

# **INTERNATIONAL COURT OF JUSTICE**

## **CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA (CAMEROON v. NIGERIA)**

### **PRELIMINARY OBJECTIONS OF THE FEDERAL REPUBLIC OF NIGERIA**

#### **VOLUME I**

DECEMBER 1995

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#### **PRELIMINARY OBJECTIONS OF THE FEDERAL REPUBLIC OF NIGERIA**

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## **Introduction**

1. On 29 March 1994, the Republic of Cameroon ("Cameroon") lodged with the Registry of the Court an Application dated 28 March 1994 ("the Application") instituting proceedings against the Federal Republic of Nigeria ("Nigeria"). The Application was concerned with the issue of sovereignty "over the Peninsula of Bakassi" and "the maritime boundary up to the limit of the maritime zones which international law places under their respective jurisdictions".

2. Subsequently, Cameroon decided to make an Additional Application by way of amendment ("the Amendment").<sup>1</sup> The Amendment was filed with the Court on 6 June 1994. The Amendment broadened the area of dispute enormously. The Court was now asked to adjudge and declare not only "sovereignty over the disputed parcel in the area of Lake Chad" but also to "specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea" (a distance of approximately 1,680 kilometres).

3. The case of Cameroon is stated in detail in its Memorial dated 16 March 1995 (the "Memorial").

4. The Memorial runs to seven Volumes. The first, which is 688 pages long, contains what is alleged to be the substance of the complaint. The remaining six Volumes contain documents ("Annexes") which are alleged by Cameroon to contain evidence supporting its complaint.

5. The present document contains the Preliminary Objections of Nigeria to the Application and the Amendment of Cameroon. The Objections are eight in number. Their subject matter is as set out below:-

**Chapter 1** The Court has no jurisdiction to entertain Cameroon's Application.

**Chapter 2** The duty of the Parties to settle all boundary questions by means of existing bilateral machinery.

**Chapter 3** The exclusive competence of the Lake Chad Basin Commission.

**Chapter 4** The Court cannot determine the tripoint in Lake Chad.

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**Chapter 7** There is no dispute susceptible of adjudication as to the maritime boundary.

**Chapter 8** Maritime delimitation necessarily involves the rights of third States.

#### **A. The physical nature of the boundary between Nigeria and Cameroon**

6. The long boundary between Nigeria and Cameroon stretches in the North from the tripoint in Lake Chad to the Gulf of Guinea in the South.

7. It is helpful to treat the boundary as comprising three sectors, namely:-

(a) from the tripoint in Lake Chad to Mount Kombon (c.1,120 km);

(b) from Mount Kombon to Pillar 64 on the Gamana River (c.176 km); and

(c) from Pillar 64 on the Gamana River to the sea (c.384 km).

A map of the boundary is to be found at the end of this Introduction (p.25).

8. The Bakassi Peninsula is a low lying region bordered on the West by the estuary of the Cross River, on the North by the Akwayafe River (also known as the Akpa Ikang), on the East by the Rio del Rey estuary, and on the South by the Gulf of Guinea. The Peninsula itself

consists of a series of islands covering approximately 50 square kilometres and occupied for the most part by long-established communities of Nigerians, in several dozens of villages. The confluence of two important ocean currents, the eastward flowing warm Guinea current and the northward drift of the cold Benguela current, contribute to create large breakers and shoals which make navigation at the entrance to the Cross River estuary hazardous. This confluence also enriches the region with plankton and makes the waters surrounding the Peninsula rich in fish and other forms of marine life.

9. The rest of the boundary (the subject matter of the Amendment) consists in the South East section (from Mount Kombon to the Bakassi Peninsula) of mountainous country including the Obudu and Mambilla Plateaux. North East Nigeria is the area North of the Benue River, bordered in the North and East by the countries of Niger, Chad and Cameroon and in the West by the Nigerian State boundaries of Kano and Kaduna. The boundary North of Mount Kombon passes along the Eastern boundaries of the Nigerian border States of Taraba, Adamawa and Borno and into Lake Chad. The terrain in the North Eastern section of the boundary varies sharply between the Mandara Mountains running along the border with Cameroon and the flat, low-lying, Lake Chad basin. The mountainous areas through which the boundary passes constitute very difficult terrain. Parts of these mountainous areas are virtually inaccessible during the rainy season. Indeed, a considerable part of the boundary between Nigeria and Cameroon lies in remote country amidst dense forests or high mountain ranges.

## **B. The Parties to the present dispute**

10. Nigeria is a Federation. Cameroon is a unitary State.

11. At independence on 1 October 1960, Nigeria had three semi-autonomous Regions, namely the Eastern, Western and Northern Regions of Nigeria. A fourth Region, the mid-Western Region, was created in 1963. From 1967, the federal units became known as "States".

12. Twelve new States were initially created in 1967 out of the four existing Regions. The constituent units of the Nigerian Federation increased to 30 States in 1991 with the Federal Capital Territory at Abuja as the new seat of Government in substitution for Lagos.

13. The political and administrative history of the Bakassi Peninsula is linked very closely with the Cross River and Akwa Ibom States. These two States were originally component units of the former South-Eastern State, which was created in 1967 and inherited the administration of the Bakassi Peninsula from the Eastern Region of Nigeria.

14. Germany was the first colonial power in Cameroon. The German Kamerun Protectorate was set up in July 1884. After the First World War, the League of Nations mandate conferred the administration of four-fifths of the territory on France and the remainder on Great Britain. The British sector comprised two separate territories, one (the Southern Cameroons) in the South-West and the other (the Northern Cameroons) further North, running along the Eastern border of Nigeria. The Southern Cameroons were joined in one administrative union with the Eastern Province of Nigeria while the Northern Cameroons were linked with the Northern Province of Nigeria in another.

15. At the end of the Second World War, the League of Nations mandates were converted into UN Trust Territories, still under British and French administration. In February 1961, the UN supervised plebiscites in both the Southern and Northern Cameroons. Cameroon became a unitary Republic on 2 June 1972.

16. In 1983, the number of Cameroon's provinces was increased from seven to ten. The then Northern Province was split into Adamaoua (North and Far North) and the Centre South split into the Centre and Centre South. Shortly thereafter the "Republic of Cameroon" was adopted as the name of the country.

### **C. The Bakassi Peninsula**

17. Reference has been made above to the Bakassi Peninsula. At least 90% of the population of the Bakassi Peninsula consist of Efik and Efut people of Nigeria. The historical association with Old Calabar provides evidence of the integral links between Calabar and the Bakassi district. Very briefly, numerous treaties were entered into between colonial powers and native chiefs for the purpose of establishing and consolidating spheres of influence. The Bakassi Peninsula was one of the territories covered by protectorate treaties made between the British Crown and the Efik Kings, Chiefs and People of what later became the South-Eastern part of Nigeria. The dominions of Old Calabar included the Bakassi Peninsula.

18. The British sphere of influence stretched eastwards as far as the Rio del Rey. In consequence, at that period the area of the Bakassi Peninsula was within the territories of the Kings, Chiefs and People with whom Great Britain concluded treaties in 1884.

19. The villages of the Bakassi Peninsula were administered by the Eket Division of the former Calabar Province of Nigeria. Following the creation of new Nigerian States in 1967 the administration continued under the South Eastern State, later called the Cross River State. Akwa Ibom State was created in 1978 out of the former Cross River State and soon after that, the Mbo Local Government Authority ("LGA") of Akwa Ibom State, located within the territory of the former Eket Division, and the Akpabuyo LGA of Cross River State raised conflicting claims to the Bakassi Peninsula.

### **D. The untimeliness of the Application**

20. The specific grounds for the Preliminary Objections are set out in more detail in Chapters 1 to 8 below. As explained more fully in Chapter 1, the timing of the Application is significant. However, for present purposes Nigeria is concerned that Cameroon saw fit to bring the Application and the Amendment before the Court at all.

21. Nigeria's continuing attempts to maintain friendly relations with Cameroon are evidenced, for example, by the exchange of visits which took place in January 1994. Nigeria's Minister for Foreign Affairs, Ambassador Baba Gana Kingibe, visited the Cameroonian President, His Excellency Mr. Biya, at the instance of Nigeria's Head of State, His Excellency General Sani Abacha. At the meeting, Ambassador Baba Gana Kingibe stressed Nigeria's determination to strengthen the existing cordial relations between the two countries. He also urged the two

countries to utilise existing mechanisms of the bilateral institutional framework to consolidate their peaceful co-existence and good neighborliness, as well as to take steps to resolve all outstanding contentious issues between them. In appreciation of Ambassador Baba Gana Kingibe's visit, the President of Cameroon despatched his Foreign Minister on a goodwill mission to Nigeria's Head of State on 13 January 1994. The Cameroonian delegation came on that occasion with a proposal for the setting up of a joint fact-finding committee to address the border question in its entirety (with particular reference to the Bakassi Peninsula). A meeting to work out the modalities for the formation of the Committee, as well as the Committee's itinerary, was scheduled for 8 or 9 February 1994 either in Calabar or in Buea, Cameroon. The matter never progressed beyond that.

22. Further discussions were taking place only a few days before Cameroon filed the Application. The 8th Summit of the Heads of State and Government of the Lake Chad Basin Commission took place in Abuja, Nigeria during 21-23 March 1994. The Summit was under the Chairmanship of His Excellency General Sani Abacha. His Excellency Mr. Augustin Frederic Kodock attended the 8th Summit representing Cameroon.

23. Clearly, it would have been deeply embarrassing for Cameroon, after having attended the 8th Summit of the Lake Chad Basin Commission on 23 March 1994, to be found, five days later, making an application to the Court in relation to the border in the area of Lake Chad. In its Memorial, (paragraphs 1.08 to 1.10), Cameroon attempts to place reliance merely upon a claim by Nigeria to sovereignty over Darak, an island in Lake Chad, (in conjunction with the dispute in relation to the Bakassi Peninsula and a history in which allegations of minor border incursions were made by both sides) as being the ground for the assertion that it was only "then" that the Government of Cameroon became "aware" that this territorial claim formed part of a "systematic plan" by Nigeria to challenge "the existing boundaries". Nevertheless, in an adjacent paragraph Cameroon asserts that incidents between the two countries in relation to border disputes had been virtually incessant all along their common border since independence in 1960. There is no logical nexus between Nigeria making a claim in respect of Darak and Cameroon concluding (erroneously) that this formed part of a "systematic plan" by Nigeria to challenge "the" (by which Cameroon means "all") existing boundaries. This certainly does not justify broadening the scope of the Application in respect of the land boundary. This amounts to no more than the adoption of emotive language to conceal the *non sequitur* in the Cameroon reasoning.

24. In all the circumstances, the lack of coherence in Cameroonian diplomacy in the early part of 1994 invites a question as to whether the diplomatic steps taken by Cameroon at that time were taken in good faith.

### **E. Prejudicial comments and other defects in the Memorial**

25. In this Introduction it is neither appropriate nor possible to list exhaustively all the concerns of Nigeria as to the presentation of the Memorial. At this stage, the objective is to highlight, for the benefit of the Court, certain matters which pertain to the Preliminary Objections.

26. In doing so, it is first necessary to draw attention to the fact that the Memorial is replete with emotive language. These matters are dealt with briefly below -in paragraphs 28 to 40. In

addition, both the Memorial and the Annexes referred to therein contain numerous defects and omissions. For ease of reference, Nigeria has prepared two Schedules, copies of which are annexed at the rear of this Volume 1, respectively entitled:-

SCHEDULE 1: - Schedule of Annexes which are incorrectly referenced in Volume 1 of the Cameroon Memorial; and

SCHEDULE 2: - Schedule of inadequacies in the Annexes to the Cameroon Memorial.

27. It is likewise not possible to specify in this Introduction all the individual examples of prejudicial wording which have been utilised by Cameroon throughout the lengthy Memorial. However, even the first few pages of the Memorial contain numerous examples of language being used which is prejudicial because:-

it is emotive; or

it distorts the truth; or

it is misleading/disingenuous; or

it begs the question and assumes the correctness of the Cameroon case as to both the delimitation and demarcation of the boundary.

Nigeria is concerned that Cameroon's approach mischaracterises the nature of the dispute between the two States.

28. For example, paragraph 1.02 of the Memorial contains an allegation that Nigerian Troops "flagrantly violated" Cameroon's "territorial integrity in the region of the Bakassi Peninsula". This clearly begs the question as to sovereignty over the Bakassi Peninsula.

29. At paragraph 1.27, there is reference to the letter sent on 4 March 1994 (Annex MC 344 to the Memorial) by the *Chargé d'Affaires ad interim* of Nigeria at the United Nations to the President of the Security Council. This letter expressed the hope of Nigeria that the Security Council would encourage summit talks towards a bilateral settlement of the dispute pursuant to Article 33.1 of the United Nations Charter. The letter further stated that the Government of Nigeria hoped that the Security Council would exhort all third parties to refrain from any action which might internationalise or aggravate the situation.

30. These comments by the Nigerian Government are reasonable. Indeed, the Security Council itself in its letter dated 29 April 1994 (Annex MC 359 to the Memorial) was encouraging the pursuit of dialogue with a view to resolving the matter. Nevertheless, Cameroon alleges that the words in the letter dated 4 March 1994 from the Nigerian *Chargé d'Affaires* constitute a "scarcely veiled rejection" of the international offers of good offices and mediation. This kind of allegation cannot be substantiated. The same point is relevant in relation to paragraph 1.28 of the Memorial.

31. In relation to paragraph 1.32 of the Memorial, reference should be made to the Second Preliminary Objection specifying the duty of the parties to settle all boundary questions by means of the existing bilateral machinery. The Parties have accepted such a duty and

complied with that duty for a quarter of a century. Therefore, when placed in context, it can be seen that the following words from paragraph 1.32 are inserted only for purposes of prejudice, namely:-

"... and that if, inconceivably, such a [bilaterally negotiated] solution were to be reached, Nigeria would in all probability call it into question at the first opportunity, either sooner or later".

32. In paragraph 1.71, the Memorial asserts that discussions had been going on for years in Nigeria about how to "gain possession" of the Bakassi Peninsula ("pour s'approprier celle-ci"). The inference of these words is that Nigeria believed that the Bakassi Peninsula had to be seized from its rightful owners, Cameroon. This again begs the question. Even if such assertions were not erroneous it is illogical for Cameroon to present them as evidence supporting that conclusion.

33. Further, in paragraph 1.67 of the Memorial, Cameroon quotes a Note from the Cameroon Minister for Foreign Affairs addressed to the Nigerian Ambassador in Yaoundé on 11 April 1994 (after the date of the Application) which stated in relevant part:-

"... 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"<sup>2</sup>.

The wording of this Note from the Cameroonian Minister is a false claim. Cameroon took the initiative in disturbing the *status quo* in the border regions, especially in the Bakassi Peninsula.

34. Later in its Memorial (paragraph 6.12 and following) Cameroon refers to alleged Nigerian military incursions in the Bakassi Peninsula. Cameroon claims a military patrol of the Nigerian army violated Cameroon territory by penetrating into the Bakassi Peninsula as far as the Rio del Rey where it opened fire on a craft of the Cameroonian Navy. Cameroon alleges (paragraph 6.21) that the deaths of five Nigerian soldiers provided the Nigerian authorities with a pretext for exploiting the incident politically and for trying to put the blame on to Cameroon. The fact is that the incident occurred on the Akwa Yafe River, which is in Cross River State, Nigeria. It took place on 16 May 1981. As Cameroon acknowledges, it was *Nigerian* nationals who were killed. On 23 May 1981, President Ahidjo of Cameroon wrote to President of Shagari of Nigeria (NPO 1). President Shagari responded by letter dated 25 May 1981 (NPO 2) demanding:-

- (1) an unqualified apology;
- (2) the bringing to justice of the perpetrators of the murders; and
- (3) full reparation to the families of the dead soldiers.

35. On 24 May 1981, Cameroon sent to Nigeria a Delegation led by a Minister in the Cameroon Foreign Ministry, to offer the regrets of President Ahidjo for the incident.

36. Shortly thereafter, President Shagari summoned a meeting of the National Security Council to consider the response made by Cameroon. The Nigerian Government was not satisfied with the response of President Ahidjo. President Shagari sent an appropriate reply to President Ahidjo. Eventually, President Ahidjo made a full apology to President Shagari and offered compensation to the families of the victims. Copies of a letter dated 16 July 1981 from President Ahidjo to President Shagari with President Shagari's response dated 20 July 1981 are at NPO 3.

37. These letters containing the express apology made by the Head of State of Cameroon are not mentioned at all in the Memorial. There is a responsibility on Cameroon to present its case fairly and fully.

38. Comments and assertions in the Memorial of the type identified above constitute no more than unsupported allegations. They are not assertions of fact. They are not conclusions of law flowing from an analysis of the applicable law and the relevant facts. They are merely prejudicial.

39. Evidently, the objective of Cameroon is to attempt to paint a picture of a very large and powerful aggressor State - Nigeria (described in paragraph 1.38 as the "giant of Africa") - which has expansionist objectives and designs upon a smaller neighbour State - Cameroon. For the reasons explained below, this assertion is without foundation.

**F. The Economic and Political Context**

40. Cameroon asserts that the "expansionist" aims of Nigeria are explained by factors such as the attraction of natural resources and the serious economic crisis which Nigeria has been suffering since the late 1980's (Memorial, paragraph 1.61). This overlooks the reality of Cameroon's own situation during the last decade. Oil prices fell in early 1986. In addition, oil output peaked in 1985 at 9.16mtons, but by 1993 it had fallen to 6.3m tons. Annual oil production of Cameroon in thousands of tons was as follows:-

1988	-	8,292
1989	-	8,114
1990	-	7,835
1991	-	7,235
1992	-	6,790

1993 - 6,300

Identified reserves were put at 56m tons at the end of 1992. By 1994 it was apparent that the Cameroon oil industry was in decline - production was down to 120,000 barrels per day and recoverable reserves were said to be likely to be wholly depleted by the year 2005.

41. In 1989, Mr. Paul Biya, the President, Prime Minister and Commander in Chief of the Armed Forces of Cameroon, introduced his first austerity budget. There were further cutbacks in 1990/91 when the budget totaled CFA Fr. 550bn. It has remained virtually static since that date. Despite these cutbacks, the Government of Cameroon has consistently fallen short of its targets on both revenue and expenditure. Substantial deficits have continued. In 1992/93 there were wage cuts of up to 70% for public-sector employees. Government expenditure has consistently exceeded revenue by as much as one-third. Public revenue fell by more than 40% during the years 1988 to 1993.

42. Cameroon increased its external debt to a total of US\$6.5bn by the end of 1992. However, much of the debt had been raised for extended maturities and on fairly soft loans. In May 1989, Cameroon obtained its first rescheduling agreement with the Paris Club of official creditors, with approximately US\$535m of debt rescheduled over a period of ten years. In January 1992, under a second Paris Club agreement, US\$1.1bn was rescheduled. In May 1994 there was a further rescheduling. Total external debt was US\$7bn. Payments due up to September 1995 were rescheduled over a period of 23 years. There has also been a very large rise in bilateral lending since 1988.

43. By comparison with Cameroon's declining oil production and reserves, the oil production of Nigeria has remained steady. Production in thousands of barrels per day was as follows:-

1990	-	1,840
1991	-	1,950
1992	-	1,880
1993	-	1,910
1994	-	1,900

44. Despite various difficulties, at a political level Nigeria and Cameroon have maintained correct and for the most part cordial relations. Delegations have been exchanged on a regular basis. The Heads of State customarily send messages of congratulations to each other on festive occasions. For example, a delegation from Cameroon visited Abuja in 1995 in order to canvass support for Cameroon's membership of the Commonwealth.

45. Since independence in 1960, Nigeria and Cameroon have sought to resolve trade matters by a series of bilateral agreements under the auspices of the Nigeria-Cameroon Joint

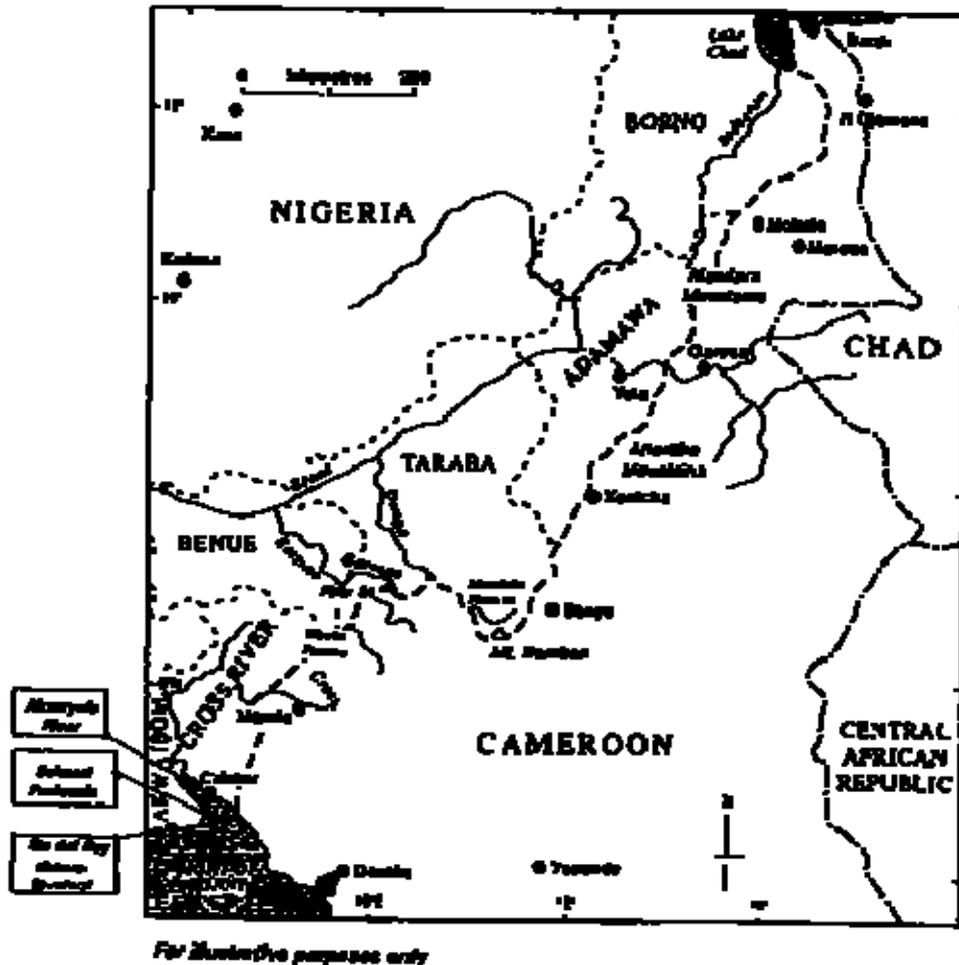
Commission, specifically set up for that purpose. These agreements have covered areas such as fishing, telecommunications, police and judicial matters, customs, visa abolition, air services, road transport, economic, scientific and technical co-operation, as well as cultural and social matters. Of these only the visa abolition treaty and the air services agreements are in force. The Agreement on Economic, Scientific and Technical Co-operation has been signed but is not yet in force. Other agreements have remained in draft, principally due to reticence on the part of Cameroon.

46. The most recent Joint Commission meeting was held in Abuja from 1-5 November 1993. Discussions were held on fishing, water resources, transport, culture, health, police, security and border matters as well as petroleum and energy, science and technology (NPO 4).

47. Nigeria and Cameroon have been making efforts to draw up a draft trade agreement. Trade officials of both countries met in Abuja in 1994 to consider a draft.

48. It has been necessary to refer to these points in some detail in order to counteract the presentation of Nigeria's behaviour as "expansionist" and of Nigeria as intent on a "systematic plan" to challenge existing boundaries. There are specific difficulties relating to the common boundaries, many of them of long duration. Both countries have, in addition, economic and other difficulties which they are seeking to surmount. To attempt to link the two, as the Cameroon Memorial does, is both contrived and counter-productive.

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## CHAPTER 1

### The Court has no jurisdiction to entertain Cameroon's Application

#### A: The Court has no jurisdiction to entertain the Application

1.1 Cameroon, in lodging the Application on 29 March 1994 pursuant to its Declaration of 3 March 1994 accepting the Court's jurisdiction under Article 36.2 of the Statute, acted prematurely and without regard to requirements of good faith, and failed to satisfy the requirement of reciprocity as a condition to be met before the jurisdiction of the Court under Article 36.2 of the Statute can be invoked against Nigeria.

## **B: Background**

1.2 The Application, which was lodged with the Court Registry on 29 March 1994 by Cameroon, seeks to base the jurisdiction of the Court on the Declarations made by Nigeria and Cameroon under Article 36 of the Statute. Paragraph 12 of that Application reads (in translation):

"The Republic of Cameroon and the Republic of Nigeria have both accepted the compulsory jurisdiction of the Court, in accordance with Article 36 of its statute, without any reservation."

1.3 Cameroon's Amendment of 6 June 1994 similarly seeks to base on those same Declarations the Court's jurisdiction over the extended subject matter thereby submitted to the Court. Paragraph 10 of the Amendment reads (in translation):

"The basis of the Court's jurisdiction has already been indicated in the Application instituting proceedings filed by the Republic of Cameroon on 29 April [*sic: semble `29 March' intended*] 1994, to which the Government of the Republic of Cameroon respectfully requests the Court to join the present additional Application, and to deal with the whole as one and the same case."

1.4 Paragraph 1.18 of the Memorial repeated those assertions as to the basis for the Court's jurisdiction.

1.5 Nigeria's Declaration was dated 14 August 1965, and was deposited with the Secretary-General of the United Nations on 3 September 1965: its text is at NPO 5. Nigeria's Declaration has therefore been a matter of public record for some 30 years. In contrast, Cameroon's Declaration was undated, and was communicated to the Secretary-General of the United Nations by the Permanent Mission of Cameroon only on 2 March 1994 (text at NPO 6); it was apparently received by the Secretary-General the following day and has accordingly been treated as bearing the date of 3 March 1994. Nearly a year later, the Secretary-General, pursuant to Article 36.4 of the Statute, transmitted copies of the Cameroon Declaration to Nigeria (as presumably to other parties to the Statute) by means of a Note dated 9 February 1995 (text at NPO 7). As already noted, Cameroon filed its Application instituting the present proceedings on 29 March 1994 - 25 days after the Declaration was received by the Secretary-General, and some ten and a half months *before* the Secretary-General informed Nigeria that the Declaration had been made.

1.6 Nigeria had no means of knowing, and in fact did not know, of the deposit by Cameroon of its Declaration until it was informed by the Registrar of the Court by telex and letter dated 29 March 1994 of the lodging by Cameroon of the Application (NPO 8).

1.7 It is striking that Cameroon took no steps to inform Nigeria bilaterally of the making of its Declaration, or of its transmission to the Secretary-General of the United Nations on 2 March 1994. As is clear from paragraphs 21 above and 2.6 to 2.23 below, an extensive network of bilateral institutions exists which could have been used by Cameroon for this purpose, quite apart from the normal diplomatic channels which were available for the communication of such information between two States in diplomatic relations with each other. In particular, during the period immediately before and after 2 March 1994 there were bilateral and multilateral meetings attended by representatives of the two States at which the

communication of such information would not only have been easy and appropriate, but also would have been what was to be expected between States having the degree of shared interests such as existed at that time between Nigeria and Cameroon.

1.8 It is also noteworthy that Cameroon failed to bring these chronological factors to the Court's attention. Article 38.2 of the Rules of Court requires that the "application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based". Cameroon, while asserting that the basis for the Court's jurisdiction is to be found in Declarations under Article 36.2 of the Statute, has treated the jurisdictional issue in a way that can only be characterised as minimal and perfunctory, and a long way removed from compliance with the obligation under Article 38.2 of the Rules of Court to "specify" the legal grounds "as far as possible". Thus in its Application (and also in its Memorial) Cameroon did not mention (as it could have done, and as Nigeria is now doing) the dates of the respective Declarations, nor did Cameroon provide (as it could have done, and as Nigeria is now doing) copies of those Declarations as Annexes. It is clear that Cameroon was unwilling to draw attention to the inappropriate haste with which it had sought to institute the present proceedings against Nigeria.

1.9 Thus, in contrast to Nigeria's long-standing, open and (apart from the stipulation as to reciprocity) unqualified acceptance of the Court's compulsory jurisdiction, Cameroon accepted the jurisdiction of the Court surreptitiously - an aspect of the proceedings which Nigeria develops elsewhere (see Section C below, especially paragraphs 1.17 and 1.18). In the course of various contacts immediately before March 1994 Cameroon carried on discussions with Nigeria in a normal manner, with no suggestion by Cameroon that it was even contemplating, let alone about to take, such a significant step in the bilateral relations between two States as to institute proceedings before the Court: no threat or suggestion or other warning of imminent arbitral or judicial proceedings was made by Cameroon. Cameroon thus knowingly misled Nigeria, and - as was doubtless Cameroon's intention - Nigeria was taken by surprise by the institution of proceedings against it. Nigeria finds it difficult to reconcile such an attitude on the part of Cameroon with the dictates of proper respect for proceedings before the principal judicial organ of the United Nations.

### **C: Legal considerations**

1.10 Nigeria is aware of the second Preliminary Objection raised by India, and rejected by the Court, in *Right of Passage over Indian Territory* (Preliminary Objections), ICJ Reports 1957, p. 125. Nigeria does not consider that that Judgment excludes the present Preliminary Objection being advanced by Nigeria, because:

- (1) under Article 59 of the Statute that Judgment has binding force only for India and Portugal in respect of that particular case, and expressly has no other binding force;
- (2) there are in this context certain significant differences between the facts of that case and those of the present case, and between the arguments presented in that case and those which Nigeria presents in the present case; and

(3) in the 38 years since that Judgment was delivered in 1957 there have been developments in international law which militate in favour of a different outcome in the present proceedings instituted by Cameroon.

1.11 Article 36.2 of the Statute establishes that the jurisdiction conferred on the Court by a Declaration made under it by one State has effect only "in relation to any other state accepting the same obligation" - in effect, a general requirement of reciprocity. Article 36.3 expressly permits Declarations to be made "on condition of reciprocity", and Nigeria's Declaration does so: Nigeria's Declaration accepted the jurisdiction of the Court as compulsory:

"... in relation to any other State accepting the same obligation, that is to say, on the sole condition of reciprocity".

1.12 The principle of reciprocity is central to the system established by Article 36.2 of the Statute. It is a notion which has to be interpreted in a substantive and not a formalistic sense; it must also be understood and applied in the light of the principle of good faith which governs all aspects of State behaviour.

1.13 The Court has on several occasions treated international law as primarily concerned with the substance of issues. As it was put by Vice-President Wellington Koo in his Separate Opinion in the first phase of the *Barcelona Traction* case:

"International law, being primarily based upon the general principles of law and justice, is unfettered by technicalities and formalistic considerations which are often given importance in municipal law ... It is reality which counts more than appearance. ... it is substance which carries weight on the international plane rather than form." (ICJ Reports 1964, at pp. 62-63).

1.14 In looking to substance, the application of international law has to take proper account of international realities, particularly those concerning the conduct of the business of Governments at the international level. The Court itself has expressed itself to have been motivated by a concern not to "lose touch with reality" (*Barcelona Traction* (Second Phase), ICJ Reports 1970, at p. 37); and although that statement was made in a different context, that same motivation is equally compelling in other areas, and particularly where the basis for the Court's own jurisdiction is concerned.

1.15 The reality is that States are not omniscient. In relation to a Declaration made by another State under Article 36.2 of the Statute they need to be told of that Declaration. The Statute recognizes this: Article 36.4 requires the Secretary-General to inform them of the deposit of such Declarations. It is, no doubt, true that a State, when depositing its Declaration with the Secretary-General, "is not concerned with the duty of the Secretary-General or the manner of its fulfilment" (*Right of Passage over Indian Territory* (Preliminary Objections), ICJ Reports 1957, at p. 146). But the Secretary-General's functions are nevertheless significant for the overall system established by Article 36.2, ensuring that all parties to the Statute are made aware of changes in the scope of the Court's compulsory jurisdiction. This awareness is a necessary part of the need for transparency and good faith in international dealings, and the Secretary-General's functions in this respect are central to the proper functioning of the system established by Article 36.2 of the Statute in a society governed by the rule of law. While the declarant State is not directly involved in the Secretary-General's performance of the duties resting upon him under Article 36.4 of the Statute, it cannot fail to be affected by it

since those duties are an inseparable part of the system established by that Article. The Secretary-General's part in that system lies in ensuring that States generally are aware of developments. Until he has done so, States are in ignorance of the true position and of their international rights and obligations, and the system cannot operate in the way envisaged by the Statute: their substantive rights and obligations as they would be if the system were operating properly are unaffected.

1.16 That system was designed in such a way as to give States participating in it certain rights, including the right to be informed of relevant action taken by other States. Cameroon, by failing to allow a reasonable time for the proper operation of the system envisaged by the Statute, not only acted precipitately but also acted unmindfully of the rights of the other party to the proceedings (i.e. Nigeria) as guaranteed by the Statute.

1.17 Even if (which Nigeria denies) the deposit by Cameroon of its Declaration under Article 36.2 of the Statute gave it the immediate right to invoke that Article irrespective of any action that the Secretary-General might take, considerations of good faith and of equity require that the right be not exercised without other States affected having an opportunity to consider their position in the knowledge of Cameroon's action, or after the lapse of a reasonable time in which they might be expected to acquire knowledge of it. These considerations of good faith and equity obliged Cameroon, before lodging the Application, to have allowed at least such period to elapse as would reasonably have enabled the Secretary-General to take the action required of him in relation to Cameroon's Declaration of 3 March 1994. The exercise by Cameroon of a right which, it implicitly asserts, accrues to it even before other States, and particularly Nigeria, have any actual or reasonable opportunity to be aware of that alleged accrual, is a breach of Cameroon's obligation to exercise its rights in good faith, and constitutes an abuse of those rights.

1.18 These considerations of good faith, and the associated idea of abuse of rights, have been developed in significant ways since the Court's Judgment in *Right of Passage over Indian Territory* (Preliminary Objections), nearly 40 years ago. The Court itself has been cautious in acknowledging the development as part of international law of the concepts of good faith and abuse of rights, and in its earlier years clear statements of their role were more often given expression by individual Judges than by the Court itself; but in more recent years, and since 1957, these associated concepts have been increasingly accepted by the Court. It is even more true today than it was in 1957 that:

"Unquestionably, the obligation to act in accordance with good faith, being a general principle of law, is also part of international law" (*per* Judge Sir Hersch Lauterpacht, in *Norwegian Loans*, ICJ Reports 1957, at p. 53).

Particularly in the context of the procedures for the settlement of international disputes by recourse to the International Court of Justice, the need for States to act in good faith and avoid any abuse of rights is compelling. This has been accepted by the Court in the specific context of the system established by Article 36.2 of the Statute:

"In the establishment of this network of engagements, which constitutes the Optional Clause system, the principle of good faith plays an important role; the Court has emphasized the need in international relations for respect for good faith and confidence in particularly unambiguous terms" (*Military and Paramilitary Activities in and against Nicaragua*, ICJ Reports 1984, at p. 418).

1.19 The importance for the present proceedings of Nigeria having been unaware of Cameroon's Declaration is accentuated by the fact that considerations of reciprocity are based not just on the general structure of the system established by Article 36.2 of the Statute, but on the specific terms of Nigeria's own Declaration. This included the stipulation that Nigeria accepted the Court's jurisdiction "on the sole condition of reciprocity". Nigeria thus made the *general* principle of reciprocity inherent in the agreed terms of Article 36.2 of the Statute into a *specific* condition of its own unilateral Declaration which has to be met before it can be invoked in any given case.

1.20 This specific condition of reciprocity is part of a Declaration which was the product of unilateral drafting by Nigeria, and has the legal character of a unilateral act. While, as with the interpretation of all written texts, it is necessary to establish in good faith what meaning is to be given to words in the light of their ordinary meaning in their context, in the case of Declarations accepting the Court's compulsory jurisdiction particular weight attaches to their unilateral character, and in general to the viewpoint of the declarant State. As the Permanent Court of International Justice said in *Phosphates in Morocco*, such a Declaration:

"is a unilateral act by which [a] Government accepted the Court's compulsory jurisdiction. This jurisdiction only exists within the limits within which it has been accepted" (PCIJ Ser. A/B, No. 74, 1938 at p. 23).

1.21 Referring to the question whether certain situations fell within the scope of a declaration accepting the Court's jurisdiction, the Court observed that:

"in answering these questions it is necessary always to bear in mind the will of the State which only accepted the compulsory jurisdiction within specified limits, and consequently only intended to submit to that jurisdiction [certain defined] disputes" (*ibid.*, p. 24).

1.22 Earlier in the Judgment the Court had noted the existence of (although it found it unnecessary to apply) the restrictive principle:

"that, in case of doubt, might be advisable in regard to a clause [*scil.*, the 'optional clause'] which must on no account be interpreted in such a way as to exceed the intention of the States that subscribed to it" (at p.23).

1.23 Looked at from the point of view of the declarant State - Nigeria - the reciprocity required by Nigeria's unilateral Declaration is a reciprocity apparent to Nigeria: put another way, a reciprocal relationship - or the "consensual bond" as the Court has referred to it: *Right of Passage over Indian Territory* (Preliminary Objections), ICJ Reports 1957, at p. 146 - cannot be said to exist with respect to another State of whose participation in the system established by Article 36.2 of the Statute Nigeria knows nothing. A State which has notice that another State has in force a Declaration under Article 36.2 is in a position to rely on that Declaration and to commence proceedings under that provision. A State which does not have, and has no way of having, such notice is in a fundamentally different position. Between two States in such different positions there is no reciprocity in fact.

1.24 Moreover it is common for two States, both of whom have in force Declarations under Article 36.2, to negotiate on some matter in the knowledge that the matter may eventually be referred to the Court. This facilitates the resolution of disputes without the jurisdiction of the

Court having actually to be invoked. The present situation is quite different. Nigeria has been subject to what may be called "trial by ambush", in a context which is entirely unequal and which, far from a condition of reciprocity, places States which have made general Declarations under Article 36.2 in a distinctly vulnerable position.

1.25 Furthermore, the Indian Declaration which was considered by the Court in *Right of Passage over Indian Territory* (Preliminary Objections) accepted the jurisdiction of the Court "from to-day's date". Nigeria's Declaration contained no such statement. Nigeria's acceptance of the Court's jurisdiction takes effect in relation to any prospective applicant State only when the condition of reciprocity has been met, in the sense of that term as it appears in Nigeria's Declaration. Nigeria only consented by its Declaration to accept the Court's compulsory jurisdiction on the basis of the existence of a reciprocity of which it was, or had a reasonable opportunity of being, aware.

1.26 The principle of good faith - both in the interpretation of Nigeria's Declaration, and in seeking to invoke it as a basis for the Court's jurisdiction - requires no less. To contend that a State making a Declaration is to be deemed to take into account the possibility that, under the Statute, it may find itself subjected, at any time and without warning, to the obligations flowing from Article 36 in relation to another State which chooses to deposit a surprise Declaration, is to "deem" a result which is not provided for in the Statute, which is contrary to the principle of good faith now well-established as the basis for inter-State dealings, and which involves the first-mentioned State having to assume that other States will act in a manner contrary to their obligations to conduct themselves in accordance with the principle of good faith. The Court itself acknowledged, some 17 years after the *Right of Passage* case, that it was not its function to contemplate that a State would not comply with its obligations (*Nuclear Tests (New Zealand v. France)*, Judgment, ICJ Reports 1974, p. 457, at paragraph 63; the same language was adopted by the Court in *Nuclear Tests (Australia v. France)*, Judgment, *ibid.*, p.253, paragraph 60). That pronouncement conforms also to the general principle that States are entitled to act on the basis that other States will honour their international obligations.

1.27 The fact that, by the time Cameroon submitted its Amendment on 6 June 1994, Nigeria had knowledge of Cameroon's Declaration accepting the compulsory jurisdiction of the Court does not affect the conclusions to which the above considerations lead. Cameroon expressly requested the Court to join the Amendment to Cameroon's original Application, and to deal with the whole case as one and the same case, and the Court complied with Cameroon's request in that sense: Cameroon's request, and the Court's decision, was expressly in terms of the Amendment being joined *to* the earlier Application, not the other way round. Since, for the reasons explained by Nigeria, the Court is without jurisdiction over the matters raised in the Application, that want of jurisdiction similarly taints the Amendment joined to it.

## **D: Submissions**

1.28 For the above reasons Nigeria submits:

- (1) that Cameroon, by lodging the Application on 29 March 1994, violated its obligations to act in good faith, acted in abuse of the system established by Article 36.2 of the Statute, and disregarded the requirement of reciprocity

established by Article 36.2 of the Statute and the terms of Nigeria's Declaration of 3 September 1965;

(2) that consequently the conditions necessary to entitle Cameroon to invoke its Declaration under Article 36.2 as a basis for the Court's jurisdiction did not exist when the Application was lodged; and

(3) that accordingly, the Court is without jurisdiction to entertain the Application.

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## CHAPTER 2

### **The duty of the Parties to settle all boundary questions by means of existing bilateral machinery**

#### **A: The bases of the duty**

2.1 For a period of at least 24 years prior to the lodging of the Application the Parties have in their regular dealings accepted a duty to settle all boundary questions by means of the existing bilateral machinery. In the submission of the Government of Nigeria this course of joint conduct constitutes an implied agreement to resort exclusively to the existing bilateral machinery and not to invoke the jurisdiction of the Court.

2.2 In respect of Lake Chad, boundary problems came within the exclusive competence of the Lake Chad Basin Commission, which was established on the basis of the Convention and Statute relating to the Development of the Chad Basin, signed at Fort Lamy on 22nd May 1964 (NPO 9). This role of the Lake Chad Basin Commission will be examined in Chapter 3.

2.3 In the alternative, the Government of Nigeria submits that in the circumstances the Republic of Cameroon is estopped from invoking the jurisdiction of the Court.

2.4 In the further alternative, the Application to the Court constitutes a breach of the principle of good faith in the light of the commitment to resort to the available bilateral machinery.

2.5 Before a description is given of the bilateral machinery, the attention of the Court is drawn to the contents of the Memorial, which gives prominence to the pattern of meetings of the joint Nigeria-Cameroon Boundary Commission, without providing the whole picture: see paragraphs 2.214 *et seq.* of the Memorial. However, general recognition of the role of the Commission appears in Chapter 5, in which Cameroon records that:

"En 1970, les deux Etats créèrent une Commission mixte chargée de l'étude du problème des frontières". (Memorial paragraph 5.09).

(a) This proposition describes an unqualified conferment of responsibility (*'chargée'*) in relation to the boundaries problem.

(b) The contemporary understanding of the situation is confirmed by the statement made by Mr. O. Jemiyo, Senior State Counsel of the Federal Ministry of Justice, in September 1972. In an interview with Dr. Ian Brownlie, who was conducting research on behalf of the Royal Institute of International Affairs (London), Mr. Jemiyo stated that boundary problems with Cameroon were all dealt with by a Joint Commission. In this context it is useful to recall that Mr. Jemiyo was a member of the Nigerian Delegation at several of the sessions of the Joint Commission.

## **B: The bilateral machinery, 1965-94**

### **The Nigeria-Cameroon Joint Boundary Commission, 1965**

2.6 The first meeting of the Nigeria-Cameroon Joint Commission took place in 1965 at Mamfe (Cameroon) (NPO 10) with a further session at Ikom (Nigeria) (NPO 11 & NPO 12). The subject-matter was a localized problem in the districts of Danare (Nigeria) and Boudam (Cameroon).

### **Meetings of the Joint Boundary Commission, 1970-1993**

2.7 Bilateral work on boundary issues was interrupted by the internal crisis in Nigeria in 1966 and its aftermath. In the later years of the 1960s the Cameroon Government took initiatives which challenged the rights of Nigeria and its citizens in the region of the Bakassi Peninsula. These actions resulted in the deaths of some Nigerians, and the detention of others by the Cameroon authorities. In these circumstances it became necessary to reconvene the Joint Commission.

### **Yaoundé, 12-14 August 1970 : Meeting of the Joint Boundary Commission**

2.8 The broad mandate of the Commission is indicated by the agenda proposed by the Nigerian Delegation, which was as follows:

- (1) Peace in the Cross River area. There should be free navigation;
- (2) Investigation and demarcation of the boundary from Lake Chad to the sea;
- (3) Delimitation of the off-shore boundary; and
- (4) Situation in the Bakassi Peninsula. (NPO 13 at p.3).

2.9 The outcome of the meeting was the adoption of a declaration on 14 August 1970 (NPO 14). The declaration contains recommendations to the two Governments on a range of boundary issues, which included recommendations on the convening of technical committees.

#### **Lagos, 15-23 October 1970 : Meeting of the Joint Nigeria/Cameroon Technical Committee**

2.10 As a follow-up to the Yaoundé Meeting, the Joint Technical Committee met in Lagos from 15 to 23 October 1970: see the Minutes set out at NPO 15. The heads of delegation signed a brief report dated 23 October 1970 (NPO 16).

#### **Yaoundé, 26 March - 4 April 1971 : Meeting of the Joint Boundary Commission**

2.11 The Joint Commission reconvened in Yaoundé in March 1971: see the Report of the Nigerian Delegation (NPO 17); a Report by the Cameroon Delegation (NPO 18); and the Declaration signed on 4 April 1971 (NPO 19). After receiving instructions from the two Heads of State (who were meeting in Yaoundé at the same time), the Commission agreed to reconvene in Lagos one month later.

#### **Lagos, 14-21 June 1971 : Meeting of the Joint Boundary Commission**

2.12 The Joint Boundary Commission reconvened in Lagos for the period 14 to 21 June 1971: see the Minutes at NPO 20. In the Declaration adopted on 21 June the first paragraph reads as follows:

"The Nigeria/Cameroon Joint Boundary Commission charged with the responsibility for the delineation of the Nigeria/Cameroon Boundary met in Lagos, Nigeria from the 14th to the 21st June, 1971" (NPO 21).

#### **Yaoundé, 4-5 May 1972 : Meeting of the Nigeria/Cameroon Permanent Consultative Committee**

2.13 On 7 April 1971 the Heads of State had agreed to set up a Permanent Consultative Committee and this body held its first meeting in Yaoundé on 4 and 5 May 1972: see the Minutes and the Joint Communiqué dated 5 May 1972, (NPO 22). The meeting was at Foreign Minister level.

2.14 The outcome of this meeting was disappointing and no compromise appeared to be possible. This state of affairs continued in spite of the meetings of Heads of State at Garoua in August 1972 (NPO 23) and Kano in 1974 (NPO 24). The Maroua Declaration of 1975 was also inconclusive (NPO 25).

2.15 In this period there was a hiatus in negotiations but this came to an end during President Ahidjo's State visit to Nigeria, 11-14 January 1982. During their review of bilateral relations the Heads of State decided to resume the meetings of the Joint Boundary Commission: see the draft Joint Communiqué at NPO 26.

#### **Jos, 1-4 November, 1978 : Meeting of the Nigeria-Cameroon Joint Commission**

2.16 A further session of the original Permanent Consultative Committee was held in Jos (Nigeria) in 1978 (see generally NPO 27 to NPO 33). The meeting was at Foreign Minister level and the agenda included "Security along the Border" and "The maritime Border" (NPO 34). The Joint Communiqué, dated 4 November 1978, included the following affirmations:

"2. During the meeting of the Joint Commission, the two delegations reviewed bilateral relations between their two countries. In this regard, the two delegations expressed their mutual satisfaction with cordiality, friendship, and good neighbourliness, which had characterised their bilateral relations.

3. During their discussion, the two delegations agreed on the need for regular consultations between their two countries in order to further enhance the close and cordial relations which already exist between them. These consultations should also involve periodical meetings between the administrative and security authorities on the border." (NPO 35, 36 and 37).

### **Yaoundé, 24-28 August 1987 : Meeting of the Nigeria-Cameroon Joint Commission**

2.17 In 1980 the Government of Cameroon was urging that a further meeting of the Joint Commission be held : see the Cameroon Note dated 10 June 1980 (NPO 38). Eventually the Joint Commission met in Yaoundé on 24-28 August 1987: see generally NPO 39 to NPO 50. The Protocol of the Inaugural Session places emphasis on the resolution of boundary questions by bilateral action (NPO 51).

### **Yaoundé 27-30 August 1991 : Joint Meetings of Experts on Boundary Matters**

2.18 During the visit of the Nigerian Minister of External Affairs, Major-General Nwachukwu, to Cameroon in 1991, the experts of the two countries met to discuss items on the agenda approved by the Heads of Delegation: see the *procès-verbal* dated 29 August 1991 (NPO 52).

2.19 The content of the *procès-verbal* is of particular significance, and it clearly indicates the focus upon an ongoing institutional framework (*cadre institutionnel*) within which boundary problems were to be resolved.

2.20 The Joint Communiqué adopted by the Ministers of External Relations on 29 August 1991 contains the following passages:

"On the general state of bilateral cooperation, the two sides lauded the quality and depth of cooperation resulting from their common affinities and shared commitment to the ideals of peace, solidarity and progress of the brotherly people of Cameroon and Nigeria and felt inspired by personal friendship as well as the political will of the two presidents to strengthen the relations and fraternal cooperation between the two countries, the two sides noted with satisfaction *the commitment of the two Presidents to maintain more regular consultations with a view to solving any eventual disputes between the two countries amicably for mutual satisfaction.*

.....

In the same view, the two sides agreed on the principle of annual visits of ministers of foreign affairs of both countries, alternatively in Abuja and Yaounde. Furthermore, they expressed the wish and the need for the ministers of interior of the two countries to undertake periodic joint tours of the common border areas with a view to reinforcing the ties of friendship, brotherliness and cooperation between the two countries.

On border issues, the two sides agreed to examine in detail all aspects of the matter by the experts of the National Boundary Commission of Nigeria and the experts of Republic of Cameroon at a meeting to be convened at Abuja in October 1991 with a view to making appropriate recommendations for a peaceful resolution of outstanding border issues, the two sides also agreed to hold a transborder co-operation workshop in January 1992.

Recalling the commitments expressed by the presidents during their talks at Abuja on 10 August, 1991, the two sides re-affirmed the need to reinforce the maintenance of peace along the common border by the administrative and law enforcement agencies of both countries." (Emphasis added). (NPO 53).

### **Abuja, 15-19 December 1991: Second Session of the Joint Meeting of Experts on Boundary Matters**

2.21 The work of the Yaoundé Meeting was continued in Abuja in December 1991: see the Joint Minutes of the Joint Meeting, set out at NPO 54. The agreed Minutes (19 December 1991) contain the following passages:

"The meeting was formally opened by the Honourable Minister of Water Resources of the Federal Republic of Nigeria, Alhaji Abubakar Hashidu on behalf of the Honourable Minister of External Affairs and Chairman, International Boundary Technical Committee of the National Boundary Commission of Nigeria.

In his address, the Minister noted that the Joint Meeting of Experts was a welcome follow-up of the memorable and fruitful visit to Yaoundé in August, 1991 which he personally led. He thus urged the Joint Meeting of Experts in the spirit of fraternal relations between the two countries, to direct their efforts to the enhancement of peace, harmony and prosperity along their common borders.

In their general remarks the leaders of the two delegations to the Abuja Meeting recalled the mandate at Yaounde in August to carry out an in depth analysis of the border issues raised during the friendly working visit of the Honourable Minister of External Affairs of the Federal Republic of Nigeria, and expressed the hope that the Joint Meeting of Experts would achieve that expectation."

### **Yaoundé, 11-13 August 1993: Third Session of the Joint Meeting of Experts on Boundary Matters**

2.22 The Joint Meeting of Experts held in Yaoundé in August 1993 was part of the series of such meetings. However, on this occasion the Delegations were headed by the Foreign Ministers of the two States: see the Joint Minutes adopted on 13 August 1993, (NPO 55).

Both the agreed Minutes and the Joint Communiqué (*ibid.*) indicate that the agenda extended to a wide variety of boundary questions.

### **Abuja, 1-5 November 1993: Meeting of the Nigeria-Cameroon Joint Commission**

2.23 The second session of the Joint Commission for Economic, Scientific and Technical Co-operation was held in Abuja in November 1993. The agenda included the problem of water releases from the Lagdo Dam, and the issue of border co-operation (NPO 4).

### **C: The Situation early in 1994**

2.24 As the Court will have observed, there was a progression of negotiations concerning a wide variety of boundary questions in several types of joint meeting. At no point had there been a refusal by Nigeria to continue the operation of the bilateral machinery or a refusal to discuss boundary issues of whatever kind. Indeed, Nigeria has been forthcoming at both bilateral and multilateral levels in efforts to resolve boundary problems peacefully. Thus, the creation of the Lake Chad Basin Commission (1964), the Nigeria-Cameroon Trans-Border Co-operation Workshop (1992), and the proposed Gulf of Guinea Commission (1993), were Nigerian initiatives.

2.25 A characteristic of the relations between Nigeria and Cameroon at all material times was the persistence of bilateral contacts and the absence of any approach to the O.A.U.

2.26 At the time when Cameroon filed the Application on 3 March 1994, only six months had elapsed since the Joint Meeting of Experts (at ministerial level) in Yaoundé in August 1993, and only four months had elapsed since the meeting of the Joint Commission at Abuja in November.

2.27 In the course of January 1994 it was agreed in principle that a Joint Commission should meet in Buea (Cameroon) and visit the border areas in the south (see NPO 56 to NPO 59). On 7 January 1994 Ambassador Baba Gana Kingibe, Foreign Minister of Nigeria, visited Buea to deliver a goodwill message from General Sani Abacha.

2.28 The talks were inconclusive but the sequel was a friendly letter from the Nigerian Head of State, General Sani Abacha, to the President of Cameroon, Mr. Paul Biya, dated 14 February, in which further negotiations were proposed (NPO 60).

2.29 The overall diplomatic picture in 1993 had been normal and Nigeria had been given no cause to believe that the Government of Cameroon was about to step outside the long-established commitment to resort to bilateral machinery for the resolution of boundary problems.

### **D: The legal implications of the conduct of the Parties**

2.30 The consistent pattern of bilateral procedures, the reiterated common intention to use the bilateral machinery for the resolution of boundary questions, and the absence of any rupture in

bilateral relations constitute reliable evidence of an agreement between the Parties not to resort to the International Court of Justice in relation to boundary questions.

2.31 It is to be noted that the Parties did not advert at any time to the possibility of resorting to the contentious jurisdiction of the International Court. Indeed, in the period under review Cameroon was not even a Party to the system of compulsory jurisdiction.

2.32 The relationship established by the conduct of the Parties in the period 1965 to 1994 also estops Cameroon from resorting to other than bilateral machinery. By her conduct, particularly in the period 1970 to 1994, Cameroon had clearly and consistently evinced acceptance of the regime of exclusive recourse to bilateral machinery: see the *North Sea Continental Shelf Cases*, 1969, p.26, paragraph 30.

2.33 In the circumstances Nigeria has suffered prejudice as a consequence of the conduct of Cameroon and thus, in particular:

(1) Nigeria has lost the opportunity to have a system of bilateral contacts which was flexible and based upon mutual negotiation and agreement. As the Court will appreciate, the result of acquiring the status of a Party to proceedings is a serious limitation upon the normal discretion of a State in matters of foreign policy.

(2) As a result of the lodging of the Application the bilateral machinery has ceased to function and a valuable procedure for resolving disputes and for containing border problems of various kinds has been lost.

(3) Nigeria was placed in a position in which it was dealing with Cameroon in relation to matters which were to figure in the Application without having knowledge, or means of knowledge, that Cameroon had a hidden and collateral agenda.

2.34 Nigeria also contends that the Application to the Court, in the light of the pre-existing commitment to the bilateral machinery, constitutes a breach of the principle of good faith. As the Court stated in its Judgments in the *Nuclear Tests Cases*:

"One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected." I.C.J. Reports, 1974, p.268, paragraph 46; and see also (*Case Concerning Border and Transborder Armed Actions*, *ibid.*, 1988, p.105, paragraph 94).

2.35 The principle of good faith is not itself a source of obligation where none would otherwise exist, as the Court pointed out in the *Armed Actions* case, but in the present proceedings the principle reinforces the principle *pacta sunt servanda*, more especially when

the conduct in question involves persistent joint action with the particular purpose of dispute resolution.

### **E: Submissions**

2.36 For a period of at least 24 years prior to the filing of the Application the Parties have in their regular dealings accepted a duty to settle all boundary questions through the existing bilateral machinery.

(1) This course of joint conduct constitutes an implied agreement to resort exclusively to the existing bilateral machinery and not to invoke the jurisdiction of the Court.

(2) In the alternative, in the circumstances the Republic of Cameroon is estopped from invoking the jurisdiction of the Court.

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## **CHAPTER 3**

### **The exclusive competence of the Lake Chad Basin Commission**

#### **A: The Basis of the Exclusive Competence**

3.1 Without prejudice to the Second Preliminary Objection, the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission (L.C.B.C.), established in 1964 pursuant to the Convention and Statute Relating to the Development of the Chad Basin (NPO 9). In this context the procedures of settlement within the Commission are obligatory for the Parties. The operation of the dispute settlement procedures of the L.C.B.C. involved the necessary implication, for the relations of Nigeria and Cameroon *inter se*, that the jurisdiction of the Court by virtue of Article 36.2, would not be invoked in relation to matters within the exclusive competence of the Commission.

3.2 This interpretation of the relevant instruments is confirmed by the conduct of the Parties in the period 1983 to 1994. In this period it became clear that the issues concerning boundary demarcation in Lake Chad had been submitted to the competence of the L.C.B.C. and there is a presumption that these issues could not be removed from the competence of the organisation except by the collective agreement of the Member States.

3.3 The conduct of Nigeria and Cameroon in the period 1983 to 1994 confirmed that, as far as the relations *inter se* of the two States were concerned, boundary questions concerning Lake Chad were within the exclusive competence of the L.C.B.C. The exclusivity of the competence of the L.C.B.C. was not affected by the existence of bilateral machinery concerning the relations of Nigeria and Cameroon in other respects.

### **B: The Convention and Statute Relating to the Development of the Lake Chad Basin**

3.4 The primary purpose of the Convention is the development of the resources of the Basin for economic purposes, including the optimum utilization of its water resources. The instrument for attaining this purpose is the L.C.B.C., the Statute of which is annexed to the Convention and forms an integral part thereof (Article 2 of the Convention) (NPO 9).

3.5 The functions of the L.C.B.C. are defined in Article IX of the Statute as follows:

"The Commission shall have the following functions, *inter alia*:

(a) to prepare general regulations which will permit the full application of the principles set forth in the present Convention and its annexed Statute, and to ensure their effective application;

(b) to collect, evaluate and disseminate information on proposals made by Member States and to recommend plans for common projects and joint research programmes in the Chad Basin;

(d) to follow the progress of the execution of surveys and works in the Chad Basin as envisaged in the present Convention, and to keep the Member States informed at least once a year thereon, through systematic and periodic reports which each State shall submit to it;

(e) to draw up common Rules regarding navigation and transport;

(f) to draw up Staff Regulations and to ensure their application;

(g) to examine complaints and to promote the settlement of disputes and the resolution of differences;

(h) generally, to supervise the implementation of the provisions of the present Statute and the Convention to which it is annexed."

3.6 Whilst the text does not refer to boundary questions as such, there can be no doubt that the functions seen overall constitute a comprehensive public order system. Moreover, subparagraph (g) provides expressly for dispute resolution. It is, of course, obvious that the persistence of boundary problems would inevitably place obstacles in the way of the development of the resources of the Basin.

3.7 In any event the practice of the Member States of the L.C.B.C. has amply confirmed its exclusive competence in respect of boundary questions.

## C: The practice of the Member States

3.8 When the occasion presented itself, the States Parties had no hesitation in assigning boundary questions to the L.C.B.C. when incidents occurred in the region of Lake Chad in 1983. In response to the border problems an extraordinary session of the Commission was held in Lagos from 21 to 23 July 1983. At this session two Sub-Commissions were established to deal respectively with border demarcation and security on Lake Chad. The implementation of the decisions taken at Lagos was discussed at the twenty-eighth, twenty-ninth and thirtieth sessions of the L.C.B.C. in 1984 and 1985: see the extracts from the *Minutes of the Thirtieth Session, 22-25 April 1985*, pp.83-97 and Annex A (NPO 61).

3.9 In the same period of 1985 the Fifth Conference of the Heads of State of the L.C.B.C. was held and the *Minutes* thereof contain the following record of the events of 1983:

"32. Following the border incidents between Nigeria and Chad on the Lake Chad in April 1983 and the Protocol Agreement between the two countries in July the same year, the Commission was called in as the forum through which to effect a permanent settlement of the border problems in the area. Consequently, an extraordinary session of the Commission, which was held in Lagos from 21st-23rd July, 1983 set up two Sub-Commissions: one on border demarcation and the other on security on Lake Chad.

33. From 12-16 November, 1984, the experts on border demarcation and security on Lake Chad from the four Member States met in Lagos and agreed on the basic legal documents for future work.

34. The Sub-Commission on border demarcation has drawn up the technical specifications for the border demarcation, aerial photography and field mapping that need to be carried out. In view of the fact that the Commission cannot fund the field work, donor agencies have been contacted. But no positive response has been received so far." (*Minutes of the Fifth Conference of Heads of State, 29 April, 1985*, p.9 (NPO 62)).

3.10 In these *Minutes* it is indicated in unequivocal terms that the L.C.B.C. was recognised as "the forum through which to effect a permanent settlement of the border problems in the area".

3.11 In the subsequent years the process of resolving the boundary problems continued, the progress being reported in the *Minutes* under the agenda item "Boundary Demarcation and Security on Lake Chad". The main references are as follows:

(1) *Minutes of the Thirty-first Session, 16-21 December 1985*, pp.28-31 (NPO 63).

(2) *Minutes of the Thirty-second Session, 6-14 May 1986*, pp.45-50 (NPO 64).

(3) *Minutes of the Thirty-third Session, 8-9 December 1986*, pp.27-33 (NPO 65).

- (4) *Minutes of the Thirty-fourth Session*, 25-26 October 1987, pp. 57-62, Annex L (NPO 66).
- (5) *Minutes of the Sixth Conference of Heads of States*, 28-29 October 1987, p.10; and the Final Communiqué (NPO 67).
- (6) *Minutes of the Thirty-fifth Session*, 15-16 January 1988, *passim* (NPO 68).
- (7) *Minutes of the Special Session of the Lake Chad Basin Commission*, 1-2 August 1988, pp.4-6 (NPO 69).
- (8) *Minutes of the Thirty-Sixth Session*, 30 November - 1 December 1988, pp.22-23, 29; Annex J (NPO 70).
- (9) *Minutes of the Thirty-seventh Session*, 23-24 May 1989, *passim* (NPO 71).
- (10) *Minutes of the Thirty-eighth Session*, 26-30 November 1989, pp.8-9, 31; Annex G (NPO 72).
- (11) *Minutes of the Seventh Conference of Heads of States*, 13-14 February 1990, (NPO 73).
- (12) *Minutes of the Thirty-ninth Session*, 20-21 November 1990, *passim* (NPO 74).
- (13) *Minutes of the Fortieth Session*, 15 January 1992, p.2; Annex D (NPO 75).
- (14) *Minutes of the Forty-first Session*, 6 April 1993, pp.2, 11-13; Annex F (NPO 76).
- (15) *Minutes of the Eighth Summit of the Heads of State and Government*, 21-23 March 1994, pp.5-6, 13; and the Final Communiqué (NPO 77).

3.12 Whilst the Government of Nigeria reserves its position on the finality of the decisions adopted at the Eighth Summit of Heads of State, there can be no doubt that the L.C.B.C. has been, and continues to be, the exclusive forum for boundary issues in relation to Lake Chad.

#### **D: The legal implications of the practice of the Member States**

3.13 The L.C.B.C. is a regional agency with an exclusive competence within its defined scope of operation. The Statute of the Commission provides, in Article XVII, that "the Commission shall have for all purposes the status of an international Organisation". The powers of the organisation include the resolution of disputes and issues relating to the area of Lake Chad and the utilization of its resources. Such questions clearly include boundary demarcation and security problems in the boundary zones. There are obvious links between security and the need for demarcation.

3.14 This view of the competence of the L.C.B.C. is confirmed by the subsequent practice of the Member States in the period 1983 to 1994.

3.15 Given the regional character of the L.C.B.C. there is a strong presumption that its competence in matters of dispute resolution is exclusive. This character of exclusiveness could be qualified legally only by the express consent of all the Member States. It is to be noted that at no time did the Member States, individually or collectively, refer to the possibility of recourse to arbitration or judicial settlement. Moreover, for the period in question Cameroon was not a party to the system of compulsory jurisdiction.

3.16 The presumption of exclusiveness is justified by a further consideration. Given the geographical realities and the history of boundary making within Lake Chad, any delimitation, or consequential demarcation, would be opposable to *all* the riparian States. The multilateral aspect of boundary issues within the Lake would be the more evident if the analogy with the principles of maritime delimitation were to be recognised by the Court.

3.17 There was an ongoing procedure of dispute resolution for more than twelve years within an institutional framework. Such a procedure is not to be compared with *ad hoc* political negotiations, which cannot provide an appropriate alternative to the jurisdiction of the Court.

3.18 The relationship established by the conduct of the Parties in the period from 1983 to 1994 also estops Cameroon from resorting to other machinery. By her conduct Cameroon had clearly and consistently evinced acceptance of the regime of exclusive recourse to the L.C.B.C.: see the *North Sea Continental Shelf* cases, 1969, p.26, paragraph 30.

3.19 In the circumstances Nigeria has suffered prejudice as a consequence of the conduct of Cameroon and thus, in particular:

(1) Nigeria has lost the opportunity to utilize a system which was based upon mutual negotiation and agreement; and

(2) as a result of the filing of the Application, the work of the L.C.B.C. has been substantially impaired.

3.20 Nigeria also contends that the sudden variation in the conduct of Cameroon and the Application to the Court, in the light of the pre-existing commitment to the procedure within the L.C.B.C., constitutes a breach of the principle of good faith. As noted above in paragraph 2.34, the Court stated in its Judgments in the *Nuclear Tests* Cases:

"One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected." I.C.J. Reports, 1974, p.268, paragraph 46; and see also (*Case Concerning Border and Transborder Armed Actions*, *ibid.*, 1988, p.105, paragraph 94).

3.21 As stated above in paragraphs 2.34 and 2.35, the principle of good faith is not itself a source of obligation where none would otherwise exist, as the Court pointed out in the *Armed Actions Case*, but in the present proceedings the principle reinforces the principle *pacta sunt servanda*, more especially when the conduct in question involves persistent **joint** action with the particular purpose of dispute resolution.

## **E: Submissions**

3.22 Without prejudice to the Second Preliminary Objection, the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission, and in this context the procedures of settlement within the Lake Chad Basin Commission are obligatory for the Parties.

3.23 The operation of the dispute settlement procedures of the Lake Chad Basin Commission involved the necessary implication, for the relations of Nigeria and Cameroon *inter se*, that the jurisdiction of the Court by virtue of Article 36.2, would not be invoked in relation to matters within the exclusive competence of the Commission.

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## **CHAPTER 4**

### **The Court cannot determine the tripoint in Lake Chad**

#### **A: The Objection**

4.1 In the context of, and supplemental to, the Third Preliminary Objection, it should be noted that the issue of the location of the tripoint within Lake Chad directly affects a third State (the Republic of Chad). This raises the question whether the Court can determine the location of the tripoint in the present proceedings.

4.2 In the *Case concerning the Frontier Dispute (Burkina Faso v Mali)* ICJ Reports 1986 p 554, a Chamber of the Court held that "its jurisdiction is not restricted simply because the end-point of the frontier lies on the frontier of a third State not a party to these proceedings" (*ibid.* at p 577 (paragraph 46)). The Chamber relied on the proposition that the rights of the third State in question would be protected by Article 59 of the Statute. The following passage of its judgment is particularly relevant for the purposes of this Preliminary Objection. After referring to the decision of the Court in *Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 at p.26 (paragraph 21), the Chamber stated:

"...the process by which a court determines the line of a land boundary between two States can be clearly distinguished from the process by which it identifies

the principles and rules applicable to the delimitation of the continental shelf. The legal considerations which have to be taken into account in determining the location of the land boundary between parties are in no way dependent on the position of the boundary between the territory of either of those parties and the territory of a third State, even where, as in the present case, the rights in question for all three States derive from one and the same predecessor State. On the other hand, 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, paragraph 14; pp. 27-28, paragraphs 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." [*ibid.* at pp. 578 (paragraph 47)].

4.3 The present case differs from the *Case concerning the Frontier Dispute (Burkina Faso v Mali)* in a number of important respects.

4.4 First, that was a case brought by Special Agreement, under which the parties mandated the Chamber to determine the whole extent of their common frontier, extending throughout the disputed area: see the Chamber's statement to this effect, *ibid.* at p. 577 (paragraph 46). By contrast, the present case is brought without any form of prior notice by a State which had shortly before deposited a Declaration under Article 36 (2) of the Statute (NPO 6), and therefore without any agreement or attempt at an agreement between the parties defining the areas that are in dispute. Nigeria has not accepted - as Mali had done by entering into the Special Agreement in that case - that the whole of the disputed area appertains either to it or to the other party.

4.5 Secondly, in the *Case concerning the Frontier Dispute (Burkina Faso v Mali)*, Niger was treated as wholly a third party with respect to the proceedings. As the Chamber noted:

"The Parties could at any time have concluded an agreement for the delimitation of their frontier, according to whatever perception they might have had of it, and an agreement of this kind, although legally binding upon them by virtue of the principle *pacta sunt servanda*, would not be opposable to Niger. A judicial decision... merely substitutes for the solution stemming directly from their shared intention, the solution arrived at by a court under the mandate which they have given it. In both instances, the solution only has legal and binding effect as between the States which have accepted it, either directly or as a consequence of having accepted the court's jurisdiction to decide the case. Accordingly, on the supposition that the Chamber's judgment specifies a point which it finds to be the easternmost point of the frontier, there would be nothing to prevent Niger from claiming rights, vis-à-vis either of the Parties, to territories lying west of the point identified by the Chamber." [*ibid.* at pp. 577-8 (paragraph 46)].

4.6 But for the reasons already given in Chapter 3 above in relation to the Third Preliminary Objection, the position of the various States parties to the Lake Chad Basin Commission, and its associated agreements and arrangements, is not that of simple third parties. They have been and are involved in the processes of boundary fixing, resource management, settlement of disputes, etc. so far as they relate to Lake Chad. They have treaty relations with Nigeria and Cameroon with respect to these matters. These are not simply *res inter alios acta*.

4.7 In the *Case concerning the Frontier Dispute (Burkina Faso v Mali)*, Burkina Faso suggested that the problem of determining a tripoint did not really arise, since Niger too was, under the Niamey Protocol of 23 June 1964, bound by the relevant French documents as to the location of the tripoint. But the Chamber did not accept that argument. It said:

"From the mere fact that the same documents are used as the starting-point for the Chamber's reasoning and for the negotiations between Burkina Faso and Niger, it cannot be inferred that the practical conclusions reached in both operations, regarding the location of the end-point of the frontier between Burkina Faso and Mali, would necessarily be the same. It is clear that the interpretation given by the Chamber, for the purposes of this case, of the 1927 Order and its erratum will not be opposable to Niger, which has not participated in the proceedings and consequently has been unable to state its views. Mali further claims... that the Order of 1927 was invalidated by a factual error and is therefore inapplicable. This argument, the correctness or otherwise of which has to be decided by the Chamber, does not at first sight appear to have been put forward in the context of the Niamey Protocol; but this is again a matter outside the jurisdiction of the Chamber, which has not been called upon by the parties to that Protocol to interpret it." [*ibid.* at pp. 579 (paragraph 48)].

4.8 In the present case the Court will be called on to interpret each of the instruments affecting Lake Chad, and especially those associated with the purported "demarcation" carried out by IGN. If that demarcation is ineffective, for example because required ratifications have not been forthcoming, it is ineffective as against all the States parties to it, and not only as between Nigeria and Cameroon. The regime of Lake Chad is subject to multilateral cooperation, and is not susceptible to the thorough-going bilateralisation which the Chamber adopted in the *Case concerning the Frontier Dispute (Burkina Faso v Mali)*.

4.9 Thirdly, the record shows that it is not the case that the third party is merely theoretically or contingently involved in the question of the boundaries. There have been clashes between Nigeria and Chad in and in relation to Lake Chad.

4.10 Finally, some comment is called for as to the distinction which the Chamber drew in this context between the delimitation of continental shelf and land boundaries (see above, paragraph 4.2). It should be noted that the rules of law applicable to the delimitation and demarcation of boundaries in large lakes, such as Lake Chad, are not necessarily to be identified with those applicable to ordinary land boundaries. Criteria of equidistance, proportionality and equity, considerations of navigability and access to resources, have been applied to the delimitation of lacustrine boundaries, especially in large lakes. By contrast these criteria have limited relevance to land boundaries *stricto sensu* (including rivers and other watercourses).

4.11 For the reasons given above, this Court should not determine in these proceedings - as unilaterally instituted by the Cameroons and as presently constituted - the boundary in Lake Chad to the extent that that boundary constitutes or is determined by the tripoint in the lake. Whether the matter is considered as one going to the Court's jurisdiction (on the analogy of the principle in the *Monetary Gold Case* ICJ Reports 1954 p. 32 as applied by the Court, most recently, in the *Case concerning East Timor* ICJ Reports 1995 p. 90) or as to the admissibility of the proceedings (on the analogy of cases such as the *Northern Cameroons Case* ICJ Reports 1963 p. 32) does not affect the matter. On either analysis the present proceedings should not be entertained to the extent indicated above.

### **B: Submission**

4.12 The Court should not in these proceedings determine the boundary in Lake Chad to the extent that that boundary constitutes or is constituted by the tripoint in the Lake.

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## **CHAPTER 5**

### **There is no dispute concerning boundary delimitation from the tripoint in Lake Chad to the sea**

#### **A: There is no dispute concerning delimitation**

5.1 In the submission of Nigeria there is no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tripoint in Lake Chad to the sea. There is, quite simply, no evidence of such a dispute, and it is not surprising that no evidence is presented either in the Application or in the Amendment.

5.2 Thus the fifth Preliminary Objection of Nigeria can be particularised as follows:

- (1) there is no dispute in respect of the boundary delimitation as such within Lake Chad, subject to the question of title to Darak and adjacent islands inhabited by Nigerians;
- (2) there is no dispute relating to the boundary delimitation as such from the tripoint in Lake Chad to Mount Kombon;
- (3) there is no dispute relating to the boundary delimitation as such between Boundary Pillar 64 on the Gamana River and Mount Kombon; and

(4) there is no dispute relating to the boundary delimitation as such between Boundary Pillar 64 on the Gamana River and the sea.

5.3 This Preliminary Objection is without prejudice to the title of Nigeria over the Bakassi Peninsula.

5.4 The conduct of Cameroon has been apparently intended to portray Nigeria as challenging the territorial *status quo* and posing threats to the stability of boundaries. The truth of the matter is very different. In the view of the Nigerian Government it was the actions of Cameroon which challenged the *status quo* and this particularly in the region of the Bakassi Peninsula.

5.5 As a further element in this distorted picture, Cameroon contends in effect that Nigeria is posing a challenge to the entire land boundary between the two States. This is not the case and the documentation available proves the contrary.

5.6 It is instructive in this connection to peruse the diplomatic notes sent by Nigeria to the Applicant State in the period immediately after the Application was filed. The tone is friendly and practical and there are no references to wide-ranging boundary questions. Thus in Note No. 72 dated 14 April 1994 (NPO 78), which concerns alleged expulsions of Cameroonians, the following passage appears:

"As the Cameroonian Authorities are perfectly aware, it has always been the policy of the Federal Government of Nigeria to localize and resolve through dialogue and negotiations, any dispute that may arise between Nigeria and her neighbours such as the one over Bakassi, rather than to create or exaggerate additional areas of conflict. It is the fervent hope of the Federal Government of Nigeria that the Cameroonian Authorities are similarly committed to the peaceful resolution of disputes."

5.7 In another Note (No. 73) of the same date (NPO 79) the Nigerian Government makes clear that the issues are limited in scope. Once again, the tone is restrained. In the terms of the Note:

"The Nigerian Government fully recognizes Kontcha as clearly within Cameroonian Territory and lays no claims to it whatsoever. If indeed Nigerian nationals have illegally occupied that locality, it is entirely without the knowledge, encouragement or support of the Government of Nigeria. There is therefore no question of the Nigerian Authorities recalling the said Nigerian nationals since it did not send them to Kontcha.

Nigeria recognizes that Kontcha is within the sovereign right of the Republic of Cameroon to apply her relevant laws within her territory on immigrants or visitors from other countries who have not met legal entry requirements. The Federal Government however rejects the insinuation that there is a pattern to the alleged occupation of Cameroonian territory by Nigerian nationals as a prelude to Military occupation.

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 Cameroonian territory.

As regards the Bakassi Peninsula, the Cameroonian Authorities are perfectly aware that the dispute over its ownership is now before the International Court of Justice. Until it is finally resolved therefore, it is absolutely inappropriate to use it illustratively as in the specific case of Kontcha."

5.8 The position of the Nigerian Government was presented more fully in its Note No. 215 dated 20 April 1994 (NPO 80). No reference is made to problems other than the question of title to the Bakassi Peninsula.

5.9 The evidence indicates that there are certain matters in issue but they do not relate to delimitation of the sectors of the land boundary between the Lake Chad tripoint and the sea. The issues relating to Lake Chad concern demarcation exclusively and when Cameroon, in its Note dated 8 April 1994 (NPO 81), asserted that Nigeria was claiming Kontcha (in the Adamawa province of Cameroon). Nigeria promptly put the record straight (NPO 78,79 and 80). Thus Nigeria has studiously avoided placing the boundary alignment as a whole in issue.

#### **B: The absence of reference to a dispute in the Proceedings of the Joint Commissions**

5.10 The principal series of meetings of the Joint Commissions spans the period 1970 to 1994. A careful examination of the agreed Minutes and Joint Communiqués produced by the various sessions confirms the complete absence of any reference to a dispute concerning the delimitation of the land boundary between the tripoint in Lake Chad and the sea.

5.11 It will be sufficient to provide a sample of the meetings. The Declaration produced by the Joint Boundary Commission on 21 June 1971 (NPO 21) referred only to issues of inshore maritime delimitation. In 1991 a Joint Meeting of Experts on Boundary Matters was held in Yaoundé on the 27 to 30 August. The agreed Minutes of the Meeting of Experts refer to the state of the work on demarcation in Lake Chad and to the maritime boundary. Otherwise, under the rubric "Land Boundary", there is the passage:

"The two sides noted with satisfaction that the land border has been well defined and that there are no major problems at this level. They accepted the principle of the identification and densification of boundary pillars." (NPO 82).

5.12 The third session of the Joint Meeting of Experts on Boundary Matters took place at Yaoundé on 11 to 13 August 1993. The agreed Minutes, dated 13 August 1993 (NPO 55), contain no reference to a dispute concerning delimitation of the land boundary.

#### **C: The absence of references to a dispute in the Declarations of the Heads of State**

5.13 In the various meetings of the two Heads of State in 1972, 1974 and 1975, the Communiqués resulting contain no reference to a dispute relating to delimitation of the land

boundary. The discussions were exclusively concerned with certain aspects of maritime delimitation.

#### **D: The content of the Application and the Amendment**

5.14 The content of the Application, in its original form, is of considerable significance. This document begins: "The dispute is essentially centred on the issue of sovereignty over the Bakassi peninsula ...". The Application makes no reference to the boundary in the sector under examination here.

5.15 In the Amendment, introduced on 6 June 1994, Cameroon asserts, without any justification, that the entire land boundary is in issue. Thus under the rubric "objet du différend" the following appears:

"Cet aspect du différend porte essentiellement sur la question de la souveraineté sur une partie du territoire camerounais dans la zone du Lac Tchad - située entre les frontières Cameroun-Nigéria et Cameroun-Tchad jusque vers le milieu des eaux restantes - dont la République Fédérale du Nigéria conteste l'appartenance à la République du Cameroun *et sur tracé de la frontière entre la République du Cameroun et la République Fédérale du Nigéria du lac Tchad à la mer*. Ce faisant, le Gouvernement de la République Fédérale du Nigéria conteste, une fois de plus, la frontière établie de longue date entre les deux pays et qui a fait récemment l'objet de précision dans un cadre multilatéral." (Emphasis added)

5.16 The Amendment provides no evidence to justify this gratuitous and unreasonable assertion. The document includes some reference to the issue of *demarcation* in relation to Lake Chad, but that is all.

#### **E: The content of the Memorial**

5.17 The Memorial contains the same assertions: see paragraphs 1.07 - 1.13. However, like the Application, the Memorial provides no evidence to support the assertion that the entire land boundary is in dispute.

5.18 Not only does the Memorial produce no evidence to support the thesis but it fails to explain the lack of reference to such a dispute in the extensive documentation concerning the relations of the two Parties. Moreover, the relations of the Parties are caricatured and so, for example, it is alleged that the "frontier dispute" has lasted thirty years (paragraph 1.30).

5.19 The unsupported statements in the Memorial look particularly odd when they are compared with the statements accepted by Cameroonian Ministers in 1991 and 1993. The Joint Communiqué adopted by the Ministers of External Relations on 29 August 1991 contains no reflection of such a frontier dispute (NPO 83) and the same is true of the Minutes of the Ministerial Meeting at Yaoundé, 11 to 13 August 1993 (NPO 55).

## **F: The character of the problems relating to the boundary**

5.20 The evidence available to Nigeria provides indications of encroachments and incursions by the Cameroonian authorities and, or, Cameroonian private interests, upon the legally established boundary. Allegations of a similar character *mutatis mutandis* are to be found in the Application and Memorial. In the submission of Nigeria such incidents involve localized problems, and are frequently the result of an absence of effective demarcation. Such issues are unrelated to any issue of principle concerning the alignment of the boundary as such.

## **G: Conclusion**

5.21 In conclusion, there is no dispute relating to the boundary delimitation as such from the tripoint in Lake Chad to the sea. In so far as encroachments and incursions (from whatever side) raise localized problems of demarcation or improved demarcation of the boundary, such problems are not appropriate for resolution by a process of adjudication.

## **H: Submissions**

5.22 (1) In the submission of Nigeria there is no dispute concerning boundary delimitation as such throughout the whole length of the boundary from the tripoint in Lake Chad to the sea, and in particular:

(a) there is no dispute in respect of the boundary delimitation as such within Lake Chad, subject to the question of title to Darak and adjacent islands inhabited by Nigerians;

(b) there is no dispute relating to the boundary delimitation as such from the tripoint in Lake Chad to Mount Kombon;

(c) there is no dispute relating to the boundary delimitation as such between Boundary Pillar 64 on the Gamana River and Mount Kombon; and

(d) there is no dispute relating to the boundary delimitation as such between Pillar 64 on the Gamana River and the sea.

(2) This Preliminary Objection is without prejudice to the title of Nigeria over the Bakassi Peninsula.

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## CHAPTER 6

### **There is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions**

#### **A: The Objection**

6.1 Cameroon has not supplied the Court with adequate or reliable information to enable the Court to make a fair and effective judicial determination of the matters of international responsibility raised by Cameroon.

#### **B: Background**

6.2 In the Application statements are made about alleged incursions by Nigerian State or private interests across the border and into territory allegedly under the sovereignty of Cameroon, and about incidents arising from such alleged incursions. The Application raises general claims relating to questions of State responsibility on the part of Nigeria said to arise out of those incursions and associated incidents, and seeks reparation for the violations of international law said to have been committed by Nigeria.

6.3 The references in the Application to various alleged border incidents are set out in Part A of NPO 84. Nigeria also sets out in Part B of the same Annex the references in the Amendment to various alleged border incidents. Virtually all of these allegations are unspecific as to the basic facts of the alleged incidents, as to the precise location where they are said to have taken place, or as to the date(s) on which they are said to have taken place, or as to all those matters. Even when some of those details are sometimes provided, the essential nature of the alleged incursion remains unclear.

6.4 A particularly glaring example of this fundamental inadequacy is the reference in paragraph 17(f) of the Amendment to "repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries...". It is *solely* on this vague and unsubstantiated assertion (which was not adverted to in the main body of the Amendment or in the original Application) that Cameroon sought in the Amendment to put in question the whole length of the frontier between Lake Chad and the sea.

6.5 Nigeria must initially observe that as to the substance of these allegations it categorically rejects Cameroon's account, and the construction Cameroon puts upon the alleged events.

#### **C: Legal considerations**

6.6 When proceedings are instituted by application, Article 38.1 of the Rules of Court requires that "the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute". This general provision is amplified by paragraph 2, which provides that the "application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based". The inadequacy of the Application in relation to the alleged grounds of jurisdiction has already been commented upon (paragraph 1.8 above); as regards the second limb of this provision (concerning the facts) it is noteworthy that it is not qualified by the words "as far as possible", but is absolute and peremptory - "shall ... specify the precise nature of the claim". There has to be a "statement of the facts", which must be "succinct".

6.7 This provision in the Rules of Court has to be seen alongside Article 79. Under this Article objections to admissibility are "to the admissibility *of the application*". It is thus the adequacy of the original Application which is immediately in question, rather than any question as to the adequacy of the Amendment (which is dependent for its efficacy on the admissibility of the original Application) or the Memorial. But even if account is taken of the contents of the Amendment or Memorial in this context, the fundamental inaccuracies and inadequacies remain. For the most part, Nigeria still remains in the dark as to the precise circumstances, date and location of all the alleged incursions and incidents relied upon by Cameroon.

6.8 The sense of the requirement imposed by Article 38 is that enough detail must be provided by the Applicant State to enable the Respondent State to know *from the terms of the Application* enough about the charges made against it for it to determine its response. Although Article 38 requires the statement of facts to be "succinct", that term connotes a combination of brevity and clarity: it is not a licence to assert facts with extreme generality, vagueness and imprecision.

6.9 While a State has some latitude in expanding later upon what it has said in its Application, and in particular in doing so in its Memorial, it is in essential respects restricted to the case it has presented in its Application. Had Cameroon chosen, in its Memorial, to give full details of the incursions and incidents initially identified in the Application, that might have constituted an acceptable amplification of the Application: but Cameroon did not choose that course, and instead continued, in the Memorial, to make vague, unspecific and unsubstantiated allegations about the alleged incursions and incidents. Although in the Memorial Cameroon does offer some detail of some of the alleged incidents, its Memorial is still replete with wild assertions of unlawful conduct by Nigeria.

6.10 Thus in relation to the South-West Province, Cameroon asserts that "For years, the Bakassi Peninsula region has been the scene of serious and repeated incursions by Nigeria" (paragraph 6.12): in fact, Cameroon goes on to cite, and give some information about, only two incidents - those of 16 May 1981 (paragraphs 6.13 -6.27), and of January/February 1994 (paragraphs 6.28 - 6.46); furthermore, the first of those incidents was that already referred to in paragraph 34 of the Introduction above, where the Memorial so distorts the true position as to regard as a Nigerian incursion an incident in which it was five Nigerians who were killed, and it was *Cameroon* which apologized and offered to pay compensation.

6.11 Similarly, the Memorial asserts that "incursions by the Nigerian navy into Cameroonian territorial waters off the Bakassi Peninsula have been incessant since the end of the 1960s"

(paragraph 6.47), and that such incidents have occurred with "frequency and regularity" - a circumstance which is said to make it impossible to give an exhaustive list of them, and which suggests that a "few revealing examples" will be good enough: only five purported incidents are then mentioned, each wholly inadequately supported by hard facts -

6.11.1 the first (paragraph 6.50) is based on a one-sentence press agency report on 1 July 1970, giving no date for the alleged incident (the date used in the Memorial is the date of the press report), refers only to "incidents [which] have occurred recently", says nothing about where the alleged incidents took place other than they were "at sea" and took place "in Cameroonian waters", and gives no details of the alleged incidents other than that they involved stopping and searching Cameroonian fishing vessels;

6.11.2 the second (also paragraph 6.50) is based simply on an internal communication dated 18 July 1984 between Cameroonian authorities, with no other supporting authority - and, indeed, that internal communication is itself not a direct source of evidence of the alleged incident but is in its turn based only on an unspecified "reliable source" ("*source digne de foi*"): this aspect of the matter was concealed by Cameroon's incomplete quotation in the Memorial of the relevant document (MC.271);

6.11.3 the third (paragraph 6.52) involves an assertion that Nigerian authorities "regularly conducted patrols in our territorial waters": this is based only on an internal document "*drafted*" within the Cameroonian Government in December 1985, based on a report more than two weeks previously from a Sub-Prefecture, which gave no details of dates or circumstances of the alleged patrols;

6.11.4 the fourth (also paragraph 6.52) is based on an internal Cameroonian report dated 25 July 1986, recording an event said (but with only the barest supporting detail) to have occurred a month earlier; the report as quoted in the Memorial is an inaccurate version of the text given at MC.280 in that it omits, without any indication that there has been an omission, the sentence from the report acknowledging that the incidents occurred in an area which had never had an agreed boundary;

6.11.5 the fifth (paragraph 6.53) is again based only on an internal Cameroonian text of 27 August 1991 reporting a Cameroonian mission to Jabane and referring to an alleged incident which (according to MC.311, but not cited in the Memorial) occurred on 12 August 1991, and again gives virtually no supporting detail associating the vessels said to have been involved with Nigeria; again the text quoted in the Memorial is incomplete, in that it omits the passage from the report which records that the mission found no frigate flying a foreign flag moored off Jabane.

It is noteworthy that these paragraphs of the Memorial make no mention of any Cameroon diplomatic protests to Nigeria about these incidents, which might have served to identify them.

6.12 To take one further, and clear, example, reference has already been made (in paragraph 6.4 above) to the vague and unsubstantiated reference in paragraph 17(f) of the Amendment (not in the body of that Amendment, or even in the Application) to "repeated incursions ... into Cameroonian territory, all along the frontier between the two countries". This, as the sole basis advanced by Cameroon for putting in question the whole frontier from Lake Chad to the sea, is not only wholly inadequate for that purpose, but it is also inadequate for any purpose of establishing any international responsibility on the part of Nigeria. It is also an inadequate starting point in the Application for any subsequent amplification in the Memorial: the Memorial can, at best, only fill out the details of matters which have been identified with sufficient particularity in the Application. Nigeria thus rejects, as in principle improper, any purported amplification of those alleged incursions in the Memorial. Furthermore, in practice, even if those paragraphs of the Memorial may properly be referred to in order to fill out paragraph 17(f) of the Amendment, it is apparent that they do not in fact add anything significant to the vague and inadequate allegation in paragraph 17(f). The alleged incidents there stated to have taken place "all along the frontier" would seem to be those dealt with at paragraphs 6.90 - 6.109 of the Memorial; and those incidents are the following:-

6.12.1 Nigeria's alleged occupation of Tysan (part of Kontcha) (paragraphs 6.90 -6.95) in, apparently (no date is given in the Memorial), early 1994; (and it should be observed that one of the documents relied upon by Cameroon in this context is dated 12 April 1994 (MC.355), which is thus subsequent to the date of the filing of the Application);

6.12.2 alleged abduction of a Cameroonian citizen on 29 May 1989 (paragraphs 6.96 - 6.99), scant supporting details being given;

6.12.3 alleged arrest of four Cameroonian citizens on 6 July 1992 (paragraphs 6.100 - 6.103), scant supporting details being given in a report six weeks after the event;

6.12.4 alleged incidents at Mbelogo on 26 January 1994 (paragraphs 6.104 - 6.107) and 26 September 1994 (paragraphs 6.108 - 6.109).

Thus the wild allegation of incidents "all along the frontier" turns out to refer to alleged incidents at only 4 villages along the length of the 1,680 km. frontier. In respect of all four alleged incidents the details provided in the Memorial are wholly inadequate as a basis for determining the international responsibility of a State. (In any event the last of those incidents - that alleged to have occurred on 26 September 1994 - must be disregarded as it is subsequent to the date of the filing of the Application).

6.13 The rest of this part of the Memorial is similarly exaggerated, unspecific and generally inadequate as a basis for consideration, either by Nigeria or the Court, of questions of State responsibility. It may be convenient for Cameroon to say that incidents have been so frequent and regular "that it is impossible to give an exhaustive list of them" (paragraph 6.50), or that "it would be fastidious to submit an exhaustive list of border incidents attributable to Nigeria ... [and that a] few of the more significant ones will be selected for illustrative purposes" (Memorial, paragraph 6.11), but for Nigeria it is unacceptable to have allegations of Nigeria's international responsibility advanced on such a flimsy basis. Exaggerated assertions of unlawful acts do not afford any legal basis for holding a State internationally responsible for them. If a State's international responsibility is to be invoked, the State which takes it upon

itself to do so also takes upon itself the obligation to identify the circumstances with all necessary precision.

6.14 Apart from the express requirement of the Rules of Court that there must be a statement of the necessary facts, it is a general principle, essential in the administration of justice, that those charged with wrongdoing must be informed with considerable precision of the detailed facts which are said to constitute that wrongdoing. International responsibility is a very serious matter for a State: any allegation that a State bears international responsibility for various acts, with a corresponding obligation to make suitable reparation therefor, has to be supported by sufficient factual detail to warrant so serious an allegation. Formal, public but unsupported allegations of that kind are themselves a wrong against the State against which the allegations are made.

6.15 In the circumstances of the Application, an essential element in any international responsibility attaching to Nigeria is that Nigerian armed forces made incursions across the international frontier and into territory subject to Cameroon sovereignty. In a case where the Applicant State puts in issue the delimitation of the boundary, it is inappropriate for that State at the same time to raise questions of international responsibility said to arise from incursions across a boundary which *ex hypothesi* it regards as in issue. Any question of State responsibility arising from incursions across an international frontier depends for its answer upon knowing where the incursion is said to have occurred in relation to where the frontier is said to lie: a Nigerian 'incursion' into an area which is in law a part of Nigeria clearly gives rise to no international responsibility on the ground of the violation of some other State's territorial sovereignty.

6.16 Yet the Application and Amendment are generally inadequate as regards the specific locations at which alleged incursions (and associated incidents) are said to have taken place in relation to the location of the frontier between Nigeria and Cameroon. *None* of the references to incursions and associated incidents which are set out in NPO 84 gives any information in this respect, other than conveying the general inference that the places mentioned by Cameroon are within territory lying on what Cameroon regards as the Cameroonian side of the frontier. Even if account is taken of what is said in the Memorial, little further enlightenment is offered in many cases as to the precise geographical situation of places where incursions or incidents are alleged to have occurred. Without such information in the Application it is consequently not possible for Nigeria effectively to consider the issues which might arise in this context, and in consequence whether, and if so to what extent, they engaged Nigeria's international responsibility. It is similarly not possible in those circumstances for the Court to carry out a judicial examination of, and make a judicial determination on, the issues of State responsibility in so far as they are contingent upon the precise whereabouts of the *locus delicti*.

6.17 There is an additional factor to be taken into account in this connection in considering what is said in the Application, and which makes clarity essential in relation to geographical locations where events are said to have occurred. It is that in areas such as those along the frontiers of Nigeria and Cameroon, place-names are not always fixed. They frequently vary over time, or differ as between the linguistic traditions in Nigeria and Cameroon, or as between the different tribal languages or dialects. To give examples, in paragraph 9 of the Application Cameroon refers to alleged aggression by Nigeria at Jabane - but to Nigeria this place is known as Abana; in paragraph 5 of the Amendment reference is made to Nigerian occupation of *inter alia* Daba and Karakaya - but to Nigeria these places are known

respectively as Karakaya II and Karakaya I; and, as a last example, in paragraph 6 of the Amendment reference is made to Nigerian presence in Akwaya - but to Nigeria this is known as Mbenmong.

6.18 The inadequacy of the Application in these respects is of two-fold significance. First, it makes it impossible for Nigeria to respond effectively to the allegations which have been presented; second, it makes it impossible for the Court to make a fair and effective determination of the matters raised by Cameroon.

#### **D: Submissions**

6.19 For the above reasons Nigeria submits:

(1) that the Application (and so far as relevant, Amendment and Memorial) filed by Cameroon does not meet the required standard of adequacy as to the facts on which it is based, including the dates, circumstances and precise locations of the alleged incursions and incidents by Nigerian State organs;

(2) that those deficiencies make it impossible

(a) for Nigeria to have the knowledge to which it is entitled of the circumstances which are said by Cameroon to result in Nigeria's international responsibility and consequential obligation to make reparation; and

(b) for the Court to carry out a fair and effective judicial examination of, or make a judicial determination on, the issues of State responsibility and reparation raised by Cameroon; and

(3) that accordingly all the issues of State responsibility and reparation raised by Cameroon in this context should be declared inadmissible.

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## **CHAPTER 7**

**There is no dispute susceptible of adjudication as to the  
maritime boundary**

#### **A: Preliminary**

7.1 The Seventh and Eighth Preliminary Objections concern not the land but the maritime boundary. They are related to each other but are made independently of the objections concerning the various sectors of the land boundary, as well as the boundary in Lake Chad.

7.2 Nigeria asks the Court to hold that there is no legal dispute concerning delimitation of the maritime boundary between the two Parties which is at the present time appropriate for resolution by the Court. This is so for two reasons:

(1) In the first place, no determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula.

(2) Secondly, at the juncture when there is a determination of the question of title over the Bakassi Peninsula, the issues of maritime delimitation will not be admissible in the absence of sufficient action by the Parties, on a footing of equality, to effect a delimitation "by agreement on the basis of international law".

These points will be dealt with in turn.

**B: No determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula.**

7.3 It is trite law that the determination of maritime boundaries is dependent on the pre-existing determination of land boundaries. Maritime territory is dependent upon and appurtenant to land territory.<sup>3</sup> Thus Article 2 of the United Nations Convention on the Law of the Sea of 1982 defines the legal status of the territorial sea in terms of an extension of sovereignty of the coastal state "beyond its land territory... to an adjacent belt of sea"; the same language is used in Article 1 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone. The normal baseline for measuring the territorial sea, and other maritime zones beyond, is the "coast", that is, the area of land bordering the sea under the sovereignty of the coastal state (1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, Article 3; 1982 Convention, Article 5).

7.4 In the present case, however, the *location* of the "coast" of the respective States is in question, for reasons already described in Chapter 5. That issue must first be settled before it will be possible to begin to consider issues of maritime delimitation, whether of the territorial sea or other maritime zones. The provisions of the 1958 and 1982 Conventions dealing with delimitation of the territorial sea between opposite or adjacent coasts (1958 Territorial Sea Convention, Article 12; 1982 Convention, Article 15) also presuppose that each of the points on the baselines has been determined.

7.5 The difficulties of determining the issue are exacerbated in that Cameroon presents a single argument as to the location of the maritime boundary up to "Point G", relying upon the validity and legal effect of the Maroua Declaration (see Memorial, paragraphs 5.09, 5.52 - 5.60 and NPO 25). If the Court accepts Nigeria's arguments, it will thereby have undermined the whole assumption of the Cameroon's argument. But the Court cannot, consistently with its judicial character, proceed to consider the merits of a dispute on the premise that the arguments of one party are *prima facie* correct. At least, it would be more consistent with

judicial method and with the separate and consequential status of maritime boundary determination for the Court to postpone consideration of the maritime boundary *as such*.

**C: There has been no attempt by Cameroon to seek a delimitation "by agreement on the basis of international law", in accordance with the principles and provisions of the United Nations Convention on the Law of the Sea, 1982.**

7.6 The arguments made in the preceding sub-section relate to the whole maritime boundary in issue in the present case. But even assuming, for the sake of argument, that the Court were to uphold the contentions of Cameroon with respect to the Bakassi Peninsula and the Maroua Declaration, the Court would have no jurisdiction over the question of maritime delimitation beyond "Point G", or that question would be inadmissible, for the reasons explained below.

#### **D: Cameroon's presentation of the issues**

7.7 The Application refers to "several attempts" to delimit the maritime boundary, but without any specification. It asserts merely that:

"Afin d'éviter de nouveaux incidents entre les deux pays, la République du Cameroun prie la Cour de bien vouloir déterminer le tracé de la frontière maritime entre les deux Etats au-delà de celui qui avait été fixé en 1975."  
(Application, paragraph 3)

In relevant part, the "decision requested" in the Application is as follows:

"Afin d'éviter la survenance de tout différend entre les deux Etats relativement à leur frontière maritime, la République du Cameroun prie la Cour de procéder au prolongement du tracé de sa frontière maritime avec la République Fédérale du Nigéria jusqu'à la limite des zones maritimes que le droit international place sous leur juridiction respective." (Application, paragraph 20 (f))

7.8 The Application is wholly lacking in specificity. It identifies neither the "attempts" at further delimitation nor the "incidents" which should be prevented from recurring. It does not even specify which "maritime zones" in particular the Court should delimit, although it is plain from paragraph 20 (f) that it intends that the Court should draw these lines up to the limit of the respective zones, i.e. to the tripoint or tripoints (or possibly quadripoints) with the other States evidently concerned in the delimitation of the area (Equatorial Guinea, São Tomé e Príncipe, and perhaps Gabon).

7.9 The one thing which paragraph 20(f) of the Application clearly infers (by the words "Afin d'éviter la survenance de tout différend", translated accurately by the Registry as "In order to prevent any dispute arising") is that such a dispute has not already arisen. And this is in fact the case.

7.10 The Amendment provides no further information on this issue.

7.11 The Memorial is no more specific, so far as the delimitation of areas beyond "Point G" is concerned. It states (paragraph 5.02) that:

"Au-delà [du Point G], les Parties n'ont pu se mettre d'accord sur la délimitation des zones maritimes sur lesquelles elles exercent leur juridiction respective."

7.12 The Memorial traces in some detail the discussions and disagreements of the parties in the period up to 1975 on the territorial sea boundary (see Memorial, paragraphs 5.06 - 5.66). In that context it refers to and annexes a few relevant inter-State documents, and rather more internal Cameroonian documents. Thereafter it turns to the issue of maritime delimitation beyond "Point G". The relevant Section (Memorial, Section (3), paragraphs 5.63 - 5.66) mentions no single diplomatic document between the parties relating to this sector. Not a single document since 1975 is annexed. That Section reads, in its entirety, as follows:

### **"SECTION 3. AU-DELA DU POINT G**

5.63 A partir du point G en direction du large, toute délimitation entre le Cameroun et le Nigeria doit prendre en compte une série de facteurs beaucoup plus nombreux que ceux nécessaires à la délimitation des frontières des eaux territoriales entre les deux Etats. Ces facteurs incluent une grande variété d'éléments géographiques et juridiques.

5.64 La situation géographique générale est illustrée par le croquis représenté page suivante.

5.65 Les éléments géographiques à prendre en compte sont au nombre de sept, de caractère particulier, trois étant de nature plus générale. Ils sont décrits ci-dessous dans les pars. 5.97 - 5.99 de ce Mémoire.

5.66 A l'exception de la délimitation décidée par la Déclaration de Maroua du 1er juin 1975 *qui concerne essentiellement les eaux territoriales*, il n'y a pas eu d'autre délimitation entre le Cameroun et le Nigeria. L'affaire est maintenant portée devant la Cour par une requête présentée en vue de délimitation du plateau continental et de la zone économique exclusive entre ces deux Etats. Ceci est l'occasion d'aboutir à une telle délimitation conformément aux principes de l'équité, une délimitation qui doit en toutes circonstances constituer 'une solution équitable' au sens des articles 74 et 83 de la Convention des Nations Unies sur le droit de la mer de 1982 et conformément à la jurisprudence de la Cour. C'est sur cette recherche d'une délimitation équitable que se fonde l'argumentation du Cameroun relative à la frontière maritime au-delà du point G." [Memorial, paragraphs 5.63 - 5.66 (emphasis added, footnotes omitted).]

7.13 The words emphasized in the preceding paragraph are of importance. At the time of the Maroua Declaration, the whole area it purported to cover was claimed as territorial sea by both parties. Cameroon notes that the subsequent ratification of the 1982 Convention prevents the parties from claiming more than a 12 mile territorial sea (Memorial, paragraph 5.03). But the rules for delimitation of the territorial sea differ from the rules for delimitation of the

exclusive economic zone and continental shelf, both under the 1958 Geneva Conventions and under the 1982 Convention. Cameroon wholly fails to discuss what the effect of all this may be on the Maroua Declaration, even on its own assumption that that Declaration is otherwise legally binding. It is yet a further issue which the parties would need to consider in the context of negotiations for the delimitation of their maritime zones beyond 12 miles.

7.14 Rather than dealing with these difficult and unexplored issues, the Memorial makes a cursory reference to the identical provisions of Article 74 (2) and 83 (2) of the 1982 Convention, and then deals with the obligation to negotiate in the following way:

"Comme cela est précisé ci-dessus dans la section (2) du présent Mémoire... les Parties au présent différend ont tenu quantité de réunions et de négociations en vue de rechercher une solution à leur problèmes de frontières maritimes. Ces réunions ont eu lieu entre 1971 et 1975 mais n'ont pas permis de parvenir à un accord sur les frontières maritimes au delà des limites des eaux territoriales." [Memorial, paragraph 5.71.].

But as already noted, the meetings referred to dealt only with the issue of maritime delimitation to the coastwards of Point G or thereabouts, and they are treated in the Memorial precisely on this basis. To use the words of paragraph 5.66 of the Memorial, those meetings "essentially concern[ed] the territorial waters". Despite the aspirations entertained that the Joint Boundary Commission would deal comprehensively with the issues of maritime delimitation, it never even *began* consideration of them.

7.15 Nigeria for its part has not yet had the opportunity to consider, in the context of diplomatic negotiations, *any* proposal for the delimitation of the respective maritime zones of the Parties beyond "Point G". It learned of the Cameroon's actual position as to delimitation beyond "Point G" only when it received the Memorial.

7.16 In these proceedings Nigeria sees no need to take, and does not take, any position with respect to the substantive Cameroon maritime claims at present, beyond reserving its rights. Nigeria cannot be required to take a position as to what the legal position would be in respect of maritime delimitation *on the hypothesis* that its principal legal arguments are without foundation.

7.17 Nor can Cameroon, by making what appear to be extreme maritime claims, dispense with the requirement of prior negotiation. Otherwise the obligation to negotiate in good faith would be entirely frustrated, and would even become, *de facto*, an inducement to the making of extreme claims.

## **E: The Basic Legal Principle**

7.18 The key role that the parties themselves play in continental shelf delimitation goes back to the origins of the continental shelf doctrine in the Truman Proclamation of 28 September 1945. This stated, *inter alia*, that:

"In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined *by the*

*United States and the State concerned* in accordance with equitable principles." 4

This Court has consistently taken the same approach. It has refused to treat the "rules" for delimitation of the continental shelf and exclusive economic zone as in any sense imperative or self-executing, as applying by operation of law to effect a delimitation of the shelf *ipso facto* and without any attempt at agreement by the parties.<sup>5</sup> On the contrary the 1958 Convention "gave priority to delimitation by agreement".<sup>6</sup> The obligation to negotiate in good faith with a view to reaching agreement on delimitation is the "primary" obligation.<sup>7</sup>

7.19 The priority given to agreement does not mean that delimitation by means other than agreement is impossible, in cases where attempts to reach agreement have failed. Nor do the negotiations have to have proved "finally abortive".<sup>8</sup> But what is clear under general international law, as affirmed by the Court from 1969 onwards, is that the parties must have been given an *opportunity* to negotiate, to develop their positions, to see whether some resolution of the situation is not possible.<sup>9</sup> As the Court noted in 1969, there are...

"certain basic legal notions which... have from the beginning reflected the *opinio juris* in the matter of delimitation; those principles being that delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles..." [*ibid.* at p.47 (paragraph 85)].

7.20 Foremost among the "basic legal notions" is thus placed the principle that the parties must seek to reach agreement. The Court formulated it as follows:

"(a) the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation as a sort of prior condition for the automatic application of a certain method of delimitation in the absence of agreement; they are under an obligation so to conduct themselves that the negotiations are meaningful, *which will not be the case where either of them insists upon its own position without contemplating any modification of it;*" [*ibid.* at p.47 (paragraph 85), emphasis added.]

7.21 Later cases have adopted a similar approach. For example in the *Gulf of Maine* case, the Chamber expressed the first fundamental norm of general international law in relation to the delimitation of the continental shelf in the following terms:

"(1) No maritime delimitation between States with opposite or adjacent coasts may be effected unilaterally by one of those States. Such delimitation must be sought and effected by means of an agreement, following negotiations conducted in good faith and with the genuine intention of achieving a positive result. *Where, however, such agreement cannot be achieved*, delimitation should be effected by recourse to a third party possessing the necessary competence."<sup>10</sup>

7.22 In the *Case concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)*, the parties began on common ground by relying on the passage of the Court's 1969 judgment (referred to in paragraph 7.17 above), as the Court noted.<sup>11</sup> But their views as to the

application of the Court's criteria differed widely: the Court having settled the principles to be applied to the area in dispute, the parties reserved to themselves the task of reaching agreement on the actual line.

7.23 In the *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)*, the Court reaffirmed the primacy of the agreement of the parties, pointing out that:

"The normative character of equitable principles applied as part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and *indeed primarily, the duty of parties to seek first a delimitation by agreement*, which is also to seek an equitable result." [ICJ Reports 1985 p. 13 at p. 39 (paragraph 46), emphasis added].

7.24 In the *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)*, the Court was asked actually to delimit the area in question, in a case governed as to the continental shelf by the 1958 Convention. The parties had previously sought and failed to reach agreement on the issue. There was no question of one of the parties being brought before the Court without notice and without an opportunity to resolve the dispute by agreement.<sup>12</sup>

7.25 In this context it should be noted that in none of the reported decisions involving delimitation of continental shelf or EEZ has one party invoked judicial settlement without any attempt whatever at negotiations. On the contrary, in most cases there had been extensive negotiations, and the legal position of each party was well known to the other.<sup>13</sup>

7.26 In none of the above cases was the 1982 United Nations Law of the Sea Convention applicable as such between the parties. But the position under the 1982 Convention is the same as that under general international law. Rather than adopting the formula of Article 6 of the 1958 Geneva Convention on the Continental Shelf, the 1982 Convention makes a *renvoi* to the rules of general international law, as developed by the Court. Article 83 provides as follows:

"1. The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. *If no agreement can be reached within a reasonable period of time*, the States concerned shall resort to the procedures provided for in Part XV.

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the continental shelf shall be

determined in accordance with the provisions of that agreement." [emphasis added]

Article 74, dealing with delimitation of the EEZ between adjacent or opposite States, is in the same terms.

7.27 It should be stressed that each of the sub-clauses of Articles 74 and 83 refers to the need for agreement or an attempt to reach agreement between the parties. In addition, sub-clause 2 expressly allows reference to judicial settlement of disputes only if no agreement can be reached "within a reasonable period of time". Unilateral reference to a court, under a dispute settlement arrangement never notified to the other State concerned, in relation to a claim never communicated to that State let alone made the subject of negotiations, would be a plain breach of that sub-clause.

7.28 It is true that under Part XV of the 1982 Convention, which deals with settlement of disputes, the provisions for compulsory settlement in Part 2 do not apply if the parties have agreed to settle their disputes by some other means: see Part XV, Section 1, especially Articles 280, 282. This would presumably include pre-existing agreements to refer disputes to this Court under and in accordance with Article 36 of the Statute. It is argued in Chapter 1 above that there was no such agreement in the present case. But *in any event*, the rules of international law which the Court will apply are to be found in Articles 74 and 83 of the Convention, and include an explicit and substantive prior requirement of good faith negotiations on the issue for a "reasonable period of time". The same requirement exists, as has been shown, under general international law.

7.29 This is not merely good law but good sense. The delimitation of maritime zones is a matter of primary concern to the States affected. It is an issue of neighbourly relations. The considerations which have to be taken into account are not and cannot be limited; they relate not merely to the location of a line but to the continuing relationship of the parties in the area of the line, the management of resources, maritime transit rights, and so on. Any less appropriate subject for "trial by ambush", without any prior consideration of the possibilities for a settlement acceptable to the parties in the longer term, it would be hard to imagine. And this argument is reinforced by the fact that the area in question implicates the maritime zones of not two but at least four States.

## **F: The principle applied**

7.30 If the parties are under an obligation in the first place to negotiate with a view to reaching agreement on delimitation, then neither can deprive the other of the opportunity to negotiate. A party which, far from seeking to reach agreement, instigates without notice or warning what are evidently "hostile" proceedings before an international tribunal breaches the obligation which the Court articulated in its 1969 judgment and has since consistently affirmed. Such action deprives the other State of its right and opportunity to seek to resolve the issue through negotiations. That is the case with Cameroon in the present proceedings.

7.31 Under the circumstances, therefore, in Nigeria's view, the Court should hold that Cameroon has failed entirely to negotiate in good faith with a view to reaching agreement on the respective maritime zones of the parties beyond Point G. Under these circumstances, an

essential precondition to reference to the Court, under Articles 74 and 83 of the 1982 Convention as well as under general international law, has not been complied with.

7.32 For these reasons, the Court lacks jurisdiction in relation to the delimitation of the maritime zones of the parties beyond "Point G", or alternatively the claim of Cameroon is to that extent inadmissible for failure to comply with an essential precondition.

### **G: Submission**

7.33 There is no legal dispute concerning delimitation of the maritime boundary between the two Parties which is at the present time appropriate for resolution by the Court, for the following reasons:

(1) no determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula;

(2) at the juncture where there is a determination of the question of title over the Bakassi Peninsula, the issues of maritime delimitation will not be admissible in the absence of sufficient action by the Parties, on a footing of equality, to effect a delimitation "by agreement on the basis of international law".

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## **CHAPTER 8**

### **Maritime delimitation necessarily involves the rights of third States**

#### **A: Objection**

8.1. In the context of, and supplemental to, the Seventh Preliminary Objection, Nigeria contends that the question of maritime delimitation necessarily involves the rights and interests of third States and is to that extent inadmissible.

8.2. The position of the various States in and abutting the Gulf of Guinea appears sufficiently from the Map at the end of this Chapter. The Gulf is distinctly concave, and no fewer than five States are involved (Nigeria, Cameroon, Equatorial Guinea, Gabon, São Tomé e Príncipe). There has been, as far as is known to Nigeria, no agreed continental shelf or exclusive economic zone delimitation between any two of the States concerned (and Cameroon does not suggest otherwise). It is obvious from a preliminary inspection that the delimitation of the maritime zones appertaining to any two of those States will closely affect the others.

8.3. The decision of the Chamber in the *Case concerning the Frontier Dispute (Burkina Faso v Mali)* ICJ Reports 1986 p. 554 has already been analysed (see above, paragraphs 4.02 - 4.05). It will be recalled that the Chamber declined to limit its competence "simply because the end-point of the frontier lies on the frontier of a third State not a party to these proceedings" (*ibid.* at p. 577 (paragraph 46)). But it did so by explicitly distinguishing the position of continental shelf delimitation. As it held:

"...the process by which a court determines the line of a land boundary between two States can be clearly distinguished from the process by which it identifies the principles and rules applicable to the delimitation of the continental shelf... [I]n 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, paragraph. 14; pp. 27-28, paragraphs. 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." [*ibid.* at p. 578 (paragraph 47)].

8.4. As is well known, the Full Court in the *Libya/Malta Case* expressly did so limit the area within which it was competent to act, having regard to the known claims of a third State, Italy. See *Libya/Malta Case (Italian Application to Intervene)* ICJ Reports 1984 p. 3 at pp. 26-7 (paragraph 43); *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 p. 13 at pp. 27-8 (paragraphs 22-23).

8.5. Where a Court is merely laying down the principles applicable to the delimitation of a continental shelf in a given context, without actually drawing any particular line, the potential effects on third parties may be able to be reduced, or even avoided. This was the position with Malta in the *Tunisia/Libya Case* ICJ Reports 1981 p. 3. The position is quite different when the Court is actually called on to draw a line or lines, and when it is asked to do so, as here, to the full extent of the maritime zones (themselves unspecified) claimed by the Applicant State. It is true that a third State can seek some solace in Article 59 of the Statute, and that it will not be formally bound by the decision. But although third States can *always* rely on Article 59, yet in specific situations decisions of the Court may have clear and direct legal and practical effects on third States - as the Court acknowledged in the *Case Concerning East Timor*, ICJ Reports 1995 p. 90.

8.6. Moreover it is clear that this Court did not regard the protection of Article 59 as sufficient in the case of Italy, when considering the delimitation of the shelf between Libya and Malta. On the contrary, it was punctilious in leaving to one side areas which might be in issue as between Italy and one or other of the States parties: see *Libya/Malta Case (Italian Application to Intervene)* ICJ Reports 1984 p.3 at pp.26-7 (paragraph 43); *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 p. 13 at pp. 27-8 (paragraphs 22-23). It was more able to do so in that Italy, in its application to intervene, had given the Court full, current and authoritative information as to the extent of its claims and interests. As the Court itself hinted, Italy thereby achieved as much by seeking to intervene as it could have done had its request for intervention actually been granted: *Case Concerning the*

*Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 p. 13 at p. 27 (paragraph 21).

8.7. A further element, also noted by the Court, was that Malta and Libya in that case had seen and opposed Italy's request to intervene. They could fairly be said to have taken the jurisdictional consequences of their opposition. The limitation of the Court's competence with respect to the case was attributable, in part at least, to an informed and deliberate decision taken by them: *Case Concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 p. 13 at p. 28 (paragraph 23).

8.8. The position in the present case could hardly be more different. It is even more obvious than in *Libya/Malta* that the interests of other States are affected. They are affected not peripherally or marginally but as to central areas of the Gulf. Moreover, looking at the Gulf of Guinea as a whole there is not one but three such States. The Court has little or no information as to the claims or potential claims made by the other Gulf of Guinea States. Nor is Nigeria in a position at present to assist in that regard - even if it were appropriate for it to do so - given the absence of multilateral or bilateral agreements with the other Gulf of Guinea States as to their respective maritime entitlements.

8.9. Indeed Cameroon has expressly recognised that this is the position. At the Third Session of the Nigeria-Cameroon Joint Meeting of Experts on Boundary Matters, held in Yaoundé from 11-13 August 1993, the parties agreed that it was necessary to determine the tripoint between Nigeria, Cameroon and Equatorial Guinea, but they disagreed over whether it was desirable to discuss that issue in the absence of Equatorial Guinea. It was further agreed that a tripartite meeting be convened to examine the issue of the tripoint. See *Minutes of the Third Session of the Nigeria-Cameroon Joint Meeting of Experts on Boundary Matters*, Yaoundé, 11-13 August 1993, p.6 (NPO 55). In the Joint Communiqué issued after the meeting, the relevant paragraph reads:

"After underscoring that the determination of the triple point is *essential* to the delimitation of the maritime borders between Nigeria, Equatorial Guinea and Cameroon, the two Parties agreed that a tri-partite meeting should be convened to examine the issue of the determination of the triple point and the Gulf of Guinea Commission project." Third Session of the Nigeria-Cameroon Joint Meeting of Experts on Boundary Matters, Yaoundé, 11-13 August 1993, Joint Communiqué (NPO 55, p.3) [Emphasis added]

But in fact no such meeting has been held. Instead, Cameroon has called on the Court, unilaterally and without prior notice to Nigeria, to effect a purely bilateral delimitation with Nigeria.

8.10. At the same meeting, Nigeria pressed the idea of a Gulf of Guinea Commission, which "would ultimately facilitate the peaceful resolution of their maritime border problems": this was a reference to maritime border problems affecting not only Cameroon but the other Gulf of Guinea States.<sup>1</sup> In fact the proposed Gulf of Guinea Commission has not materialized, despite Nigeria's urgings, and no multipartite discussions have taken place in relation to maritime delimitation in the Gulf of Guinea.<sup>2</sup>

## **B: Conclusion**

8.11. The resulting situation can be characterized in a number of ways.

8.12. At one level, the situation highlights the difficulties presented by Cameroon in bringing the issue of maritime delimitation beyond "Point G" to the Court without any notice to or negotiation with Nigeria. Delimitation by agreement in the Gulf of Guinea would necessarily have involved the other States. It is for reasons such as these that the relevant substantive rules of international law (as reflected in Articles 74 and 83 of the 1982 Convention) require a prior attempt to reach agreement.

8.13. At this first level, the impact on third States in the Gulf highlights and reinforces the arguments for inadmissibility made in Chapter 7.

8.14. But there is more. The position in the Gulf of Guinea is such that a delimitation much beyond "Point G" would require the Court, in its own words...

"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." [*Case concerning the Frontier Dispute (Burkina Faso v Mali)* ICJ Reports 1986 p. 554 at p. 578 (paragraph 47)]

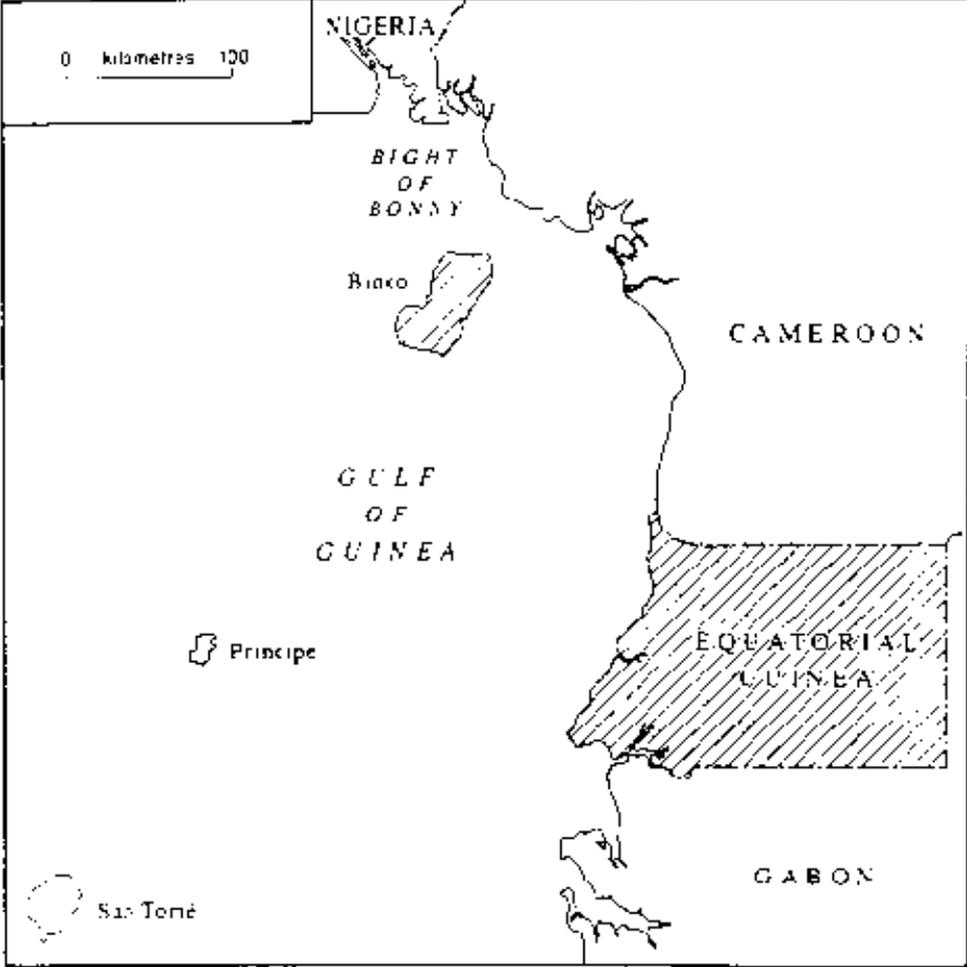
Moreover the Court is in fact required to do so without any information as to what the equitable considerations might mean for the other States concerned. In this regard it may be noted that the situation in the Gulf of Guinea is not unlike that which faced the Court in 1969, i.e. of a series of States forming part of a concave coast, with consequential effects for each of them. In such a case, as the Court held in 1969, there is not even a presumption that equidistance will provide the appropriate, equitable solution. The case of the Gulf of Guinea is complicated further (a) by the presence of island dependencies, of offshore islands and of an island State; and (b) by the absence of information as to the positions taken by affected third States.

8.15. At this second level, the Court simply does not have the possibility of deciding on a complex interlinked series of equities affecting States not parties to the proceedings.

8.16. At a third level, it is clear from the measures sought by Cameroon (actual delimitation by the Court to the full extent of its maritime zones) that the Court will be required not merely to form a view on the equities of the claims or potential claims of third States but in practical effect - notwithstanding Article 59 of the Statute - to decide on the location of tripoints and on the actual extent of third State rights. In the context of maritime delimitation, and in respect of a request maintained by a State in breach of Articles 74 and 83 of the Statute, this is something the Court cannot and should not do. In this respect Nigeria affirms and does not need to repeat the points made in respect of its Fourth Preliminary Objection (see above, paragraphs 4.2 to 4.10).

## **C: Submission**

8.17. The question of maritime delimitation necessarily involves the rights and interests of third States and is inadmissible.



**CONCLUDING SUBMISSIONS**

For the reasons advanced, the Federal Republic of Nigeria requests the Court to adjudge and declare that:

it lacks jurisdiction over the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon

and/or

the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon are inadmissible to the extent specified in these Preliminary Objections.

December 1995

**Chief Michael AGBAMUCHE SAN**  
**Hon. Attorney-General of the**  
**Federation and Minister of Justice**  
**Agent of the Federal**  
**Republic of Nigeria**

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**SCHEDULE ONE**

**Schedule of Annexes which are incorrectly  
referenced in Volume I of the Cameroon Memorial**

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**CAMEROON/NIGERIA BOUNDARY DISPUTE**

**SCHEDULE 1**

**SCHEDULE OF ANNEXES WHICH ARE INCORRECTLY REFERENCED IN  
VOLUME 1 OF THE CAMEROON MEMORIAL**

<b>Annexure No.</b>	<b>Vol. No./Page No. of Annexure</b>	<b>Paragraph No./Page No. in Memorial</b>	<b>Comments</b>
MC344	7/2819	1.29/18	The quote appearing at paragraph 1.29 of the Memorial does not appear at MC344. MC344 is a

			letter dated 4 March 1994 addressed to the President of the Security Council by the Nigerian Interim Charge d'Affaires.
MC366	7/2931	1.33/21	The document referred to at paragraph 1.33 of the Memorial and described as MC366 is actually annexed at MC367.
MC367	7/2935	1.33/20	The document referred to at paragraph 1.33 and described as MC367 is actually annexed at MC366.
MC14	2/89	2.34/57	The reference in paragraph 2.34 of the Memorial is to Article II of the Anglo-German Agreement dated 15 November 1893. The correct reference is Article III.
MC19	2/113	2.51/69	MC19 should be an English translation of a note dated 13th November 1902 from Baron Von Richthofen to the Embassy of Great Britain in Berlin. It is in fact a letter dated 27th May 1895 from Sir Claude MacDonald to the Earl of Kimberley. What should be MC19 actually appears at MC26.
MC28	2/159	2.51/69	The document annexed should be the note dated 13th November 1902 from Baron Von Richthofen to Great Britain (MC 26). It is in fact a Treaty dated 12th December 1902 establishing a Joint Boundary Commission for measuring and demarcating the boundary from Yola to Lake Chad.
MC84	3/611	2.77/79	The first two sentences of the extract as it appears at paragraph 2.77 of the Memorial are missing from MC84.
MC245	5/2007	2.84/81	This should be an extract from International Boundary Study (IBS) No. 92 (Revised) of 21st November 1974. It is in fact a summary of the proceedings of the joint Nigeria/Cameroon Frontier Commission from 26th March to 4th April 1971.
MC286	6/2399	2.180/119	The Memorial at paragraph 2.182 gives the latitudinal geographical value as - latitude: 12_32'72" 4N. MC286 gives it as - latitude: 12_32'17" 4N.
MC284	6/2371	2.187/120	The Memorial at paragraph 2.187 gives 25th May 1988 as the date when the contract was approved. MC284 gives it as 26th May 1988.
MC242	5/1975	2.219/129	Reference is made at paragraph 2.219 of the Memorial to British Admiralty Map No. 3433. No map is appended to MC 242.
MC110	3/815	3.16/150	There is a typographical error in the Memorial. At

			paragraph 3.16 the reference should be to MC110 and not MC112.
"C2"	2/5	3.34/156	The Memorial at paragraph 3.34 refers to the Milner-Simon Agreement. The document annexed at MC2 is an Agreement dated 1885 between Germany and Great Britain. The Milner-Simon Agreement is annexed at MC107.
MC119	3/915	3.35/157	The Memorial at paragraph 3.35 refers to, "correspondence during May/June 1961". MC119 is actually a letter dated 29th May 1921 from the British Ambassador in Paris to the French Minister of Foreign Affairs.
MC233	5/1915	3.42/159	The document annexed at MC233 does not support the assertion at paragraph 3.42.
MC70	3/531	3.48/163	The Memorial at paragraph 3.48 refers to a Meeting in Lagos from 15th-23rd October 1970. MC70 is actually a letter dated 28th May 1912 from the German Ambassador, Count Metternich to the British Government.
MC289	6/2415	3.58/166	The Memorial at paragraph 3.58 recites a passage in italics. MC289 does not contain this passage.
MC116	3/879	3.127/191	MC116 should be League of Nations Assembly Document 161, of 1920. The same document also appears as MC179. MC116, therefore, appears to be missing.
MC135	4/	3.140/195	MC135 is missing.
MC146	4/1123	3.142/196	The reference appearing at paragraph 3.142 is not from MC146. It can be found at MC147.
MC147	4/1133	3.144/196	The Memorial at paragraph 3.144 refers to "... certain questions that the British Administration had wished to raise in 1919 ...". MC147 does not appear to relate to this.
MC166	4/1265	3.152/199	The extract appearing at paragraph 3.152 can be found at MC 167 and not MC166.
MC203	5/1611	3.170/207	The document annexed should be a Declaration drawn up by the mandatory powers and approved by the sub-committee. MC203 is in fact the Repertory of Practice of UN Organs.
MC203	5/1611	3.172/208	The extract appearing at paragraph 3.172 can be found at MC182 and not MC203.
MC203	5/1611	3.175/210	The extract appearing at paragraph 3.175 can be found at MC182 and not MC203.
MC200	5/216	3.189	This appears to be the correct annexure, although paragraph 3.189 of the Memorial gives no indication of where in the document annexed the extract is from.

MC186	4/1419	3.189/216	The Memorial at paragraph 3.189 refers to page 3 of the Report of 1948, HMSO, Colonial No 244. MC186 is page 1 of this report and not page 3. Page 3 can be found at MC185.
MC200	5/1533	3.205/225	MC200 does not contain the exact words which are quoted at paragraph 3.205 of the Memorial. The document relates the gist of the extract only.
MC198	5/1503	3.205/225	The 2nd reference to MC198 is a quote from the Official documents of the Trusteeship Council, 1952. The quote is from MC199 and not MC198.
MC157	4/1181	3.208/229	MC157 does contain an exchange of notes of 9th January 1931, although the extract at paragraph 3.208 of the Memorial cannot be found.
MC196	4/1465	3.211/231	MC196 should be the HMSO Report for the year 1949. It is actually the Report of the UN Visiting Mission to Trust Territories in West Africa during 1950.
MC208	5/1667	3.220/235	MC208 is a letter dated 12th February 1958 from Mr. C G Eastwood to Sir John Macpherson. The Memorial at paragraph 3.220 refers to a meeting of 17th February 1959. This can be found at MC211.
MC255	6/2123	3.237/243	MC255 should be an UN Report re plebiscites dated 3rd April 1961. It is in fact a roll of taxes dated 8th July 1980. The correct annexure can be found at MC224.
MC223	5/1835	3.237/243	The Southern Cameroons Plebiscite Order of 1960 can be found at MC221 and not MC223.
MC221	5/1821	3.241/245	The Southern Cameroons (Constitution) Order in Council of 1960 can be found at MC223 and not MC221. MC221 is the Southern Cameroon's Plebiscite Order in Council 1960.
MC202	5/1589	3.242/245	MC202 is the Nigeria (Constitution) Order in Council 1951 and not the (Constitution) Order in Council of 1954 referred to in the Memorial.
MC227	5/1871	3.258/251	MC227 does not include GAOR, 15th Plenary Session, page 466 as stated in Memorial. M.C. 227 is actually General Assembly Resolution 1608 (XV)
MC355/356	7/2877 and 2883	4.15/335-336	MC355/356 both contain the same document: Note No. 73/114/Vol. VI/94 dated 14 April 1994. MC355 alone also contains a note from the Foreign Minister of Cameroon dated 11 April 1994 (No. 77/CF/DIPL/DI/SDAF/AO).
MC104	3/759	4.45/342	No Memorandum dated 11 January 1917, appears at MC104. MC104 contains a Memorandum dated 20 June 1917.

MC151	4/1149	4.70/352-353	MC151 is dated 13 March 1928, not 13 October 1925 as stated.
MC155	4/1165	4.79/355	The note of 10 September 1930 can be found on the first page of MC155.
MC172	4/1309	4.80/355	MC172 does not contain any reference to the replacement of the French President of the Commission with George Verges.
MC38	2/243	4.169/404	The protocol contained in MC38 does not contain the information in paragraph 4.69.
MC314, 324, 327	7/2603, 2679 and 2721	4.183/410	MC 314, 324 and 327 only contain Decrees:- 91/113, 92/284, 93/398 (28 April 1993), 93/398/PM/CAB, 93/399/CAB/PM, 93/399 (29 April 1993 and 93/730/PM. There are a large number of decrees and orders referred to in paragraph 4.183 which are not contained in Annexes 314, 324 and 327.
MC263	6/2179	4.185/411	MC263 is Decree No 81/510 of 4 December 1981 creating Districts. It does not appear to relate to Police Services as stated in paragraph 4.185.
MC379	7/2989	4.189/412	Not all of the schools listed in paragraph 4.189 appear in the list provided at MC379.
MC126	3/969	4.199/417	MC126 is the Report on the British Sphere of the Cameroons and not the Report of the first monitoring missions of the UN in the 1950 document T/798 (p.10).
MC1	2/1	4.228/427	MC1 is dated 15 October 1884. The Memorial refers to protectorate treaties between Germany and the indigenous Chiefs in 1884 - 1885 but these are not annexed.
MC91	3/657	4.240/433	MC91 is the 24 Ed of the German Colonial Gazette and not a memorandum dated 19 April 1913 as is referred to in paragraph 4.240.
MC383	7/3013	4.269/442	The eight maps are not specifically named nor are corresponding numbers (Memorial maps number) provided by which these maps can be identified.
MC9	2/55	4.278/446	MC9 is (Inclosure in No. 127) a copy of a letter from Baron von Soden to Consul Hewett and not a copy of a letter from the Marquis of Salisbury to Sir Eric Malet dated 2 November 1888.
MC20	2/117	4.279/447	MC20 is the Joint Report by the Survey Commissioners on the proposed Anglo-German Boundary between the Niger Coast Protectorate and the Cameroons.
MC214	5/1709	4.281/447	MC214 is JRV Prescott "the Evolution of Nigeria's Boundaries" and not J F Prescott "Geographical problems associated with the

			Delimitations of the Nigeria - Kamerun Boundary 1885-1916".
MC91	3/657	4.287/449	MC91 is the German Colonial Gazette 1913, 24th ed, No. 9; not Vol 24 (1913) no. 10.
MC87	3/637	4.364/474	MC87 is not a telegram but a letter dated 19 April 1913, from the Secretary of State at the Reich Colonial office to the Secretary of State of Foreign Affairs. The letter contains no reference to when the demarcation was completed.
MC195	4/1459	4.425/448	MC195 makes no reference to Bakassi being placed in the "Cameroons" as suggested in the Memorial.
MC314	7/2603	4.432/490	MC314 contains only decrees 91/113 and 92/284. The other orders and decrees listed in paragraph 4.432 in the Memorial are not included.
MC265	6/2195	4.433/491	MC265 is a letter from the Nigerian Consul-General dated 12 February 1982 and not the Visitors Book at the Idabato District Office dated 1 July 1976, as stated in paragraph 4.4.33.
MC240	5/1955	5.18/240	The Declaration of the Nigerian - Cameroon Joint Boundary Commission (12th - 19th August 1970) was appointed to examine "matters relating to the delimitation of the precise boundary between Nigeria and the Cameroon" and not the "problems relating to the delimitation".
MC245	5/2007	5.27/513	The Cameroon Delegation pointed out and "positively established" that Admiralty Chart No. 3433 "did not contain as many details necessary" for their current exercise as did Chart No. 6245. They did not state it was less reliable.
MC251	6/2079	5.53/521	The Memorial refers to the exchange of letters dated 12 June and 17 July between President Ahidjo and General Gowon. MC251 is the Declaration of Maroua. Are these letters the documents at pages 2091 and 2092?
MC334	7/2761	6.33/571	MC334 is dated 7 January 1994 while the reference in the Memorial is 6 January 1994 - Are these documents one and the same?
MC302	7/2523	6.73/585	Paragraph 6.73 lists MC296, 297, 299, 300, 301, 302. No note of 27 April 1990 is included in the Annexes referred to.
MC353	7/2867	6.94/591	MC353 shows the date given in the quote attached to the Memorial as 1984; not 1994. Which is the correct date?
MC283	6/2357	6.121/599	MC283 referred to in paragraph 6.121 is the L.C.B.C. contract and does not refer to captured Cameroonian villages or other alleged Nigerian

			hostilities.
MC377	7/2979	7.15/633	MC377 lists the villages in the area of Lake Chad, occupied by Nigerian forces since 1994 and not since 1987 as suggested by the Memorial at paragraph 7.15.

## SCHEDULE TWO

### Schedule of inadequacies in the Annexes (volumes II - VII) to the Cameroon Memorial

#### CAMEROON-NIGERIA BOUNDARY DISPUTE

#### SCHEDULE 2

#### SCHEDULE OF INADEQUACIES IN THE ANNEXES TO THE CAMEROON MEMORIAL

Reference	Comments
MC7	Annex is different from the document described on the frontsheet.
MC8	Front sheet - third reference should be the 16 June and not the 18 June.  The seventh entry on the front sheet is in fact MC7.
MC9	Incorrect annex. However, both the last letter in MC8 and the annex attached to MC7 are in fact MC9.
MC16	This does not appear to be a complete copy of the map.  The front sheet refers to a map to illustrate the boundary according to an Agreement of 15 November 1893. However, the map says it illustrated an Agreement of the 14 April 1893.
MC21	Front sheet says it was signed on the 13 June 1899. The document says it was signed on the 14 June 1898.
MC22	This is illegible. Is it complete?
MC23	Incomplete copy - difficult to read.  Pages 134/136/137/138/139 illegible.
MC25	Very poor photocopy.  Pages 147/148 incompletely copied.
MC31	Annex is marked "draft". This is not reflected on the front sheet or in the Memorial at page 484, para 4.399.
MC32	Illegible and incomplete copy.
MC33	Front sheet - incorrect spelling of Muehlberg - should be Mühlberg.
MC34	Enclosures stop mid-way through Inclosure 5 (p.214).

MC39	Top of page 262 illegible.
MC40	Page 271 illegible. Page 272 illegible. Page 274 illegible.
MC41	No signature. Is it a complete copy?
MC42	Page 286 incomplete copy.
MC44	Page 303 and page 306 illegible. Incomplete copy.
MC47	Please confirm where this is referred to in the Memorial. Page 347 incomplete copy. Page 359 incomplete copy. Page 366 incomplete copy. Page 368 incomplete copy.
MC48	Incomplete copy. Stops at page 6 midway through sentence.
MC51	Illegible and incomplete copy.
MC57, 62, 65 and 81.	Cannot find any reference to these in the Memorial. Should these also be referred to in paragraph 4.280 of the Memorial.
MC 59	Copying all mixed up.
MC63	Article V of page 495 illegible.
MC64	Manuscript at page 500 illegible.
MC66	Page 512 - manuscript on copy illegible.
MC78	Page 572 difficult to read.
MC92	Please confirm where this is referred to in the Memorial.
MC94	Refers to enclosing 4 maps. Only one enclosed.
MC95	Pages 693/694 identical to pages 665 and 666 in MC92.
MC96	Pages 701 and 702 are identical.
MC97	The letter is from Mr G V Fiddes and not Mr H Read as indicated on the front sheet.
MC103	Pages 739, 741, 742, 743, 744 and 745 are either very difficult to read or illegible.
MC104	Should this be dated 20 June, rather than July 1917?  The following pages are difficult to read or illegible - 763, 764, 765, 767, 769 and 775.
MC106	Front sheet should read 19/04/1913 - not 1918.
MC112	Page 842 difficult to read.
MC113	The following pages are illegible - 845, 846, 847, 848, 849 and 850.
MC114	Pages 853, 854, 855, 856, 857 and 859 very difficult to read and in parts

	illegible.
MC115	What is this? No description on front sheet. Please confirm where it is referred to in the Memorial?
MC116	Annex has no correlation to front sheet nor is it referred to in the Memorial.
MC117	Pages 885 to 894 are not part of this exhibit.  Pages 986 and 898 are incomplete copies.
MC118	Pages 907 and 909 are illegible.
MC120	Pages 922 and 923 are illegible.
MC121	Pages 927, 928, 929 and 930 are incomplete.
MC124	Pages 947, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958 and 959 are illegible.
MC125	23 April should be reference on front sheet - not 27 April.
MC128	Please identify where this is referred to in the Memorial.
MC129	Please identify where this is referred to in the Memorial.  Page 1035 is illegible and incomplete.
MC130	The front sheet says 2 June 1923. It should be 26 June 1923.
MC131	The front sheet indicates that page 43 is included. The pages included appear to be pages 153, 154 and 155. Is the extract complete?  Also, please identify where this is referred to in the Memorial.
MC133	Please identify where this is referred to in the Memorial and exactly what is relied upon.  The front sheet indicates that page 2 only is the annex. However, the annex also contains other pages. It also goes from page 3 (page 1067) straight to page 12 (page 1068)
MC134	Page 1071 is illegible.
MC135	This annex is completely absent.
MC136	Page 1081. The bottom of the page has been cut off.  Please identify where it is referred to in the Memorial.
MC139	Please identify where this is referred to in the Memorial.  Page 1098 is illegible.
MC140	Page 1102 - illegible.
MC141	Please identify where this is referred to in the Memorial.  Is the excerpt complete?  Pages 1105 and 1106 illegible in parts.
MC142	Please identify where this is referred to in the Memorial.

MC143	Page 1113 is an incomplete copy (top right hand corner missing).
MC146 and MC147	The annexures appear to be the wrong way round, i.e. annexure 147 is attached to the annex 146 front sheet.  In MC146 please confirm whether pages 84 and 85 are relied upon and if so where they are referred to in the Memorial.
MC149	Please confirm where this is referred to in the Memorial.  Page 78 is an incomplete copy.  The front sheet may be incorrect. It states that the Annexure is 1927 Cameroon under French Mandate report - pages 78/79. However, the manuscript in the document suggests that it is Permanent Mandate Commission Minutes - Thirteenth Session 1928.
MC150	Incomplete copy - page 1148 - left hand side cut off.
MC151	The Memorial refers to this at page 353 but the annexure attached does not have the correct date and does not appear to be the annex referred to on page 353. Please confirm where MC151 is referred to in the Memorial.  Illegible copy on page 1151.
MC157	The following pages are illegible in parts, 1194, 1195, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1205, 1206 and 1207.
MC161	Page 1230 illegible.
MC162	The front sheet is incorrect. Letter is dated 29 September 1932 not 30 September 1932.
MC163	Page 1243 is illegible.
MC165	Please confirm where this is referred to in the Memorial.  The front sheet indicates that the annex is the 2 November 1934 - Permanent Mandate's Commission Minutes - 25th Session page 67. The exhibits are confused. They seem to be the Permanent Mandate's Commission Minutes dated 12 June 1934.  What is page 1257/8. It is relied upon in the Memorial? If so, where.  What are pages 1260 to 1263. They appear to be dated 2 November 1934. Are these relied upon, and if so, please confirm reference in the Memorial.
MC166	What is page 1268? Is it relied upon and if so, confirm reference in Memorial.  Page 1268 is incomplete.  The Memorial refers to page 94 and page 177. However, these do not form part of the annex.
MC167	Please confirm where this is relied upon in the Memorial.  Nigeria understands from the front sheet to the Annex that only page 2 is

	considered by Cameroon to be relevant. Please confirm that Nigeria's understanding is correct.
MC168	Please identify what is relied upon. The front sheet suggests page 2 only is relied upon as does the reference in the Memorial.
MC169	Page 1288 is illegible.
MC170	Please confirm exactly what in this annex is relied upon. The front sheet and the Memorial suggest page 62 only.
MC172	Please confirm exactly what is relied upon. The front sheet refers to a letter from the Foreign Office to the French Ambassador in London dated 9 July 1937. This is found at pages 1312 to 1313. However, there are other (badly photocopied) documents in the Annex. Is the front sheet incorrect?  Pages 1314 to 1317 appear to be the pages relied upon in the Memorial.
MC173	Illegible.
MC174	The front sheet does not refer to pages 1332 and 1333.  The front sheet refers to an Agreement relating to the instructions on marking the boundaries. The Annex is Instructions from the British government to the British delegation. This is also exhibited at MC175.
MC175	Pages 1337 to 1339 and 1340 to 1343 are the same as 1325 to 1327 and 1328 to 1331. Have they been included in Annex MC174 by mistake? If so, where is Annex 174.  What are pages 1344 and 1345? Are they relied upon in the Memorial. If so, please state where.
MC176	Where is this referred to in the Memorial? Are only pages 6 and 7 relied upon?
MC178	Page 7 of the Protocol is missing.
MC183	Please confirm where this is referred to in the Memorial.  Please also confirm which pages are relied upon in the Memorial.  Pages 1401 to 1403 are incompletely copied.
MC185	Please confirm where this is referred to in the Memorial.  Page 1416 is illegible.  Page 1417 is an incomplete copy.
MC186	Page 1422. Is this the correct excerpt? It does not relate to the Memorial reference.
MC190	Please confirm where this is referred to in the Memorial.  Please confirm what part of the annex is relied upon.
MC191	Please confirm where this is referred to in the Memorial.  The front sheet is incorrect.

MC192	The top of page 1450 has been cut off.
MC193	Please confirm where this is referred to in the Memorial and exactly what part of the annex is relied upon.  Page 1454 is an incomplete copy.
MC194	Please confirm where this is referred to in the Memorial.
MC196	A very confusing Annex.  The front sheet is incorrect. Pages 50 to 51 are exhibited.  Where do pages 1473 to 1497 come from.  Page 1491 is the same as 1467.  Page 1492 is the same as 1468.  Page 1493 is the same as 1470.  Page 1494 is the same as 1471.  Pages 1473 to 1490 are all out of order.  Page 1473 is illegible.  Page 1476 is incomplete.  Page 1479 is illegible.  Page 1480 incomplete.  Page 1482 incomplete.  Page 1483 illegible.  Page 1484 illegible.  Page 1485 illegible.  Page 1486 illegible.  Page 1487 illegible.  Page 1488 incomplete.  Page 1489 incomplete.  Page 1490 incomplete.  Pages 1495 and 1497 are illegible.

MC197	<p>Please confirm where this is referred to in the Memorial.</p> <p>Please confirm what documents from the Annex are actually relevant. Is it solely page 337 as indicated in the front sheet?</p> <p>Is page 337 page 1501 or 1502?</p>
MC198	<p>The front sheet is incorrect. It refers to page 39 only.</p> <p>Page 1505 is incomplete.</p> <p>Page 1506 illegible.</p> <p>Page 1507 incomplete.</p> <p>Page 1509 incomplete.</p> <p>Page 1516 incomplete.</p>
MC199	<p>It is appropriate to set out on the front sheet what is included in the Annex.</p> <p>It is a bundle of pages with no explanation where they come from or why they are included.</p> <p>Page 1519 is illegible.</p> <p>Page 1520 is illegible.</p> <p>Page 1522 - is this relied upon?</p> <p>Page 1523 - is this relied upon.</p> <p>Pages 1527/1528/1529 are incomplete.</p> <p>Page 1530 is incomplete.</p>
MC200	<p>It is appropriate to identify on the front sheet exactly what documents are being relied upon. At present it is just a bundle of miscellaneous documents without reference.</p> <p>In addition:-</p> <p>Page 1541 incomplete.</p> <p>Page 1558 incomplete.</p> <p>Page 1564 incomplete.</p> <p>Page 1576 incomplete.</p> <p>Page 1577 incomplete.</p>

	Page 1578 incomplete.
MC201	Please state where this is referred to in the Memorial.  Page 1583 partly illegible.  Pages 1584 and 1585 are incomplete.
MC202	Page 1604 illegible.
MC203	The front sheet refers to annexing pages 212 to 218. Pages 214 and 215 are missing.
MC204	Please confirm exactly what is relied upon in the Memorial.  Page 1621 is an incomplete copy.  Page 1622 an incomplete copy.  Page 1626 incomplete copy.  Please confirm where page 1629 comes from.
MC205	Please confirm whether pages 1634-1639 are relied upon. If they are, please provide the references in the Memorial.
MC207	Please confirm where this is relied upon in the Memorial.  Page 1654 incomplete.  Page 1656 incomplete.  Page 1659 incomplete.  Page 1660 incomplete.  Page 1661 incomplete.  Page 1662 incomplete.  Page 1664 incomplete.  Please confirm where page 1666 is from.
MC209	Please confirm where pages 1677 to 1684 are referred to in the Memorial.
MC210	Please confirm where this Annex is referred to in the Memorial.
MC211	Please confirm where this Annex is referred to in the Memorial.
MC212	Please confirm where this Annex is referred to in the Memorial.
MC214	Pages 96 and 97 of the Annex are missing.
MC216	Please confirm where this is referred to in the Memorial.  In addition, the document does not appear to be complete. It ends at page 5.

MC217	Please confirm where this is referred to in the Memorial. The enclosure jumps from page 25 to page 32.
MC218	Please confirm where this is referred to in the Memorial.
MC219	Please confirm where this is referred to in the Memorial.  The document appears to be incomplete. Only pages 1 and 4 are annexed.
MC220	Please confirm where this Annex is referred to in the Memorial. The front sheet refers to page 77 only. However, the Annex contains 53 pages. Please therefore identify on the front sheet exactly what is relied upon.  In addition:-  Page 1768 incomplete.  Page 1770 incomplete.  Page 1772 incomplete.  Page 1774 incomplete.  Page 1777 incomplete.  Page 1779 incomplete.  Page 1780 incomplete.  Page 1783 incomplete.  Page 1792 incomplete.  Page 1795 incomplete.  Page 1819 incomplete.
MC221	Please confirm the origin of page 1827. Is it part of MC221? Is it relied upon?
MC224	Please confirm where this is referred to in the Memorial. The pages included appear to be selective having the following page numbers only: Pages 1, 21, 22, 51, 52, 53, 86, 87(?), 88(?) and 20.  Please confirm the origin of the documents.
MC228	Please confirm where this is referred to in the Memorial.
MC229	Page 1883 is illegible.  Page 1884 is illegible.  Page 1885 is illegible.
MC231	Please confirm where this is referred to in the Memorial.

MC232	Please confirm where this is referred to in the Memorial.
MC236	Please confirm where this is referred to in the Memorial.
MC239	<p>Page 1949 is illegible.</p> <p>Page 1953 is illegible.</p> <p>Is the Annex complete? It appears to end mid-sentence on page 1953.</p> <p>Pages 2037, 2039 and 2043 are incomplete.</p>
MC248	<p>Page 2057 and 2058 are supposed to be maps 2 and 3.</p> <p>Is page 2057 complete?</p> <p>It will be necessary to identify page 2058.</p>
MC251	<p>The front sheet mentions two documents to be considered as Annexes to the Declaration of Maroua. Are they pages 2091 and 2092? If so, the front sheet is incorrect as it speaks of a letter from President Gowon dated 17th June 1975. It is actually dated 17th July 1975.</p> <p>It is necessary to clarify the identity of pages 2093-2098 (inclusive). Where are they referred to in the Memorial?</p>
MC252	Where is this referred to in the Memorial?
MC257	<p>Page 2144 is a poor copy.</p> <p>Page 2145 is incomplete.</p>
MC258	<p>Page 2151 is a poor copy.</p> <p>Page 2152 is a poor copy.</p> <p>Page 2153 is marked as a page "2" but so is page 2152.</p> <p>Is this is a complete copy of this document?</p>
MC260	<p>Page 2165 illegible.</p> <p>Page 2166 illegible.</p> <p>Page 2167 illegible.</p> <p>Page 2168 illegible.</p>
MC261	<p>Is the front sheet correct? It speaks of the 15th June 1981. Should it be the 5th June 1981.</p> <p>Page 2172 is incomplete.</p>
MC264	<p>Do we have a complete copy of the annex?</p> <p>Page 2190 is numbered page 3.</p>

	<p>Page 2191 numbered page 5.</p> <p>Page 2193 is numbered page 3.</p> <p>Page 2194 is numbered page 5.</p>
MC268	Where is this referred to in the Memorial?
MC271	<p>Page 2235 is incomplete</p> <p>Page 2236 incomplete.</p> <p>Page 2252 incomplete.</p>
MC272	<p>In parts the following pages are illegible.</p> <p>Page 2260.</p> <p>Page 2261.</p> <p>Page 2262.</p> <p>Page 2263.</p> <p>Page 2264.</p> <p>Page 2265.</p> <p>Page 2266.</p> <p>Page 2267.</p> <p>Page 2268.</p> <p>Page 2269 stops mid-sentence.</p> <p>The Annex has pages 24, 25, 26 and 27. It then goes on to 83, 84, 85, 86, 87, 88, 89, 90 and 91. Upon what exactly is reliance being placed? Is it solely page 84?</p>
MC275	<p>Please confirm where this is referred to in the Memorial and exactly what documents are being relied upon.</p> <p>Page 2304 illegible.</p> <p>Page 2305 better copy required.</p> <p>Page 2306 better copy acquired.</p> <p>Page 2307 better copy required.</p>

	<p>Page 2308 better copy required.</p> <p>Page 2309 incomplete.</p> <p>Page 2310 illegible.</p> <p>Page 2311 illegible.</p> <p>Page 2312 ends mid-sentence.</p>
MC278	Please confirm where this is referred to in the Memorial. It appears as if the document is dated 26.5.1986. The front sheet states 25.5.1986.
MC281	Page 2352. Please confirm what this is referred to in the Memorial. It is not identified on the front sheet.
MC282	Please confirm where this is referred to in the Memorial.
MC283	The front sheet is wrong. It refers to No. 94/F/SED/2000. The document actually appears to be No. 94/F/SED/200.
MC285	Do pages 2391 to 2397 form part of the document at pages 2389 to 2390? They are not referred to on the front sheet.
MC286	Page 2404 illegible.
MC288	Page 2413 ends mid-sentence.
MC289	<p>The document annexed is the same document to that annexed at 288. Which one is the correct document? Neither is dated.</p> <p>Where is the document described under the front sheet of 289.</p>
MC290	Page 2421 illegible.
MC291	Please confirm where this is referred to in the Memorial. Only pages 74 and 75 are supplied. Is anything else relied upon? This document appears for a second time as MC294.
MC293	Pages 3 & 5 only are provided.
MC294	<p>This Annex is precisely the same as MC291.</p> <p>Page 75 cuts off mid-sentence.</p>
MC295	This is the same as MC293. Which document is correctly described on its front sheet. Is there a document missing? If so, please provide a copy.
MC296	<p>The front sheet is incorrect. It should read document No: 387/MTLS/MIAT/DAP/SDAA/SAA. (DAP is omitted).</p> <p>The front sheet fails to describe the other documents also enclosed. Where are they referred to in the Memorial? Are they relied upon?</p> <p>Page 2494 almost illegible.</p> <p>Page 2496 impossible to read manuscript.</p>
MC298	<p>Please identify where this is referred to in the Memorial.</p> <p>Page 2505 stops mid-sentence. The Annex would appear to be incomplete.</p>

MC299	<p>The date on the front sheet may be incorrect. The front sheet dates the document as 2 May 1990. The document itself bears a date of 28 May 1990 (although it is not wholly clear whether this is the date of despatch or receipt).</p> <p>The manuscript on page 2509 is illegible.</p>
MC300	<p>Page 2513 illegible.</p> <p>Page 2514 illegible.</p> <p>Page 2515 illegible.</p> <p>Page 2516 illegible.</p> <p>Page 2517 illegible.</p>
MC301	<p>Page 2521 manuscript illegible.</p> <p>Page 2522 signature illegible.</p>
MC302	Page 2525 manuscript illegible.
MC303	<p>Page 2532 illegible in part.</p> <p>The Memorial refers to pages 2 and 3 only (2532/2533). What are pages 2535-2537? Are they relied upon? If so, please confirm where they are referred to in the Memorial.</p>
MC304	Page 2541 illegible.
MC305	Is only page 89 relied upon? What is page 2548? Is it relied upon? If so please identify where it is referred to in the Memorial.
MC306	Pages 2553 and 2554 are difficult to read.
MC307	Page 2557 is difficult to read.
MC308	<p>Page 2561 unclear photocopy.</p> <p>Page 2562 unclear photocopy.</p>
MC309	Please confirm where this is referred to in the Memorial. Does the text of the Report commence on page 2566 or is there a page missing?
MC310	The front sheet is incorrect. The document is dated 27 June 1991. The front sheet refers to it being dated 26, 27 and 28 June 1991. The meeting following which the report was prepared, took place on 26 and 27 June only.
MC311	Page 2577 manuscript illegible.
MC314	The decree number 91/113 of 29 November 1991 is also included but is not referred to on the front sheet.
MC317	<p>Please confirm where this is referred to in the Memorial.</p> <p>The document is described on the front sheet as being 18 February 1992. However it appears to be dated 21 January 1992. Is it the correct document? The manuscript is illegible on page 2633. The conclusion to the</p>

	annex appears to be the same as that exhibited at MC222.
MC318	Please confirm where this is referred to in the Memorial.
MC320	Page 2651 is the same as Page 2652. Is the note complete?  Page 2653 is illegible.
MC321	Please confirm where this is referred to in the Memorial.
MC322	The document is the same as MC317. It appears that the correct place for the document is MC322.  Page 2674 is incomplete on the left hand side.
MC323	Please confirm where this is referred to in the Memorial.
MC324	No copy of the document referred to on the front sheet as Presidential Decree No. 93/398 of 28 April 1993 is found in the Annex.  There appear to be 2 copies of Decree No. 93/399 described on the front sheet. Pages 2685 to 2696 and 2697 to 2708 are the same.  Page 2683 is illegible in part.
MC325	What is page 2713. It is not identified on the front sheet. Is it relied upon and if so please confirm where it is referred to in the Memorial.
MC327	Pages 2723-2731 and 2733 are very poor copies.
MC329	Is page 2741 complete?
MC331	The front sheet is the same as MC332. The document exhibited appears to be correct.
MC332	Page 2753 is illegible.
MC333	Please confirm where this is referred to in the Memorial.
MC334	The top of page 2763 has been cut off.
MC337	Front sheet states that the document is dated 9 February 1994. The document is marked 19 February 1994.
MC338	Page 2781 is incomplete.
MC340	Please confirm where this is referred to in the Memorial.
MC341	The front sheet gives the date as 21st February 1994. This is not correct. It should read 20th April 1994.  The Annex contains 2 documents not one as specified on the front sheet. What is page 2796?
MC342 BIS	Please confirm where this is referred to in the Memorial.
MC343	Page 2817 is illegible.
MC345	This is incomplete. Page 2828 ends mid-sentence.
MC346	Page 2832 is not described on the front sheet. Is it relied upon and if so please confirm where it is referred to in the Memorial.
MC350	Page 2853 the left hand side has been cut off.
MC351	Please confirm that only pages 5, 13 and 14 of the exhibits are relied upon. Pages 2859 and 2860 are also in MC268 (at pages 2219 and 2220).

MC352	The document is the same as MC342 BIS. From the description on the front sheet, MC352 appears to be missing (with the exception of the last 4 pages).
MC355	The frontsheet shows the date as 12 April. The document appears to be dated 11 April. Pages 2880 and 2881 appear to be MC356.
MC358	The top of page 2893 has been cut off (manuscript).
MC362	Pages 2912 and 2914 are incomplete.
MC367	Page 2937 is incomplete and finishes mid-sentence.
MC369	Please confirm where this is referred to in the Memorial.
MC371	Page 2953 is very difficult to read. What is the document at pages 2954 and 2955. This is not referred to on the front sheet. Is it relied upon and if so where is it referred to in the Memorial.
MC375	Please confirm where this is referred to in the Memorial.  The front sheet is incorrect. It describes the letter as number 3.27/02 etc. It is in fact number E.27/02 etc.
MC376	Please confirm where this is referred to in the Memorial.
MC378	Please confirm where this is referred to in the Memorial.
MC381	Please confirm where this is referred to in the Memorial.  Page 3004 and 3005 are incomplete copies. There appears to be a page missing from the Annex.
MC382	Please confirm where this is referred to in the Memorial.

**LIST OF ANNEXES  
TO  
NIGERIA'S PRELIMINARY OBJECTIONS  
Volume II: NPO 1 - NPO 60**

<b>NPO</b>	<b>Description</b>	<b>Date</b>
1.	Letter from President Ahidjo of Cameroon to President Shagari of Nigeria	23 May 1981
2.	Letter from President Shagari of Nigeria to President Ahidjo of Cameroon	25 May 1981
3.	Letter from President Ahidjo to President Shagari together with a reply dated 20 July 1981	16 July 1981
4.	Minutes of the Second Session of the Nigeria/Cameroon Joint Commission held at Abuja	5 November 1993
5.	Nigeria's Declaration Recognizing as Compulsory the Jurisdiction of the Court (extracts from ICJ Yearbook 1993/4 at page 108/109)	14 August 1965

6.	Cameroon's Declaration Recognizing as Compulsory the Jurisdiction of the Court (extracts from ICJ Yearbook 1993/4 at page 87)	3 March 1994
7.	Depositary Notification from the Secretary-General of the United Nations relating to the Declaration by Cameroon	9 February 1995
8.	Letter and Telex from the Registrar of the International Court of Justice to Nigeria's Ministry of External Affairs	29 March 1994
9.	Convention and Statute of the Lake Chad Basin Commission together with a Protocol of Amendment dated 22 October 1972	22 May 1964
10.	Minutes of a Meeting between Nigeria and Cameroon held at Mamfe for Preliminary Discussions on the Danare/Boudam boundary dispute	9 June 1965
11.	Minutes of a Meeting between Nigeria and Cameroon held at Ikom for Preliminary Discussions on the Danare/Boudam Boundary Dispute	7 June 1965
12.	Joint Report on the first stage of the Nigeria/Cameroon Boundary Survey of May 1966	8 June 1966
13.	Minutes of a Meeting of the Joint Nigeria/Cameroon Boundary Commission held at Yaounde	14 August 1970
14.	Declaration of the Joint Nigeria/Cameroon Boundary Commission (in English and French)	14 August 1970
15.	Minutes of a Meeting of the Joint Nigeria/Cameroon Technical Committee held at Lagos	23 October 1970
16.	Report of the Joint Nigeria/Cameroon Boundary Commission held at Lagos	23 October 1970
17.	Report of the Nigerian Delegation to a Meeting of the Joint Nigeria/Cameroon Boundary Commission held at Yaounde	4 April 1971
18.	Report of the Cameroon Delegation to a Meeting of the Joint Nigeria/Cameroon Boundary Commission held at Yaounde	4 April 1971
19.	Declaration of the Joint Nigeria-Cameroon Boundary Commission made at Yaounde	4 April 1971
20.	Minutes of a Meeting of the Joint Nigeria/Cameroon Boundary Commission held at Lagos	14 June 1971
21.	Declaration of the Joint Nigeria-Cameroon Boundary Commission made at Lagos (in English and French)	21 June 1971
22.	Minutes and Joint Communique from a Meeting of the Nigeria/Cameroon Permanent Consultative Committee held at Yaounde	5 May 1972
23.	Joint Communique on a State visit by the Nigerian Head of State to Garoua	6 August 1972
24.	Joint Communique on the Meetings of the Heads of State of Nigeria and Cameroon held at Kano	1 September 1974
25.	Maroua Declaration (in English and French).	1 June 1975
26.	Draft/Joint Communique on a State visit to Nigeria by the Cameroonian Head of State	14 January 1982

27.	Translation of a Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 10700/DIPL/1/S/AF	21 October 1977
28.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 152/77	10 November 1977
29.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria No. 6108/DIPL/1 (with English translation)	21 June 1978
30.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 114/78	29 August 1978
31.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 9005/DIPL/1 (with English translation)	14 September 1978
32.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria No. 10389/DIPL/SAT	24 October 1978
33.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 10629/DIPL/1	30 October 1978
34.	Letter from Nigerian Commissioner for External Affairs to the Nigerian Head of State reporting on the outcome of meetings with Cameroon held on 1 - 4 November in Jos	November 1978
35.	Joint Communique of the Joint Nigeria/Cameroon Commission made at Jos	4 November 1978
36.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 7/79	22 January 1979
37.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 1146/DIPL/1/S/AF (with English translation)	2 February 1979
38.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 5415/DIPL/1	10 June 1980
39.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 163/85	8 October 1985
40.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 08/86	8 January 1986
41.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 900/DIPL/D1/A (with English translation)	7 February 1986
42.	Letter from the Government of Cameroon to Nigeria's Ministry of External Affairs	7 February 1986
43.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 3975/DIPL/DI/A/AF (with English translation)	13 June 1986
44.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 141/86	28 August 1986
45.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 7210/DIPL/D1/A	14 October 1986
46.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 46/87	26 March 1987
47.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 2702/DIPL/D1/A/AF	13 April 1987
48.	Embassy of Nigeria Diplomatic Note to the Republic of	17 August 1987

	Cameroon - No 109/87	
49.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 6024/DIPL/D1/A	14 August 1987
50.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 51/88	8 March 1988
51.	Protocol of the Inaugural Session of the Joint Nigeria-Cameroon Commission held at Yaounde	28 August 1987
52.	Minute of a Meeting of Experts from Nigeria and Cameroon	29 August 1991
53.	Joint Communiqué adopted by the Nigerian and Cameroonian Ministers of External Affairs and Relations	29 August 1991
54.	Minutes of a Joint Meeting of Nigerian and Cameroonian Experts on Boundary Matters held at Abuja (in English and French)	19 December 1991
55.	Minutes of the Third Session of the Nigeria/Cameroon Joint Meeting of Experts on Boundary Matters (including Joint Communiqué)	13 August 1993
56.	Republic of Cameroon Diplomatic Facsimile to the Federal Republic of Nigeria - No. 13/DIPL/D1	19 January 1994
57.	Letter from the Nigerian Minister of Foreign Affairs to Cameroon's Minister of External Relations	20 January 1994
58.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria - No. 70457/DIPL/D1/SDAF	8 February 1994
59.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon - No. 32/114/Vol V1/94	8 February 1994
60.	Letter from the Head of State of Nigeria to the President of Cameroon	14 February 1994

### Volume III: NPO 61 - NPO 87

<b>NPO</b>	<b>Description</b>	<b>Date</b>
61.	Extracts from the Minutes of the 30th Session of the Lake Chad Basin Commission	25 April 1985
62.	Minutes of the 5th Conference of the Heads of State (Lake Chad Basin Commission)	29 April 1985
63.	Extracts from the Minutes of the 31st Session of the Lake Chad Basin Commission	21 December 1985
64.	Extracts from the Minutes of the 32nd Session of the Lake Chad Basin Commission	14 May 1986
65.	Extracts from the Minutes of the 33rd Session of the Lake Chad Basin Commission	9 December 1986
66.	Extracts from the Minutes of the 34th Session of the Lake Chad Basin Commission	26 October 1987
67.	Minutes of the 6th Conference of Heads of State (Lake Chad Basin Commission) and the Final Communiqué	29 October 1987

68.	Extracts from Minutes of the 35th Session of the Lake Chad Basin Commission	16 January 1988
69.	Extracts from the Minutes of the Special Session of the Lake Chad Basin Commission	2 August 1988
70.	Extracts from the Minutes of the 36th Session of the Lake Chad Basin Commission	1 December 1988
71.	Extracts from the Minutes of the 37th Session of the Lake Chad Basin Commission	24 May 1989
72.	Extracts from the Minutes of the 38th Session of the Lake Chad Basin Commission	30 November 1989
73.	Extracts from the Minutes of the 7th Conference of Heads of State (Lake Chad Basin Commission)	14 February 1990
74.	Extracts from the Minutes of the 39th Session of the Lake Chad Basin Commission	21 November 1990
75.	Extracts from the Minutes of the 40th Session of the Lake Chad Basin Commission	15 January 1992
76.	Extracts from the Minutes of the 41st Session of the Lake Chad Basin Commission	6 April 1983
77.	Minutes of the 8th Conference of Heads of State (Lake Chad Basin Commission) and the Final Communique	23 March 1994
78.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon No: 72/114/Vol VI/94	14 April 1994
79.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon No: 73/114/Vol VI/94	14 April 1994
80.	Embassy of Nigeria Diplomatic Note to the Foreign and Commonwealth Office and others No 215/94	20 April 1994
81.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria No: 77/CF/DIPL/SDAF/AO	8 April 1994
82.	Minutes of a Meeting of Experts of the Joint Commissions held at Yaounde, Cameroon	30 August 1991
83.	Joint Communique adopted by the Ministers of External Affairs and Relations	29 August 1991
84.	Part A: References in Cameroon's application to various alleged border incidents;  Part B: References in Cameroon's additional application of 6 June 1994 to various alleged border incidents	
85.	Republic of Cameroon Diplomatic Note to the Embassy of Nigeria No: 5688/DIPL/D1/SDAF/AO, and Appendix	21 October 1993
86.	Embassy of Nigeria Diplomatic Note to the Republic of Cameroon No: 98/114/Vol III/91	13 May 1991
87.	Minutes of a meeting between Mr Leopold Oyono of Cameroon and Ambassador M G Bello of Nigeria	24 January 1994

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## FOOTNOTES

1 At a meeting between the President and the representatives of the Parties held on 14 June 1994 the Agent of Cameroon informed the President that it had not been the intention of Cameroon to present a separate Application, but rather that the Additional Application was intended as an amendment of the initial Application. See ICJ Reports 1994 p.105 (Order of 16 June 1994).

2 The translation of this Note forms the first page of Annexe MC 355 to the Memorial: the Annexe reference number is omitted from the text of paragraph 1.67 of the Memorial.

3 Cf *Aegean Sea Continental Shelf Case (Greece v Turkey)* ICJ Reports 1978 p.3 at p.36 (paragraph 86).

4 See (1946) 40 *AJIL Supp* 45 (emphasis added). The Court in 1969 treated it as "the starting point of the positive law on the subject": ICJ Reports 1969 at pp. 114-115.

5 In the *North Sea Continental Shelf Cases* ICJ Reports 1969 p.6 at p.23, the Court noted that, "if, for instance, the Parties are unable to enter into negotiations, - any cartographer can *de facto* trace [an equidistance] boundary on the appropriate maps and charts and those traced by competent cartographers will for all practical purposes agree." But it refused to treat equidistance as the rule of law for delimiting the continental shelf between adjacent or opposite coasts.

6 *Ibid* at p.35 (paragraph 53), repeated at p.36 (paragraph 55).

7 *Ibid.* at p.42 (paragraph 72) (twice repeated). To similar effect, *ibid.* at p.98 (Judge Padilla Nervo, separate opinion).

8 To use the Court's language in the *North Sea Continental Shelf Cases* ICJ Reports 1969 p.6 at p.27 (paragraph 34). The Court refused in the circumstances of that case to determine the point at which the obligation to negotiate would be satisfied: *ibid.* (paragraph 35).

9 Cf *North Sea Continental Shelf Cases* ICJ Reports 1969 p.6 at pp. 47-8 (paragraph 87), where the Court held that a negotiation between the parties which failed to deal with the specific factual situation due to the conflicting legal positions of the parties did not constitute a negotiation in good faith, as required by international law.

10 *Gulf of Maine Case (Canada/United States of America)* ICJ Reports 1984 p.247 at p.299 (paragraph 112) (emphasis added). Cf *ibid.* at p.311 (paragraph 154) ("primary rule").

11 *Case concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)* ICJ Reports 1982 p.18 at p.43 (paragraph 37).

12 The Court distinguished between these two phases, of negotiation between the parties and judicial delimitation: *Case Concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)* ICJ Reports 1993 p.38 at p.63 (paragraph 57).

13 See eg. *Delimitation of the Continental Shelf (United Kingdom v France)*, decision of a Court of Arbitration, 30 June 1977, 18 UNRIAA p.3, at p.44 (paragraph 66); *Case concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)* ICJ Reports 1982 p.18 at p.68-71 (paragraphs 90-96) (and cf *Tunisia/Libya (Application for Revision and Interpretation)* ICJ Reports 1985 p.192 at p.206 (paragraph 27); *Gulf of Maine Case (Canada/United States of America)* ICJ Reports 1984 p.246 at pp.279-87 (paragraphs 61-76); *Maritime Delimitation Case (Guinea/Guinea Bissau)*, decision of a Court of Arbitration, 14 February 1985, 77 ILR 635 at pp. 654-656 (paragraphs 31-6); *Case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta)* ICJ Reports 1985 p.13 at pp.28-29 (paragraphs 24-25); *Case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)* ICJ Reports 1993 p.38 at pp.55-56 (paragraph 38). In the *Aegean Sea Case (Greece v Turkey)* ICJ Reports 1978 p.3, Turkey (which did not appear before the Court) nonetheless argued that the Court should not entertain the case because the parties had agreed that there should be "frank, thoroughgoing" negotiations: at p.11 (paragraph 27). The Court rejected the argument. But even in this case, there was no question that the parties had notice of each other claims and had sought to resolve them through a series of meetings, even agreeing in principle to refer to dispute to the Court; *ibid.* at pp.8-10 (paragraphs 16-22), 36-37 (paragraphs 87-8), 44-4 (paragraphs 101-6). The case is to be explained as one where negotiations had in fact occurred and the parties were well aware of each other's positions. The Court did not require, in terms of the 1969 Judgment, that these negotiations be "finally abortive": above, paragraph 7.20 and footnote 8.

1 See Ministry of External Relations, Republic of Cameroon, Note, 21 October 1993, enclosing amended minutes to the Joint Meeting held in August (NPO 85). The proposal for a Gulf of Guinea Commission was a Nigerian initiative, raised with Cameroon by diplomatic note dated 13 May 1991 (NPO 86). A Joint Communiqué following a Ministerial Meeting in August 1991 stated that:

"In furtherance of the objectives of the above Treaty, the Cameroonian side agreed to a Nigerian proposal for the establishment of the Gulf of Guinea Commission comprising beside Nigeria and Cameroon, Gabon, Equatorial Guinea and São Tomé e Príncipe and proposed to host the first meeting of experts responsible for drafting the basic instrument setting up said Commission after necessary consultation by Nigeria with the other countries concerned."

Joint Communiqué, Yaoundé, 29 August 1991, p. 3, (NPO 53).

2 The only subsequent indication of the position of the parties, prior to the unheralded commencement by Cameroon of the present proceedings, was given at a meeting between the Cameroon Minister of External Relations and the Nigerian Ambassador, held on 24 January 1994. The Nigerian Ambassador again raised the issue of the proposed Gulf of Guinea Commission, to which the Cameroon reply was only that Equatorial Guinea was "of the view that the border between Cameroon and Equatorial [sic] Guinea be demarcated [sic] first before meeting with Nigeria to determine the tripartite point." Minutes of the Meeting between the Honourable Minister of External Relations HE Mr Leopold Oyono and HE Ambassador MG Bello, 24 January 1994; (NPO 87).

