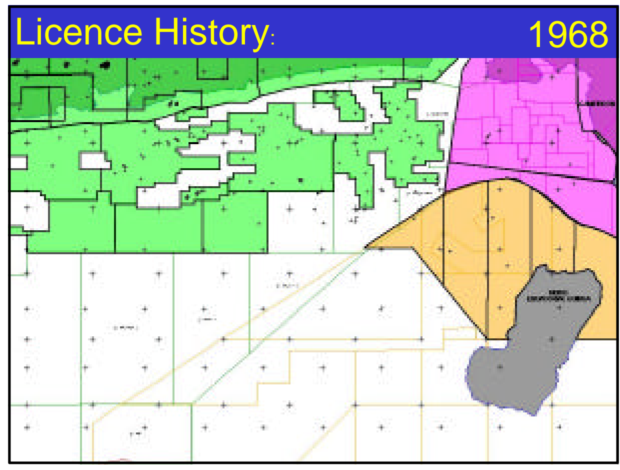
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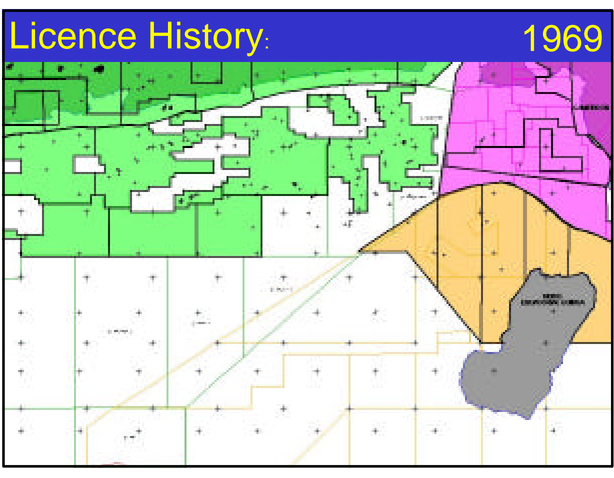
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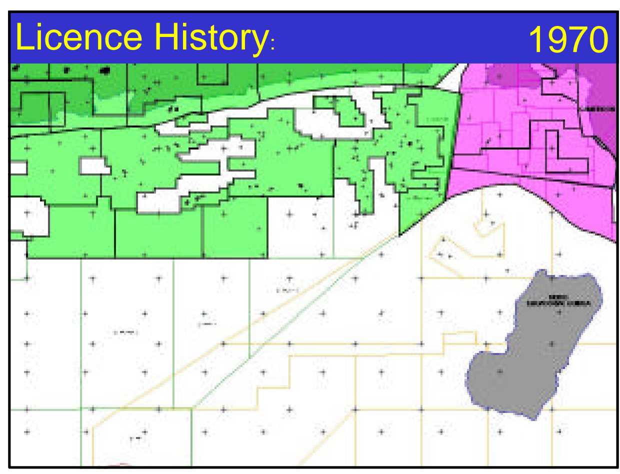
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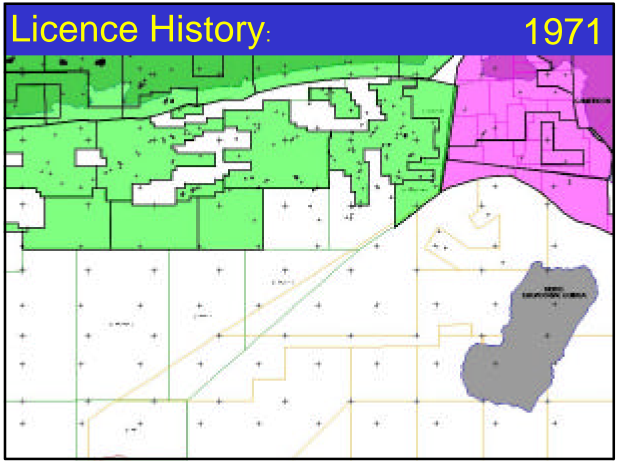
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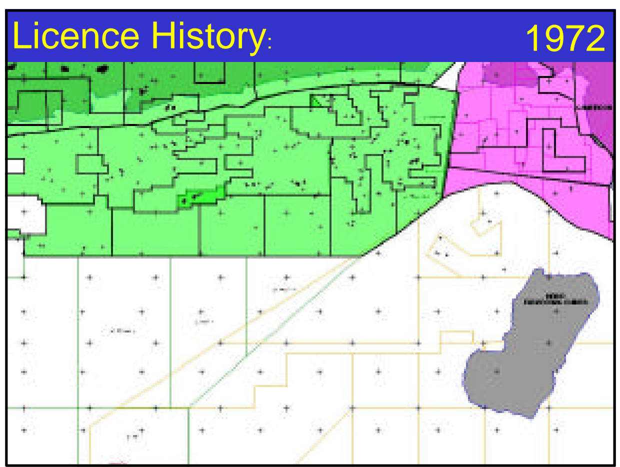
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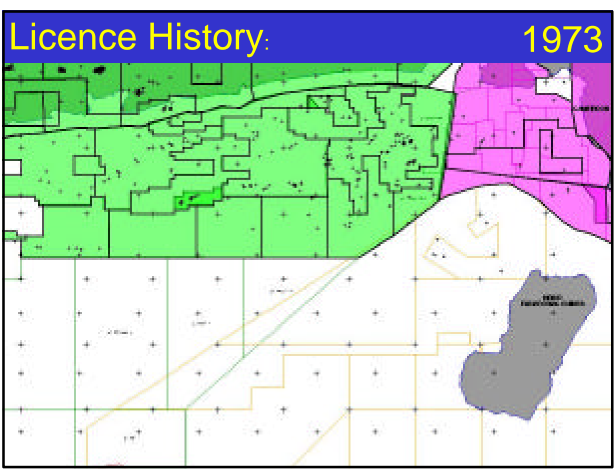
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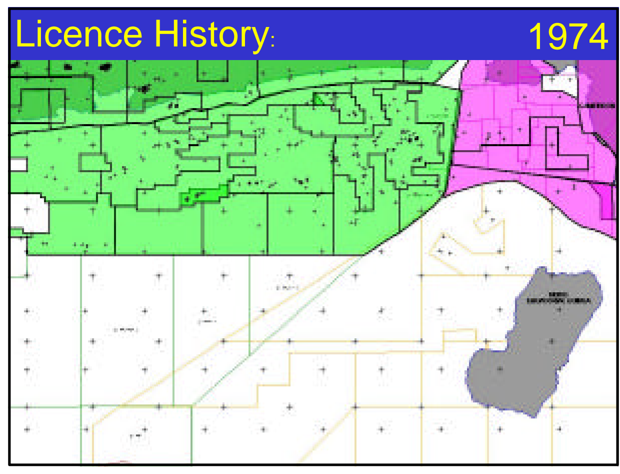
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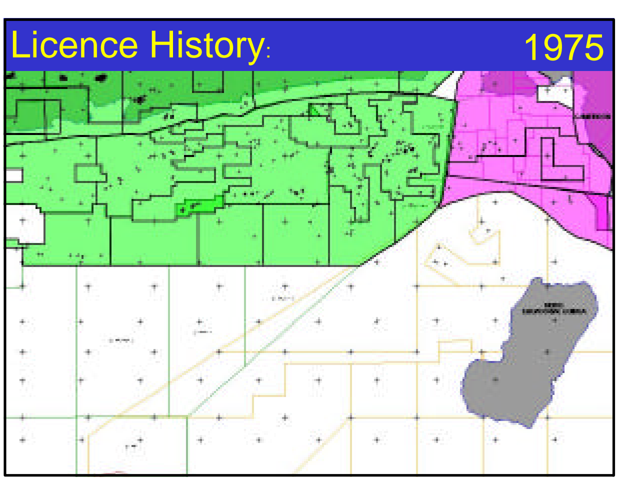
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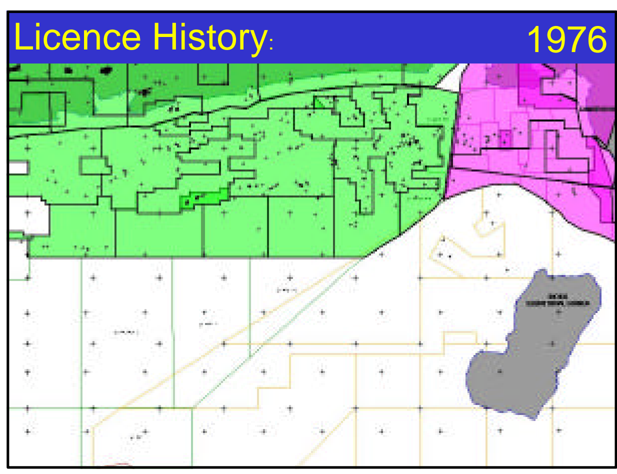
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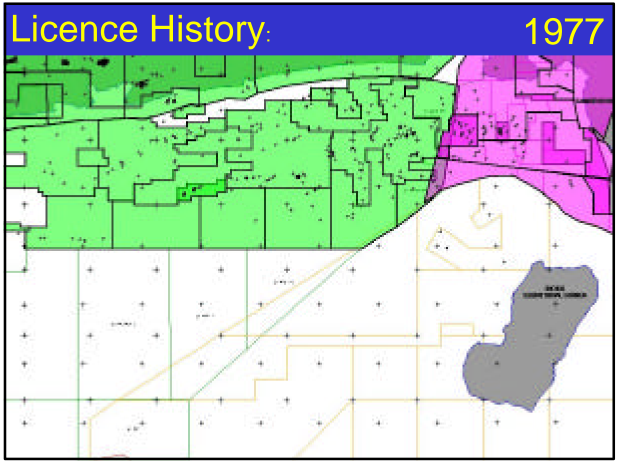
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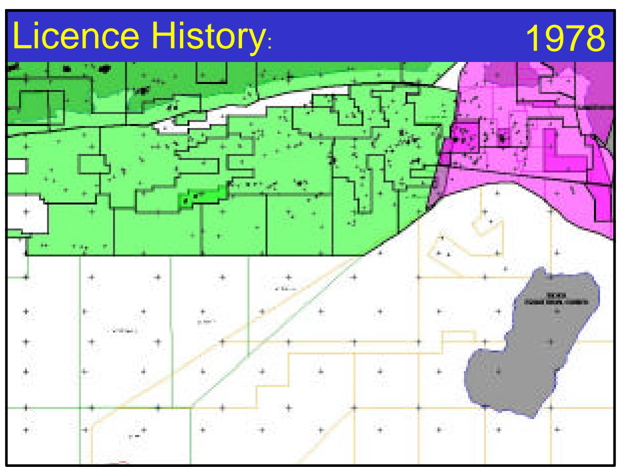
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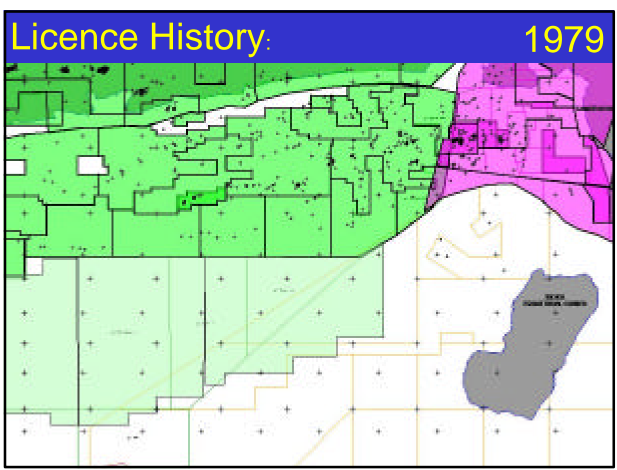
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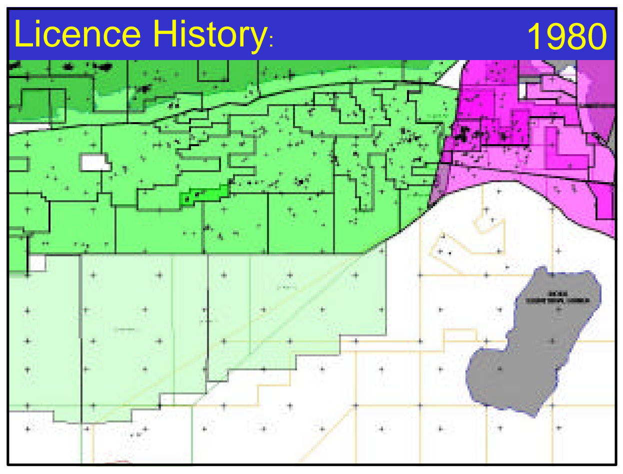
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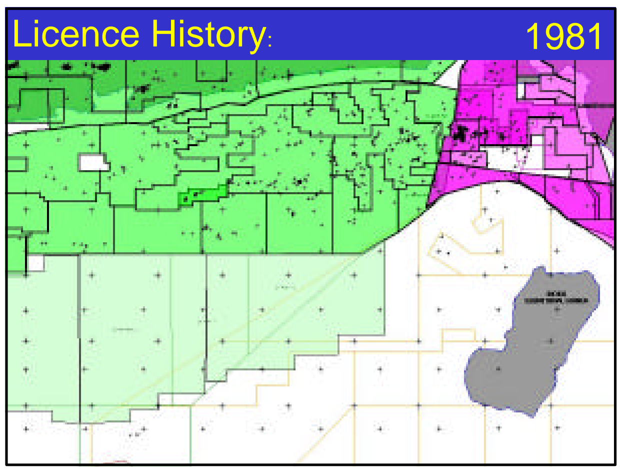
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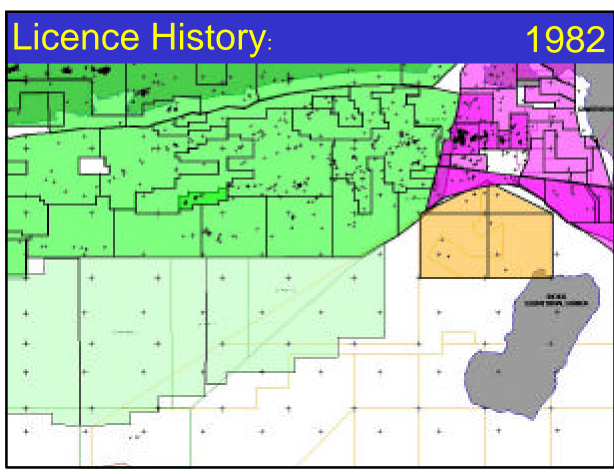
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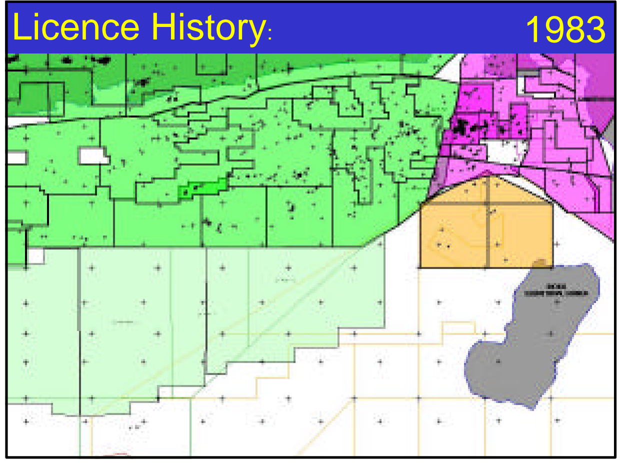
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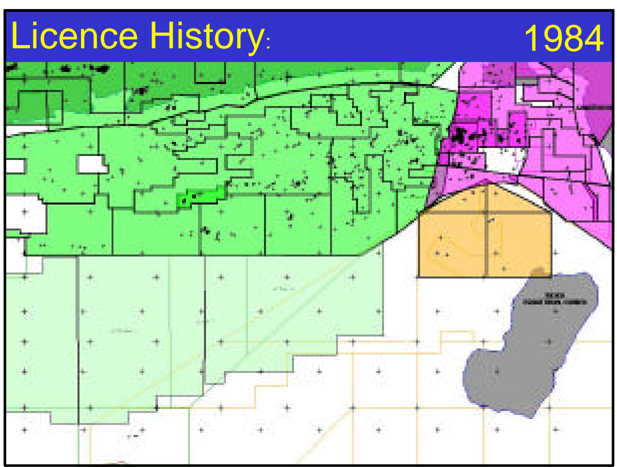
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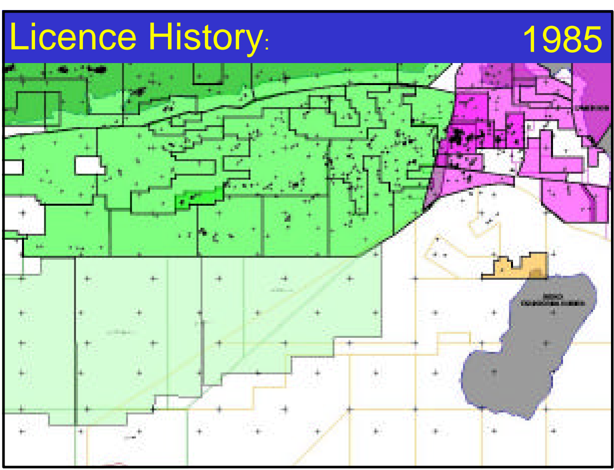
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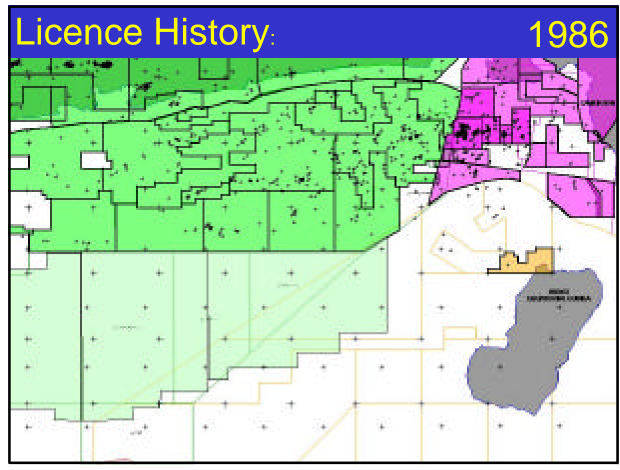
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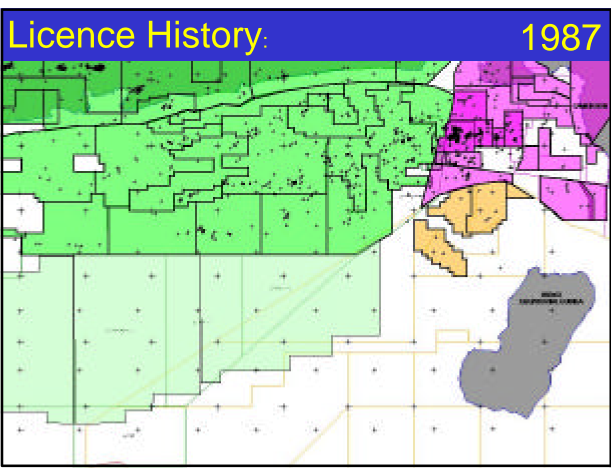
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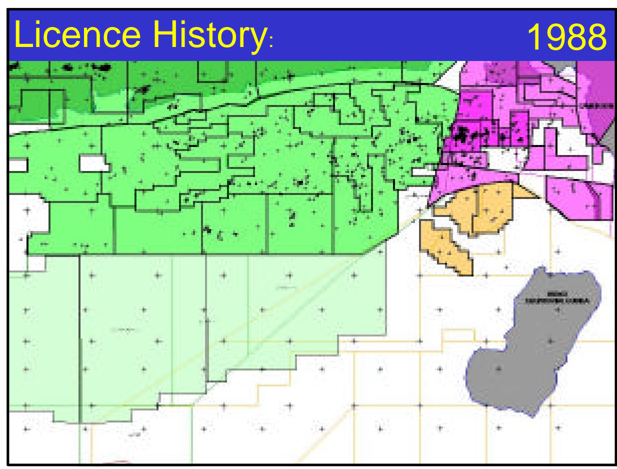
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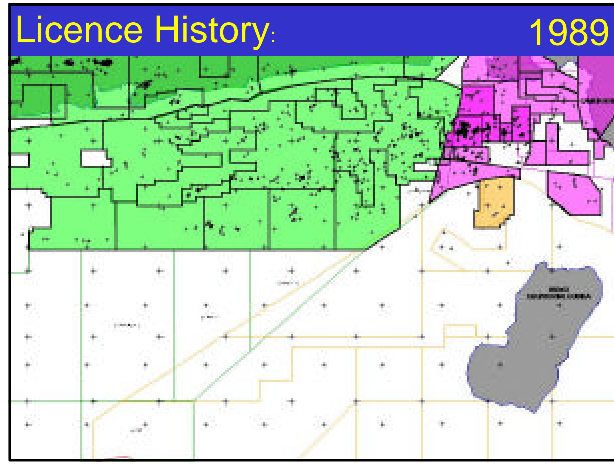
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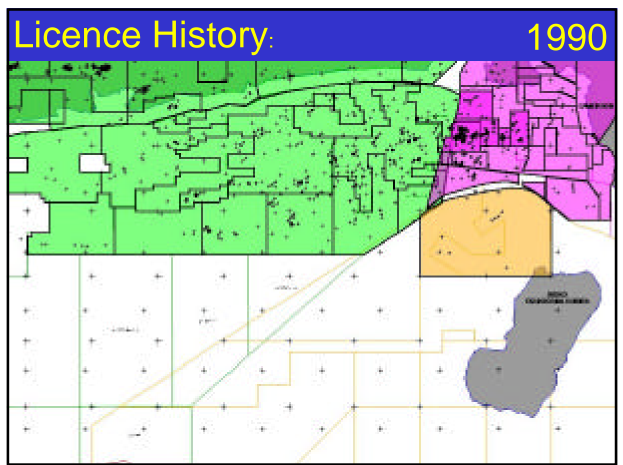
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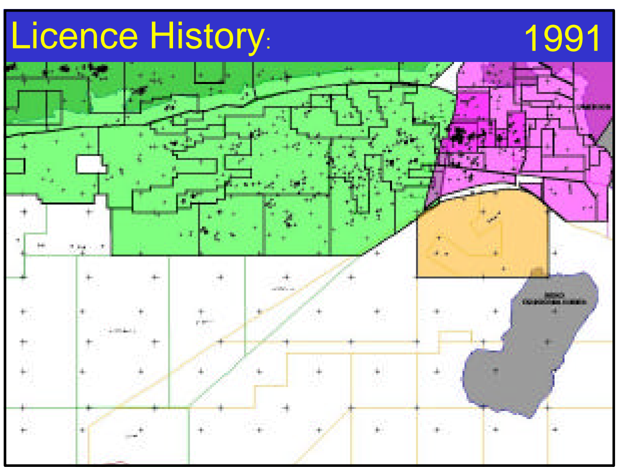
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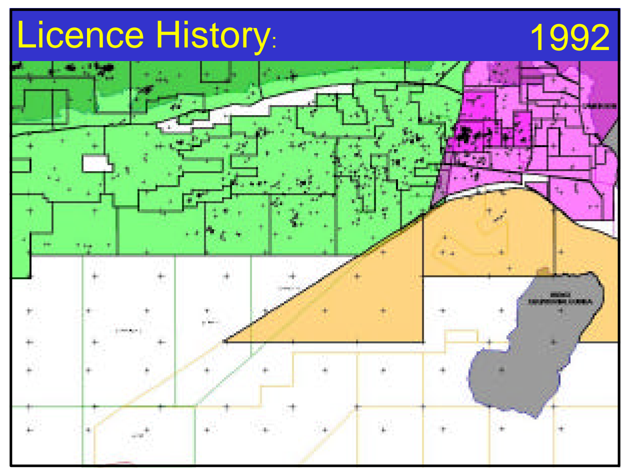
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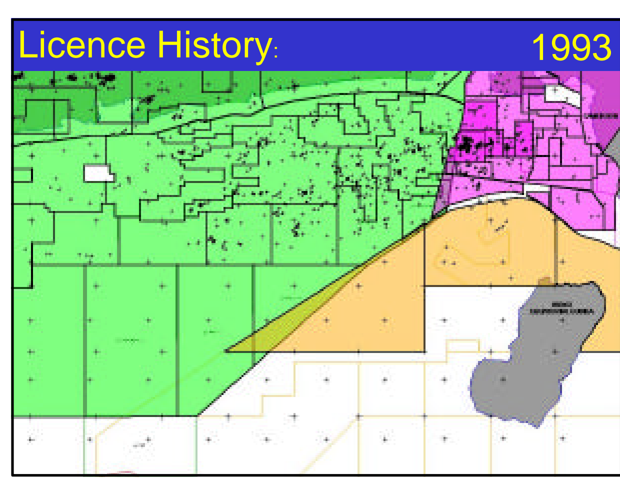
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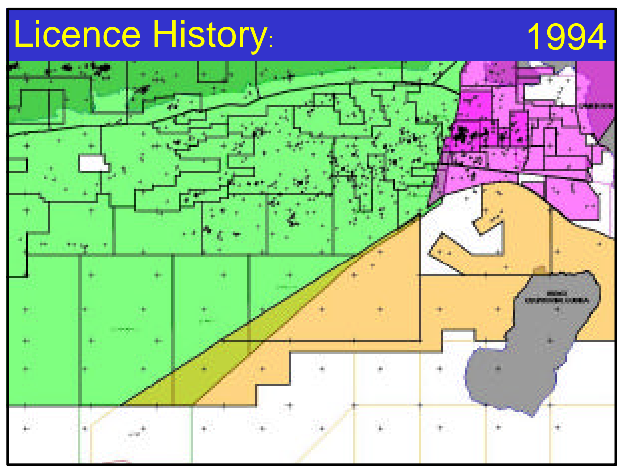
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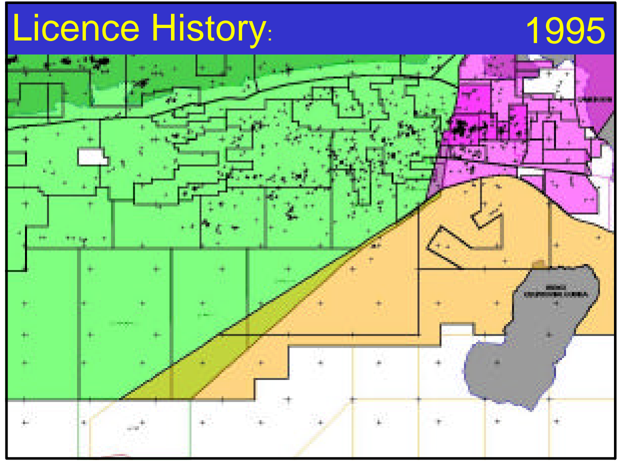
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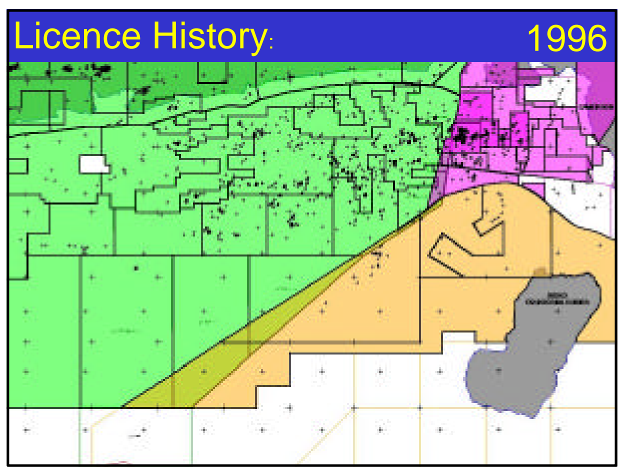
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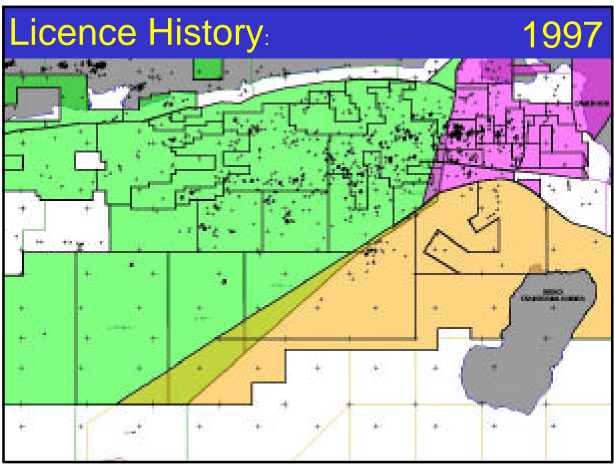
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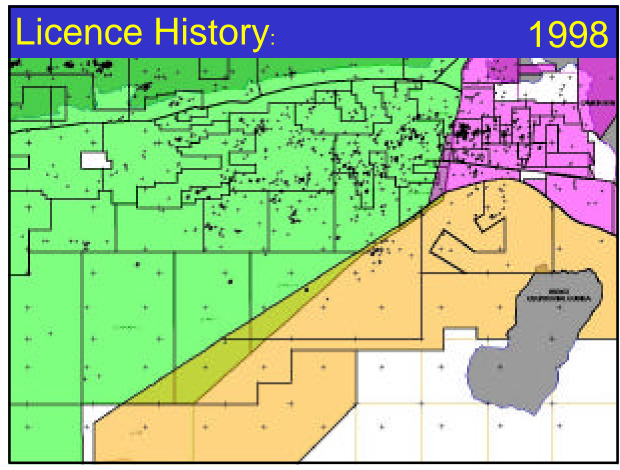
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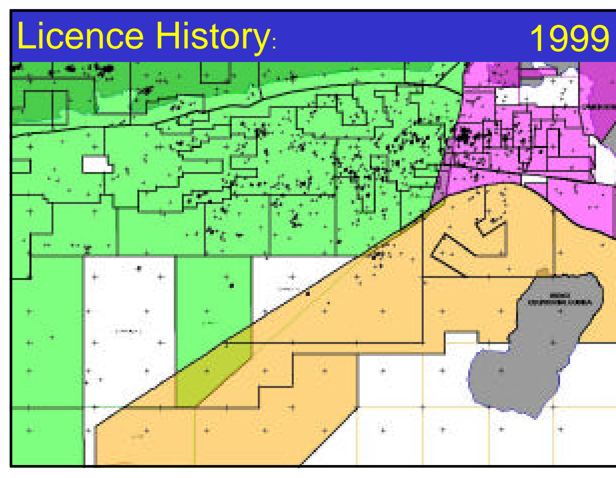
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