COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA FRONTIÈRE TERRESTRE ET MARITIME ENTRE LE CAMEROUN ET LE NIGÉRIA

(CAMEROUN c. NIGÉRIA)

EXCEPTIONS PRÉLIMINAIRES

ARRÊT DU 11 JUIN 1998

1998

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA

(CAMEROON *v.* NIGERIA)

PRELIMINARY OBJECTIONS

JUDGMENT OF 11 JUNE 1998

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(CAMEROON *v.* NIGERIA)

PRELIMINARY OBJECTIONS

(1) Optional Clause (Article 36, paragraph 2, of Statute) — Deposit of Declaration with United Nations Secretary-General (Article 36, paragraph 4, of Statute) — Transmission of copy by Secretary-General to States parties to Statute — Interval between deposit of Declaration and filing of Application — Alleged abuse of Optional Clause system — Date of establishment of consensual bond under Article 36, paragraph 2, of Statute — Res judicata *— Article 59 of Statute.*

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(2) Asserted duty to resort exclusively to bilateral machinery — Estoppel — Principle of good faith — Rule pacta sunt servanda *— Whether exhaustion of diplomatic negotiations is precondition for referral to the Court.*

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(4) Boundary terminating in a tripoint in Lake Chad — Possible effect on legal interests of third States.

(5) Question relating to the existence of a boundary dispute — Determination of the existence of a dispute.

(6) Presentation of facts in an application — Requirements of Article 38, paragraph 2, of Rules of Court — Meaning of "succinct".

(7) Determination of title to a peninsula prior to maritime delimitation — Discretionary power of the Court concerning sequence in which it settles issues before it — Alleged absence of sufficient action by Parties to effect delimitation by agreement on basis of international law — Seisin based on declarations made under Article 36, paragraph 2, of Statute — Sufficiently precise character of a dispute.

(8) Maritime delimitation which may involve rights and interests of third States — Whether objection raised has exclusively preliminary character (Article 79, paragraph 7, of Rules of Court).

JUDGMENT

Present: *President* SCHWEBEL; *Vice-President* WEERAMANTRY; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK; *Judges* ad hoc MBAYE, AJIBOLA; *Registrar* VALENCIA-OSPINA.

In the case concerning the land and maritime boundary between Cameroon and Nigeria,

between

the Republic of Cameroon,

represented by

H.E. Mr. Laurent Esso, Minister of Justice, Keeper of the Seals,

as Agent;

Mr. Douala Moutomé, Member of the Cameroon Bar, former Minister,

Mr. Maurice Kamto, Professor, University of Yaoundé II, Member of the Paris Bar,

Mr. Peter Ntamark, Dean, Professor of Law, Faculty of Law and Political Science, University of Yaoundé II, Barrister-at-Law, member of the Inner Temple,

as Co-Agents;

H.E. Mr. Joseph Owona, Minister of Youth and Sport,

Mr. Joseph-Marie Bipoun Woum, Professor, University of Yaoundé II, former Minister,

as Special Advisers;

Mr. Alain Pellet, Professor, University of Paris X-Nanterre and Institute of Political Studies, Paris,

as Deputy-Agent, Counsel and Advocate;

Mr. Michel Aurillac, avocat à la cour, Honorary Member of the Council of State, former Minister,

Mr. Jean-Pierre Cot, Professor, University of Paris I (Panthéon-Sorbonne), Vice-President of the European Parliament, Member of the Paris and Brussels Bars, former Minister,
Mr. Keith Highet, Counsellor in International Law, Vice-Chairman, Inter-American Juridical Committee, Organization of American States,
Mr. Malcolm N. Shaw, Barrister-at-Law, Sir Robert Jennings Professor of International Law, Faculty of Law, University of Leicester,

Mr. Bruno Simma, Professor, University of Munich,
Sir Ian Sinclair, K.C.M.G., Q.C., Barrister-at-Law,
Mr. Christian Tomuschat, Professor, University of Berlin,

as Counsel and Advocates;

H.E. Mr. Pascal Biloa Tang, Ambassador of Cameroon to France,
H.E. Mrs. Isabelle Bassong, Ambassador of Cameroon to the Benelux Countries,
H.E. Mr. Martin Belinga Eboutou, Ambassador, Permanent Representative of Cameroon to the United Nations,
Lieutenant General Pierre Semengue, Chief of Staff of the Armed Forces,

Mr. Robert Akamba, Principal Civil Administrator, chargé de mission, Secretariat of the Presidency of the Republic,
Mr. Etienne Ateba, Minister-Counsellor, Chargé d'affaires a.i. at the Embassy of Cameroon, The Hague,
Mr. Ernest Bodo Abanda, Director of the Cadastral Survey, Member of the National Boundary Commission of Cameroon,
Mr. Ngolle Philip Ngwesse, Director at the Ministry of Territorial Administration,
Mr. Thomas Fozein Kwanke, Counsellor in Foreign Affairs, Deputy Director at the Ministry of Foreign Relations,
Mr. Jean Gateaud, ingénieur général géographe,
Mr. Bienvenu Obelabout, Director, Central Administration, General Secretariat of the Presidency of the Republic,
Mr. Marc Sassen, Advocate and Legal Adviser, The Hague,
Mr. Joseph Tjop, Consultant at Mignard, Teitgen, Grisoni and Associates, Senior Teaching and Research Assistant, University of Paris X-Nanterre,

Mr. Songola Oudini, Director, Central Administration, General Secretariat of the Presidency of the Republic,

as Advisers;

Mrs. Florence Kollo, Principal Translator-Interpreter,

as Translator-Interpreter;

Mr. Pierre Bodeau, Teaching and Research Assistant, University of Paris X-Nanterre,
Mr. Olivier Corten, Senior Lecturer, Faculty of Law, Université libre de Bruxelles,
Mr. Daniel Khan, Assistant, University of Munich,
Mr. Jean-Marc Thouvenin, Senior Lecturer, University of Maine, and Institute of Political Studies, Paris,

as Research Assistants;

Mr. Guy Roger Eba'a,
Mr. Daniel Nfan Bile,

as Communications Specialists;

Mrs. René Bakker,
Mrs. Florence Jovis,
Mrs. Mireille Jung,

as Secretaries,

and

the Federal Republic of Nigeria,

represented by

H.E. the Honourable Alhaji Abdullahi Ibrahim, OFR, SAN, Attorney-General of the Federation and Minister of Justice,

as Agent;

Chief Richard Akinjide, SAN, FCIArb, former Minister, Member of the English and Gambian Bars,

as Co-Agent;

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., Chichele Professor of Public International Law, University of Oxford, Member of the International Law Commission, Member of the English Bar,
Sir Arthur Watts, K.C.M.G., Q.C., Member of the English Bar,
Mr. James Crawford, S.C., Whewell Professor of International Law, University of Cambridge, Member of the International Law Commission, Member of the Australian Bar,

as Counsel and Advocates;

Mr. Timothy H. Daniel, Partner, D. J. Freeman of the City of London,
Mr. Alan Perry, Partner, D. J. Freeman of the City of London,
Mr. David Lerer, Solicitor, D. J. Freeman of the City of London,
Mr. Christopher Hackford, Solicitor, D. J. Freeman of the City of London,

Ms Louise Cox, trainee Solicitor, D. J. Freeman of the City of London,

as Solicitors;

Mr. A. H. Yadudu, Professor, Special Adviser to the Head of State on Legal Matters,
Mr. A. Oye Cukwurah, Professor, National Boundary Commission, Abuja,

Mr. I. A. Ayua, Professor, Director-General, NIALS,
Brigadier General L. S. Ajiborisha, Director of Operations, DHQ,
Mrs. Stella Omiyi, Director, International and Comparative Law Department, Federal Ministry of Justice,
Mr. K. Mohammed, Director of Research and Analysis, the Presidency,
Mr. Jalal A. Arabi, Legal Adviser to the Secretary to the Government of the Federation,
Mr. M. M. Kida, Assistant Director, Ministry of Foreign Affairs,
Mr. Alhaji A. A. Adisa, Deputy Surveyor-General of the Federation, Abuja,

Mr. P. M. Mann, Chargé d'affaires, Embassy of Nigeria, The Hague,

Mrs. V. Okwecheme, Counsellor, Embassy of Nigeria, The Hague,
Mr. Amuzuei, Counsellor, Embassy of Nigeria, The Hague,
Mr. Clive Schofield, Cartographer, International Boundaries Research Unit, Durham University,
Mr. Arthur Corner, Cartographer, Durham University,
Ms Michelle Burgoine, Information Technology Assistant,
as Advisers;

Mrs. Coralie Ayad, D. J. Freeman of the City of London
as Secretary.

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 29 March 1994, the Government of the Republic of Cameroon (hereinafter called "Cameroon") filed in the Registry of the Court an Application instituting proceedings against the Government of the Federal Republic of Nigeria (hereinafter called "Nigeria") in respect of a dispute described as "relat[ing] essentially to the question of sovereignty over the Bakassi Peninsula". Cameroon further stated in its Application that the "delimitation [of the maritime boundary between the two States] has remained a partial one and [that], despite many attempts to complete it, the two parties have been unable to do so". It accordingly requested the Court, "in order to avoid further incidents between the two countries, . . . to determine the course of the maritime boundary between the two States beyond the line fixed in 1975". In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of Nigeria by the Registrar.

3. On 6 June 1994, Cameroon filed in the Registry an Additional Application "for the purpose of extending the subject of the dispute" to a further dispute described in that Additional Application as "relat[ing] essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad". Cameroon also requested the Court, in its Additional Application, "to specify definitively" the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and "to examine the whole in a single case". In order to found the jurisdiction of the Court, the Additional Application referred to the "basis of . . . jurisdiction . . . already . . . indicated" in the Application instituting proceedings of 29 March 1994.

4. On 7 June 1994, the Registrar communicated the Additional Application to the Government of Nigeria.

5. At a meeting which the President of the Court held with the representatives of the Parties on 14 June 1994, the Agent of Nigeria stated that he had no objection to the Additional Application being treated, in accordance with the wish expressed by Cameroon, as an amendment to the initial Application, so that the Court could deal with the whole in a single case. By an Order dated 16 June 1994, the Court indicated that it had no objection itself to such a procedure, and fixed 16 March 1995 and 18 December 1995, respectively, as the

time-limits for the filing of the Memorial of Cameroon and the Counter-Memorial of Nigeria.

6. Pursuant to Article 40, paragraph 3, of the Statute, all States entitled to appear before the Court were notified of the Application.

7. Cameroon duly filed its Memorial within the time-limit prescribed in the Court's Order dated 16 June 1994.

8. Within the time-limit fixed for the filing of its Counter-Memorial, Nigeria filed preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Accordingly, by an Order dated 10 January 1996, the President of the Court, noting that, under Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, fixed 15 May 1996 as the time-limit within which Cameroon might present a written statement of its observations and submissions on the preliminary objections.

Cameroon filed such a statement within the time-limit so prescribed, and the case became ready for hearing in respect of the preliminary objections.

9. Since the Court included upon the Bench no judge of the nationality of the Parties, each Party exercised its right under Article 31, paragraph 3, of the Statute of the Court to choose a judge *ad hoc* to sit in the case: Cameroon chose Mr. Kéba Mbaye and Nigeria chose Mr. Bola Ajibola.

10. By a letter dated 10 February 1996 and received in the Registry on 12 February 1996, Cameroon submitted a request for the indication of provisional measures under Article 41 of the Statute. By an Order dated 15 March 1996, the Court, after hearing the Parties, indicated certain provisional measures.

11. By various communications, Cameroon stressed the importance of a speedy disposal of the case; it also filed, under cover of a letter dated 9 April 1997, a document with annexes entitled "Memorandum of the Republic of Cameroon on Procedure". Nigeria made known its views on the latter communication in a letter dated 13 May 1997.

12. By a letter dated 2 February 1998, Nigeria sought to introduce a volume of documents entitled "Supplemental Documents (Lake Chad Basin Commission Proceedings)". By a letter dated 16 February 1998, the Agent of Cameroon indicated that Cameroon did not oppose their introduction. The Court admitted the said documents pursuant to Article 56, paragraph 1, of the Rules of Court.

13. By a letter dated 11 February 1998, the Agent of Cameroon sought to introduce certain "new documents relating to events occurring since the filing of the Memorial" of Cameroon, and "moreover requested the Court to consider the annexes to the [Memorandum of April 1997] as an integral part of the proceedings". Having considered the views expressed by Nigeria in its above-mentioned letter of 13 May 1997 (see paragraph 11 above) and in its letter of 24 February 1998, the Court admitted the documents pursuant to the provisions of Article 56 of its Rules.

14. In accordance with Article 53, paragraph 2, of its Rules, the Court decided to make accessible to the public, on the opening of the oral proceedings, the preliminary objections of Nigeria and the written statement containing the observations and submissions of Cameroon on the objections, as well as the documents annexed to those pleadings.

15. Public sittings were held between 2 March and 11 March 1998, at which the Court heard the oral arguments and replies of:

For Nigeria: H.E. the Honourable Alhaji Abdullahi Ibrahim,
Mr. Richard Akinjide,
Mr. Ian Brownlie,
Sir Arthur Watts,
Mr. James Crawford.

For Cameroon: H.E. Mr. Laurent Esso,
Mr. Douala Moutomé,
Mr. Maurice Kamto,
Mr. Peter Ntamark,
Mr. Joseph-Marie Bipoun Woum,
Mr. Alain Pellet,
Mr. Michel Aurillac,
Mr. Jean-Pierre Cot,
Mr. Keith Highet,
Mr. Malcolm N. Shaw,
Mr. Bruno Simma,
Sir Ian Sinclair,
Mr. Christian Tomuschat.

At the hearings, a Member of the Court put a question to the Parties, who answered in writing after the close of the oral proceedings.

*

16. In its Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, the Republic of Cameroon, while reserving for itself the right to complement, amend or modify the present Application in the course of the proceedings and to submit to the Court a request for the indication of provisional measures should they prove to be necessary, asks the Court to adjudge and declare:

(a) that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*;

(c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary law;

(d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;

(e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;

(e') that the internationally unlawful acts referred to under *(a),(b),(c),(d)* and *(e)* above involve the responsibility of the Federal Republic of Nigeria;

(e") that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions."

17. In its Additional Application, Cameroon made the following requests:

"On the basis of the foregoing statement of facts and legal grounds, and subject to the reservations expressed in paragraph 20 of its Application of 29 March 1994, the Republic of Cameroon asks the Court to adjudge and declare:

(a) that sovereignty over the disputed parcel in the area of Lake Chad is Cameroonian, by virtue of international law, and that that parcel is an integral part of the territory of Cameroon;

(b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)*, and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

(c) that the Federal Republic of Nigeria, by occupying, with the support of its security forces, parcels of Cameroonian territory in the area of Lake Chad, has violated and is violating its obligations under treaty law and customary law;

(d) that in view of these legal obligations, mentioned above, the Federal Republic of Nigeria has the express duty of effecting an immediate and unconditional withdrawal of its troops from Cameroonian territory in the area of Lake Chad;

(e) that the internationally unlawful acts referred to under *(a),(b),(c)* and *(d)* above involve the responsibility of the Federal Republic of Nigeria;

(e') that consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.

(f) That in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the

frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea."

18. In the written proceedings, the Parties presented the following submissions:

On behalf of the Government of Cameroon,

in the Memorial:

"The Republic of Cameroon has the honour to request that the Court be pleased to adjudge and declare:

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

— from the point at longitude 14° 04′ 59″ 9999 E of Greenwich and latitude 13° 05′ 00″ 0001 N, it then runs through the point located at longitude 14° 12′ 11″ 7 E and latitude 12° 32′ 17″ 4 N;

— thence it follows the course fixed by the Franco-British Declaration of 10 July 1919, as specified in paragraphs 3 to 60 of the Thomson-Marchand Declaration, confirmed by the Exchange of Letters of 9 January 1931, as far as the 'very prominent peak' described in the latter provision and called by the usual name of 'Mount Kombon';

— from Mount Kombon the boundary then runs to 'Pillar 64' mentioned in paragraph 12 of the Anglo-German Agreement of Obokum of 12 April 1913 and follows, in that sector, the course described in Section 6 (1) of the British Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946;

— from Pillar 64 it follows the course described in paragraphs 13 to 21 of the Obokum Agreement of 12 April 1913 as far as Pillar 114 on the Cross River;

— thence, as far as the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe, the boundary is determined by paragraphs 16 to 21 of the Anglo-German Agreement of 11 March 1913.

(b) That notably, therefore, sovereignty over the Peninsula of Bakassi and over the disputed parcel occupied by Nigeria in the area of Lake Chad, in particular over Darak and its region, is Cameroonian.

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

— from the intersection of the straight line joining Bakassi Point to King Point and the centre of the navigable channel of the Akwayafe to 'point 12', that boundary is determined by the 'compromise line' entered on British Admiralty Chart No. 3343 by the Heads of State of the two countries on 4 April 1971 (Yaoundé Declaration) and, from that 'point 12' to 'point G', by the Declaration signed at Maroua on 1 June 1975;

— from point G that boundary then swings south-westward in the direction which is indicated by points G, H, I, J and K represented on the sketch-map on page 556 of this Memorial and meets the requirement for an equitable solution, up to the outer limit of the maritime zones which international law places under the respective jurisdictions of the two Parties.

(d) That by contesting the courses of the boundary defined above under *(a)* and *(c)*, the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization *(uti possidetis juris)* and its legal commitments concerning the demarcation of frontiers in Lake Chad and land and maritime delimitation.

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

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

(g) That the internationally wrongful acts referred to above and described in detail in the body of this Memorial involve the responsibility of the Federal Republic of Nigeria.

(h) That, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in a form to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon.

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

These submissions are lodged subject to any points of fact and law and any evidence that may subsequently be lodged; the Republic of Cameroon reserves the right to complete or amend them, as necessary, in accordance with the Statute and the Rules of Court."

On behalf of the Government of Nigeria,

in the preliminary objections:

First preliminary objection:

"(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, paragraph 2, of the Statute, and disregarded the requirement of reciprocity established by Article 36,

paragraph 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, paragraph 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."

Second preliminary objection:

"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."

Third preliminary objection:

"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.

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, paragraph 2, would not be invoked in relation to matters within the exclusive competence of the Commission."

Fourth preliminary objection:

"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."

Fifth preliminary objection:

"(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."

Sixth preliminary objection:

"(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."

Seventh preliminary objection:

"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'."

Eighth preliminary objection:

"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."

On behalf of the Government of Cameroon,

in the written statement containing its observations on the preliminary objections:

"For the reasons given . . ., the Republic of Cameroon requests the International Court of Justice:

(1) to dismiss the preliminary objections raised by the Federal Republic of Nigeria;
(2) to find that, by its formal declarations, Nigeria has accepted the jurisdiction of the Court;
(3) to adjudge and declare:
— that it has jurisdiction to decide on the Application filed by Cameroon on 29 March 1994 as supplemented by the additional Application of 6 June 1994; and
— that the Application, thus consolidated, is admissible;
(4) having due regard to the particular nature of the case, which relates to a dispute concerning the territorial sovereignty of Cameroon and is creating serious tensions between the two countries, to fix time-limits for the further proceedings which will enable the Court to proceed to the merits at the earliest possible time."

19. In the oral proceedings, the Parties presented the following submissions:

On behalf of the Government of Nigeria,

at the hearing on 9 March 1998:

"[F]or the reasons that have been stated either in writing or orally, Nigeria submits:

First preliminary objection

1.1. 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, paragraph 2, of the Statute, and disregarded the requirement of reciprocity established by Article 36, paragraph 2, of the Statute and the terms of Nigeria's Declaration of 3 September 1965;

1.2. that consequently the conditions necessary to entitle Cameroon to invoke its Declaration under Article 36, paragraph 2, as a basis for the Court's jurisdiction did not exist when the Application was lodged;

1.3. that accordingly, the Court is without jurisdiction to entertain the Application.

Second preliminary objection

2.1. That 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;

2.1.1. that 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;

2.1.2. that *in the alternative*, in the circumstances the Republic of Cameroon is estopped from invoking the jurisdiction of the Court.

Third preliminary objection

3.1. That 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;

3.2. that 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, paragraph 2, would not be invoked in relation to matters within the exclusive competence of the Commission.

Fourth preliminary objection

4.1. That 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.

Fifth preliminary objection

5.1. That, without prejudice to the title of Nigeria over the Bakassi Peninsula, 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.

Sixth preliminary objection

6.1. That the Application (and so far as permissible, subsequent pleadings) 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;

6.2. 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;

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

6.4. that, without prejudice to the foregoing, any allegations by Cameroon as to State responsibility or reparation on the part of Nigeria in

respect of matters referred to in paragraph 17 *(f)* of Cameroon's amending Application of 6 June 1994 are inadmissible.

Seventh preliminary objection

7.1. 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, 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) in any event, the issues of maritime delimitation are inadmissible 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'.

Eighth preliminary objection

8.1. That the question of maritime delimitation necessarily involves the rights and interests of third States and is inadmissible beyond point G.

Accordingly, Nigeria formally requests the Court to adjudge and declare that:

(1) it lacks jurisdiction over the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon; and/or

(2) the claims brought against the Federal Republic of Nigeria by the Republic of Cameroon are inadmissible to the extent specified in the preliminary objections."

On behalf of the Government of Cameroon,

at the hearing on 11 March 1998:

"For the reasons developed in the written pleadings and in the oral proceedings, the Republic of Cameroon requests the International Court of Justice:

(a) to dismiss the preliminary objections raised by the Federal Republic of Nigeria;
(b) completely in the alternative, to join to the merits, as appropriate, such of those objections as it may deem not to be of an exclusively preliminary character;
(c) to adjudge and declare: that it has jurisdiction to decide on the Application filed by Cameroon on 29 March 1994 as supplemented by the Additional Application of 6 June 1994; and that the Application, thus consolidated, is admissible;
(d) having due regard to the particular nature of the case, to fix time-limits for the further proceedings which will permit examination of the merits of the dispute at the earliest possible time."

* * *

20. The Court will successively examine the eight preliminary objections raised by Nigeria.

FIRST PRELIMINARY OBJECTION

21. The first objection contends that the Court has no jurisdiction to entertain Cameroon's Application.

22. In this regard, Nigeria notes that it had accepted the Court's compulsory jurisdiction by a declaration dated 14 August 1965, deposited with the Secretary-General of the United Nations on 3 September 1965. Cameroon had also accepted the Court's compulsory jurisdiction by a declaration deposited with the Secretary-General on 3 March 1994. The Secretary-General transmitted copies of the Cameroon Declaration to the parties to the Statute eleven-and-a-half months later. Nigeria maintains, accordingly, that it had no way of knowing, and did not actually know, on the date of the filing of the Application, i.e., 29 March 1994, that Cameroon had deposited a declaration. Cameroon consequently is alleged to have "acted prematurely". By proceeding in this way, the Applicant "is alleged to have violated its obligation to act in good faith", "abused the system instituted by Article 36, paragraph 2, of the Statute" and disregarded "the condition of reciprocity" provided for by that Article and by Nigeria's Declaration. The Court consequently does not have jurisdiction to hear the Application.

23. In contrast, Cameroon contends that its Application fulfils all the conditions required by the Statute. It notes that in the case concerning *Right of Passage over Indian Territory*, the Court held that

> "the Statute does not prescribe any interval between the deposit by a State of its Declaration of Acceptance and the filing of an Application by that State, and that the principle of reciprocity is not affected by any delay in the receipt of copies of the Declaration by the Parties to the Statute" (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 147).

Cameroon indicates that there is no reason not to follow this precedent, at the risk of undermining the system of compulsory jurisdiction provided by the Optional Clause. It adds that the Cameroonian Declaration was in force as early as 3 March 1994, as at that date it was registered in accordance with Article 102 of the United Nations Charter. Cameroon states that in any event Nigeria has acted, since the beginning of these proceedings, in such a way that it should be regarded as having accepted the jurisdiction of the Court.

24. Nigeria argues in reply that the "case concerning the *Right of Passage over Indian Territory*, was a first impression", that the Judgment given is outdated, and that it is an isolated one; that international law, especially as it relates to good faith, has evolved since and that in accordance with Article 59 of the Statute, that Judgment only has the force of *res judicata* as between the parties and in respect of that case. For these reasons, the solution adopted in 1957 should not be adopted here. Nigeria does not accept the reasoning of Cameroon based on Article 102 of the Charter. Nigeria also contends that there is no question of its

having consented to the jurisdiction of the Court in the case and hence there is no *forum prorogatum*.

Cameroon contests each of these arguments.

25. The Court observes initially that, in accordance with Article 36, paragraph 2, of the Statute:

> "The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes"

as specified in that clause.

Article 36, paragraph 4, provides:

> "Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court."

In the case concerning *Right of Passage over Indian Territory*, the Court concluded, in the light of these provisions, that:

> "by the deposit of its Declaration of Acceptance with the Secretary-General, the accepting State becomes a Party to the system of the Optional Clause in relation to the other declarant States, with all the rights and obligations deriving from Article 36. The contractual relation between the Parties and the compulsory jurisdiction of the Court resulting therefrom are established, '*ipso facto* and without special agreement', by the fact of the making of the Declaration . . . For it is on that very day that the consensual bond, which is the basis of the Optional Clause, comes into being between the States concerned." (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 146.)

The conclusions thus reached by the Court in 1957 reflect the very essence of the Optional Clause providing for acceptance of the Court's compulsory jurisdiction. Any State party to the Statute, in adhering to the jurisdiction of the Court in accordance with Article 36, paragraph 2, accepts jurisdiction in its relations with States previously having adhered to that clause. At the same time, it makes a standing offer to the other States party to the Statute which have not yet deposited a declaration of acceptance. The day one of those States accepts that offer by depositing in its turn its declaration of acceptance, the consensual bond is established and no further condition needs to be fulfilled. Thus, as the Court stated in 1957:

> "every State which makes a Declaration of Acceptance must be deemed to take into account the possibility that, under the Statute, it may at any time find itself subjected to the obligations of the Optional Clause in relation to a new Signatory as the result of the deposit by that Signatory of a Declaration of Acceptance" (*ibid.*, p. 146).

26. Furthermore, and as the Court also declared in the case concerning *Right of Passage over Indian Territory*, the State making the declaration

> "is not concerned with the duty of the Secretary-General or the manner of its fulfilment. The legal effect of a Declaration does not depend upon subsequent action of the Secretary-General. Moreover, unlike some other instruments, Article 36 provides for no additional requirement, for instance, that the information transmitted by the Secretary-General must reach the Parties to the Statute, or that some period must elapse subsequent to the deposit of the Declaration before it can become effective. Any such requirement would introduce an element of uncertainty into the operation of the Optional Clause system. The Court cannot read into the Optional Clause any requirement of that nature." (*I.C.J. Reports 1957*, pp. 146-147.)

27. The Court furthermore recalls that, contrary to what is maintained by Nigeria, this Judgment is not an isolated one. It has been reaffirmed in the case concerning the *Temple of Preah Vihear* (*Preliminary Objections, I.C.J. Reports 1961*, p. 31), and in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392). In that latter case, the Court pointed out that:

> "as regards the requirement of consent as a basis of its jurisdiction, and more particularly as regards the formalities required for that consent to be expressed in accordance with the provisions of Article 36, paragraph 2, of the Statute, the Court has already made known its view in, *inter alia*, the case concerning the *Temple of Preah Vihear*. On that occasion it stated: 'The only formality required is the deposit of the acceptance with the Secretary-General of the United Nations under paragraph 4 of Article 36 of the Statute.' (*I.C.J. Reports 1961*, p. 31.)" (*I.C.J. Reports 1984*, p. 412, para. 45.)

28. Nigeria nonetheless contests that conclusion pointing out that, in accordance with Article 59 of the Statute, "[t]he decision of the Court has no binding force except between the parties and in respect of that particular case". Thus, judgments given earlier, in particular in the case concerning *Right of Passage over Indian Territory*, "clearly [have] no direct compelling effect in the present case".

It is true that, in accordance with Article 59, the Court's judgments bind only the parties to and in respect of a particular case. There can be no question of holding Nigeria to decisions reached by the Court in previous cases. The real question is whether, in this case, there is cause not to follow the reasoning and conclusions of earlier cases.

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29. In this regard, Nigeria maintains first of all that the interpretation given in 1957 to Article 36, paragraph 4, of the Statute should be reconsidered in the light of the evolution of the law of treaties which has occurred since. In that connection, Nigeria relies on Article 78 *(c)* of the Vienna Convention on the Law of Treaties of 23 May 1969. That Article relates to the notifications and communications made under that Convention. It provides that:

> "Except as the treaty or the present Convention otherwise provide, any notification or communication to be made by any State under the present Convention shall:
>
> . . . . . .
>
> *(c)* if transmitted to a depositary, be considered as received by the State for which it was intended only when the latter State has been informed by the depositary."

According to Nigeria, that rule "must apply to Cameroon's Declaration". In the light of the provisions of the Vienna Convention, Nigeria contends that the Court should overturn the solution it adopted earlier in the case concerning *Right of Passage over Indian Territory*. Cameroon states, for its part, that the declarations of acceptance of the Court's compulsory jurisdiction "are not treaties within the meaning of the Vienna Convention" and "it was clearly no part of the intentions of the drafters of the . . . Convention . . . to interfere with the settled jurisprudence of the Court in this matter". This jurisprudence, Cameroon argues, should be followed.

30. The Court notes that the régime for depositing and transmitting declarations of acceptance of compulsory jurisdiction laid down in Article 36, paragraph 4, of the Statute of the Court is distinct from the régime envisaged for treaties by the Vienna Convention. Thus the provisions of that Convention may only be applied to declarations by analogy (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 420, para. 63).

31. The Court furthermore observes that in any event the provisions of the Vienna Convention do not have the scope which Nigeria imputes to them. Article 78 of the Convention is only designed to lay down the modalities according to which notifications and communications should be carried out. It does not govern the conditions in which a State expresses its consent to be bound by a treaty and those under which a treaty comes into force, those questions being governed by Articles 16 and 24 of the Convention. Indeed, the International Law Commission, in its Report to the General Assembly on the draft which was subsequently to become the Vienna Convention, specified that if the future Article 78 included *in limine* an explicit reservation, that was "primarily in order to prevent any misconception as to the relation" between that Article and the future Articles 16 and 24 (*Yearbook of the International Law Com-*

mission, 1966, Vol. II, p. 271). It added that consequently "specific provisions [of those latter Articles] will prevail".

According to Article 16:

> "Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon:
>
> . . . . . .
>
> *(b)* their deposit with the depositary."

Article 24 further provides in its paragraph 3 that:

> "When the consent of a State to be bound by a treaty is established on a date after the treaty has come into force, the treaty enters into force for that State on that date, unless the treaty otherwise provides."

In its report to the General Assembly, the International Law Commission had pointed out that:

> "In the case of the deposit of an instrument with a depositary, the problem arises whether the deposit by itself establishes the legal nexus between the depositing State and other contracting States or whether the legal nexus arises only upon their being informed by the depositary." (*Yearbook of the International Law Commission,* 1966, Vol. II, p. 201.)

After describing the advantages and disadvantages of both solutions, it concluded that:

> "The Commission considered that the existing general rule clearly is that the act of deposit by itself establishes the legal nexus . . . This was the view taken by the International Court of Justice in the *Right of Passage over Indian Territory* (preliminary objections) case in the analogous situation of the deposit of instruments of acceptance of the optional clause under Article 36, paragraph 2, of the Statute of the Court . . . [Therefore] the existing rule appears to be well-settled." *(Ibid.)*

This general rule is reflected in Articles 16 and 24 of the Vienna Convention: the deposit of instruments of ratification, acceptance, approval or accession to a treaty establishes the consent of a State to be bound by a treaty; the treaty enters into force as regards that State on the day of the deposit.

Thus the rules adopted in this sphere by the Vienna Convention correspond to the solution adopted by the Court in the case concerning *Right of Passage over Indian Territory*. That solution should be maintained.

32. Nigeria maintains however that, in any event, Cameroon could not file an application before the Court without allowing a reasonable period to elapse "as would . . . have enabled the Secretary-General to take the

action required of him in relation to Cameroon's Declaration of 3 March 1994". Compliance with that time period is essential, the more so because, according to Nigeria, the Court, in its Judgment of 26 November 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, required a reasonable time for the withdrawal of declarations under the Optional Clause.

33. The Court, in the above Judgment, noted that the United States had, in 1984, deposited with the Secretary-General, three days before the filing of Nicaragua's Application, a notification limiting the scope of its Declaration of acceptance of the Court's jurisdiction. The Court noted that that Declaration contained a clause requiring six months' notice of termination. It considered that that condition should be complied with in cases of either termination or modification of the Declaration, and concluded that the 1984 notification of modification could not, with immediate effect, override the obligation entered into by the United States beforehand (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 421, para. 65).

The Court noted, moreover, in relation to Nicaragua's Declaration upon which the United States was relying on the grounds of reciprocity, that, in any event,

> "the right of immediate termination of declarations with indefinite duration is far from established. It appears from the requirements of good faith that they should be treated, by analogy, according to the law of treaties, which requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity" (*ibid.*, p. 420, para. 63).

The Court added: "the question of what reasonable period of notice would legally be required does not need to be further examined: it need only be observed that [three days] would not amount to a 'reasonable time'" *(ibid.)*.

34. The Court considers that the foregoing conclusion in respect of the withdrawal of declarations under the Optional Clause is not applicable to the deposit of those declarations. Withdrawal ends existing consensual bonds, while deposit establishes such bonds. The effect of withdrawal is therefore purely and simply to deprive other States which have already accepted the jurisdiction of the Court of the right they had to bring proceedings before it against the withdrawing State. In contrast, the deposit of a declaration does not deprive those States of any accrued right. Accordingly no time period is required for the establishment of a consensual bond following such a deposit.

35. The Court notes moreover that to require a reasonable time to elapse before a declaration can take effect would be to introduce an element of uncertainty into the operation of the Optional Clause system. As set out in paragraph 26 above, in the case concerning *Right of Passage*

over Indian Territory, the Court had considered that it could not create such uncertainty. The conclusions it had reached then remain valid and apply all the more since the growth in the number of States party to the Statute and the intensification of inter-State relations since 1957 have increased the possibilities of legal disputes capable of being submitted to the Court. The Court cannot introduce into the Optional Clause an additional time requirement which is not there.

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36. Nigeria's second argument is that Cameroon omitted to inform it that it intended to accept the jurisdiction of the Court, then that it had accepted that jurisdiction and, lastly, that it intended to file an application. Nigeria further argued that Cameroon even continued, during the first three months of 1994, to maintain bilateral contacts with it on boundary questions while preparing itself to address the Court. Such conduct, Nigeria contends, infringes upon the principle of good faith which today plays a larger role in the case-law of the Court than before, and should not be accepted.

37. Cameroon, for its part, argues that it had no obligation to inform Nigeria in advance of its intentions, or of its decisions. It adds that in any event "Nigeria was not at all surprised by the filing of Cameroon's Application and . . . knew perfectly well what Cameroon's intentions were in that regard several weeks before the filing". The principle of good faith was not at all disregarded.

38. The Court observes that the principle of good faith is a well-established principle of international law. It is set forth in Article 2, paragraph 2, of the Charter of the United Nations; it is also embodied in Article 26 of the Vienna Convention on the Law of Treaties of 23 May 1969. It was mentioned as early as the beginning of this century in the Arbitral Award of 7 September 1910 in the *North Atlantic Fisheries* case (United Nations, *Reports of International Arbitral Awards*, Vol. XI, p. 188). It was moreover upheld in several judgments of the Permanent Court of International Justice (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 30; *Free Zones of Upper Savoy and the District of Gex, Order of 6 December 1930, P.C.I.J., Series A, No. 24*, p. 12, and *1932, P.C.I.J., Series A/B, No. 46*, p. 167). Finally, it was applied by this Court as early as 1952 in the case concerning *Rights of Nationals of the United States of America in Morocco* (*Judgment, I.C.J. Reports 1952*, p. 212), then in the case concerning *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland) (Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 18), the *Nuclear Tests* cases (*I.C.J. Reports 1974*, pp. 268 and 473), and the case concerning *Border and Transborder Armed Actions (Nicaragua* v. *Honduras)* (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 105).

39. The Court furthermore notes that although the principle of good faith is "one of the basic principles governing the creation and performance of legal obligations . . . it is not in itself a source of obligation where none would otherwise exist" (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 105, para. 94). There is no specific obligation in international law for States to inform other States parties to the Statute that they intend to subscribe or have subscribed to the Optional Clause. Consequently, Cameroon was not bound to inform Nigeria that it intended to subscribe or had subscribed to the Optional Clause.

Moreover:

> "A State accepting the jurisdiction of the Court must expect that an Application may be filed against it before the Court by a new declarant State on the same day on which that State deposits with the Secretary-General its Declaration of Acceptance." (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 146.)

Thus, Cameroon was not bound to inform Nigeria of its intention to bring proceedings before the Court. In the absence of any such obligations and of any infringement of Nigeria's corresponding rights, Nigeria may not justifiably rely upon the principle of good faith in support of its submissions.

40. On the facts of the matter, to which the Parties devoted considerable attention, and quite apart from legal considerations, the Court would add that Nigeria was not unaware of Cameroon's intentions. On 28 February 1994, Cameroon had informed the Security Council of incidents which had occurred shortly beforehand in the Bakassi Peninsula. In response, on 4 March 1994, Nigeria apprised the Security Council of its surprise in noting that "the Cameroon Government had decided to raise the matter to an international level by . . . *(c)* bringing proceedings before the International Court of Justice". Indeed on 4 March, Cameroon had deposited its declaration of acceptance of the compulsory jurisdiction of the Court, but had not yet seised the Court. Nigeria's communication to the Security Council nevertheless showed that it was not uninformed of Cameroon's intentions.

Further the Court points out that, on 4 March 1994, the *Journal of the United Nations*, issued at Headquarters in New York to United Nations organs and to the permanent missions, reported that Cameroon had deposited with the Secretary-General a "declaration recognizing as compulsory the jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court" (*Journal of the United Nations*, Friday 4 March 1994, No. 1994/43 (Part II)).

Lastly, on 11 March 1994, the bringing of the matter to the Security Council and the International Court of Justice by Cameroon was men-

tioned at the extraordinary general meeting of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity, devoted to the border conflict between Cameroon and Nigeria.

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41. Nigeria recalls in the third place that, by its Declaration deposited on 3 September 1965, it had recognized

> "as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is to say, on the sole condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36, paragraph 2, of the Statute of the Court".

Nigeria maintains that on the date on which Cameroon's Application was filed, it did not know that Cameroon had accepted the Court's compulsory jurisdiction. Accordingly it could not have brought an application against Cameroon. There was an absence of reciprocity on that date. The condition contained in the Nigerian Declaration was operative; consequently, the Court does not have jurisdiction to hear the Application.

42. Cameroon disputes this argument in fact as well as in law. It states that, in the minds of the States party to the Optional Clause, the condition of reciprocity never possessed the meaning which Nigeria now ascribes to it; the Court had ascribed a completely different meaning to it in a number of its judgments. The interpretation now provided by Nigeria of its own declaration was a new interpretation for which no authority was cited in support. In sum, the purpose of the Nigerian Declaration, according to Cameroon, was only to emphasize that there is "a sole and unique condition to the compulsory character of the Court's jurisdiction in this case, i.e., that Cameroon should accept the same obligation as Nigeria, or in other words that it should accept the jurisdiction of the Court. This Cameroon does."

43. The Court has on numerous occasions had to consider what meaning it is appropriate to give to the condition of reciprocity in the implementation of Article 36, paragraph 2, of the Statute. As early as 1952, it held in the case concerning *Anglo-Iranian Oil Co.* that, when declarations are made on condition of reciprocity, "jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it" (*I.C.J. Reports 1952*, p. 103). The Court applied that rule again in the case of *Certain Norwegian Loans* (*I.C.J. Reports 1957*, pp. 23 and 24) and clarified it in the *Interhandel* case where it held that:

> "Reciprocity in the case of Declarations accepting the compulsory jurisdiction of the Court enables a Party to invoke a reservation to that acceptance which it has not expressed in its own Declaration but which the other Party has expressed in its Declaration. . . Reciprocity enables the State which has made the wider acceptance of the

> jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other Party. There the effect of reciprocity ends." (*I.C.J. Reports 1959*, p. 23.)

In the final analysis, "[t]he notion of reciprocity is concerned with the scope and substance of the commitments entered into, including reservations, and not with the formal conditions of their creation, duration or extinction" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 419, para. 62). It simply requires that the Court ascertain whether, at the time of filing the Application instituting proceedings "the two States accepted 'the same obligation' in relation to the subject-matter of the proceedings" (*ibid.*, pp. 420-421, para. 64).

Therefore, in legal proceedings, the notion of reciprocity, and that of equality, "are not abstract conceptions. They must be related to some provision of the Statute or of the Declarations" (*Right of Passage over Indian Territory, Preliminary Objections, Judgment, I.C.J. Reports 1957*, p. 145). Consequently, "the principle of reciprocity is not affected by any delay in the receipt of copies of the Declaration by the Parties to the Statute" (*ibid.*, p. 147).

Nigeria considers, however, that that precedent does not apply here. It points out that, although in its 1965 Declaration, it recognized the jurisdiction of the Court as compulsory in relation to any other State accepting the same obligation, it was more explicit in adding the words "and that is to say, on the sole condition of reciprocity". "Those additional words clearly have some meaning and effect . . . it is the supplementing of the 'coincidence' required by Article 36, paragraph 2, by the element of mutuality inherent in the concept of 'reciprocity'." The Nigerian condition, in other words, sought "to mitigate the effects" of the Court's earlier decision in the case concerning *Right of Passage over Indian Territory* by creating an equality of risk and precluding that proceedings be brought before the Court by surprise.

44. In support of its position, Nigeria invokes the decision given in the case concerning *Anglo-Iranian Oil Co.*, in which the Court stated that it could not base its interpretation of the Iranian Declaration recognizing the jurisdiction of the Court

> "on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court." (*Anglo-Iranian Oil Co., Preliminary Objection, I.C.J. Reports 1952*, p. 104.)

The Court had concluded that "[i]t is unlikely that the Government of Iran . . . should have been willing, on its own initiative, to agree that disputes relating" (*ibid.*, p. 105) to the capitulations which it had just denounced be submitted to an international court of justice.

45. The Court considers that the situation in this case is very different. Nigeria does not offer evidence in support of its argument that it intended to insert into its Declaration of 14 August 1965 a condition of reciprocity with a different meaning from the one which the Court had drawn from such clauses in 1957. In order to protect itself against the filing of surprise applications, in 1965, Nigeria could have inserted in its Declaration an analogous reservation to that which the United Kingdom added to its own Declaration in 1958. Ten or so other States proceeded in this way. Nigeria did not do so at that time. Like the majority of States which subscribe to the Optional Clause, it merely specified that the commitments it was entering into, in accordance with Article 36, paragraph 2, of the Statute, were reciprocal in relation to any other State accepting the same obligation. In the light of this practice, the additional phrase of the sentence, "that is to say, on the sole condition of reciprocity" must be understood as explanatory and not adding any further condition. This interpretation is "in harmony with a natural and reasonable way of reading the text" (*Anglo-Iranian Oil Co., Preliminary Objection, I.C.J. Reports 1952*, p. 104) and Nigeria's condition of reciprocity cannot be treated as a reservation *ratione temporis*.

46. The Court therefore concludes that the manner in which Cameroon's Application was filed was not contrary to Article 36 of the Statute. Nor was it made in violation of a right which Nigeria may claim under the Statute, or by virtue of its Declaration, as it was in force on the date of the filing of Cameroon's Application.

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47. Nigeria's first preliminary objection is accordingly rejected. The Court is therefore not called upon to examine the reasoning put forward by Cameroon under Article 102 of the Charter, nor Cameroon's alternative submissions based on *forum prorogatum*. In any event, the Court has jurisdiction to pass upon Cameroon's Application.

* *

Second Preliminary Objection

48. Nigeria raises a second preliminary objection stating that

> "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".

According to Nigeria, an implicit agreement is thus said to have been reached with a view to resorting exclusively to such machinery and to

refraining from relying on the jurisdiction of the International Court of Justice. In the alternative, Nigeria claims that by its conduct Cameroon is estopped from turning to the Court. Finally, Nigeria invokes the principle of good faith and the rule *pacta sunt servanda* in support of this argument.

49. Cameroon maintains that the bilateral bodies which dealt with various boundary difficulties that had emerged between the two countries had only been temporary and that no permanent institutional machinery had been set up. It contends that no explicit or implicit agreement had been established between the Parties with a view to vesting exclusive jurisdiction in such bodies. Finally, according to Cameroon, the conditions laid down in the Court's case-law for the application of estoppel to arise were not fulfilled here. Therefore, there was no occasion to apply the principle of good faith and the rule *pacta sunt servanda*.

50. Nigeria's objection thus consists of two branches. But before making a legal determination considering them in turn, the Court will review the relevant facts.

51. The first bilateral contact referred to in the pleadings concerns a local dispute in the districts of Danare (Nigeria) and Budam (Cameroon). This dispute gave rise in 1965 to "exploratory talks" concerning the demarcation of the boundary in this sector. That course having been determined by the German and British authorities at the beginning of the century, it was agreed to locate existing boundary pillars with a view to identifying the boundary and proceeding with its demarcation not only between Danare and Budam, but also on a stretch of some 20 miles from Obokum Falls to Bashu (boundary pillars Nos. 114 to 105). The existing pillars were identified but none of the work planned was subsequently carried out.

52. Five years later, in response to incidents that occurred in the Cross River region and the Bakassi Peninsula, the two Governments decided to set up a Joint Boundary Commission. At the first meeting of that Commission, the delegates from Cameroon and Nigeria approved, on 14 August 1970, a declaration recommending that the delimitation of the boundary be carried out in three stages:

> "*(a)* the delimitation of the maritime boundary;
> *(b)* the delimitation of the land boundary as defined in the Anglo-German Protocol signed at Obokum on 12 April 1913 and confirmed by the London Anglo-German agreement 'respecting (1) the settlement of Frontier between Nigeria and Cameroon from Yola to the sea; and (2) the Regulation of navigation on the Cross River', and the exchange of letters between the British and German Governments on 6 July 1914;
> *(c)* the delimitation of the rest of the land boundary".

The declaration further specified the bases on which the delimitation of the maritime boundary was to be carried out. It recommended that the demarcation work commenced in 1965 be resumed. Finally, it recommended that, on completion of each of these stages, a separate treaty be

signed by the two countries to give effect to the boundary so demarcated and surveyed.

A Joint Technical Committee was then set up for the purpose of implementing the joint declaration. As agreed, it began its work with the delimitation of the maritime boundary. Negotiations went on at various levels on this matter for almost five years. They concluded on 4 April 1971 as regards the maritime boundary at the mouth of the Cross River, then led on 1 June 1975 to a declaration in Maroua by the two Heads of State concerning the course of the maritime boundary from the mouth of the Cross River to a point denominated "G" situated, according to the Parties, some 17 nautical miles from the coast.

53. Over the following years, contacts between the two countries on these boundary issues became less frequent. At most, it may be noted that two Joint Committee meetings were held. The first, in 1978, was attended by the two Foreign Ministers. They set forth their points of view on a number of boundary problems without undertaking negotiations and the meeting did not result in any joint minutes. The second meeting, held in 1987, brought together the Ministers responsible for planning in the two countries and did not broach boundary matters.

54. The negotiations on these issues, which were interrupted after 1975, were only resumed between the two States 16 years later when, on 29 August 1991, the two Foreign Ministers adopted a joint communiqué stating:

> "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 the 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."

Indeed, a first meeting of these experts took place at the same time as that of the Foreign Ministers in August 1991. It was followed by a second meeting at Abuja in December 1991, then by a third at Yaoundé in August 1993. No agreement could be reached at these meetings, in particular as regards the Maroua Declaration, which was considered binding by Cameroon but not by Nigeria.

55. In sum, the Court notes that the negotiations between the two States concerning the delimitation or the demarcation of the boundary were carried out in various frameworks and at various levels: Heads of State, Foreign Ministers, experts. The negotiations were active during the period 1970 to 1975 and then were interrupted until 1991.

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56. Turning to legal considerations, the Court will now consider the first branch of the Nigerian objection. It recalls first that, "Negotiation

and judicial settlement are enumerated together in Article 33 of the Charter of the United Nations as means for the peaceful settlement of disputes" (*Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978*, p. 12, para. 29). Neither in the Charter nor otherwise in international law is any general rule to be found to the effect that the exhaustion of diplomatic negotiations constitutes a precondition for a matter to be referred to the Court. No such precondition was embodied in the Statute of the Permanent Court of International Justice, contrary to a proposal by the Advisory Committee of Jurists in 1920 (Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee (16 June-24 July 1920) with Annexes*, pp. 679, 725-726). Nor is it to be found in Article 36 of the Statute of this Court.

A precondition of this type may be embodied and is often included in compromissory clauses of treaties. It may also be included in a special agreement whose signatories then reserve the right to seise the Court only after a certain lapse of time (cf. *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 9). Finally, States remain free to insert into their optional declaration accepting the compulsory jurisdiction of the Court a reservation excluding from the latter those disputes for which the parties involved have agreed or subsequently agree to resort to an alternative method of peaceful settlement. In this case, however, no reservation of this type was included in the Declarations of Nigeria or Cameroon on the date of the filing of the Application.

Moreover, the fact that the two States have attempted, in the circumstances set out in paragraphs 54 and 55 above, to solve some of the boundary issues dividing them during bilateral contacts, did not imply that either one had excluded the possibility of bringing any boundary dispute concerning it before other fora, and in particular the International Court of Justice. The first branch of Nigeria's objection accordingly is not accepted.

57. Turning to the second branch of the objection, the Court will examine whether the conditions laid down in its jurisprudence for an estoppel to exist are present in the instant case.

An estoppel would only arise if by its acts or declarations Cameroon had consistently made it fully clear that it had agreed to settle the boundary dispute submitted to the Court by bilateral avenues alone. It would further be necessary that, by relying on such an attitude, Nigeria had changed position to its own detriment or had suffered some prejudice (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 26, para. 30; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports 1990*, p. 118, para. 63).

These conditions are not fulfilled in this case. Indeed, as pointed out in paragraph 56 above, Cameroon did not attribute an exclusive character to the negotiations conducted with Nigeria, nor, as far as it appears, did

Nigeria. Furthermore, Nigeria does not show that it has changed its position to its detriment or that it has sustained prejudice in that it could otherwise have sought a solution to the border problems existing between the two States by having recourse to other procedures, but was precluded from doing so by reliance on the positions allegedly taken by Cameroon.

58. Finally, the Court has not been persuaded that Nigeria has been prejudiced as a result of Cameroon's having instituted proceedings before the Court instead of pursuing negotiations which, moreover, were deadlocked when the Application was filed.

59. This being so, in bringing proceedings before the Court, Cameroon did not disregard the legal rules relied on by Nigeria in support of its second objection. Consequently, Nigeria is not justified in relying on the principle of good faith and the rule *pacta sunt servanda*, both of which relate only to the fulfilment of existing obligations. The second branch of Nigeria's objection is not accepted.

60. The second preliminary objection as a whole is thus rejected.

* *

THIRD PRELIMINARY OBJECTION

61. In its third preliminary objection, Nigeria contends that "the settlement of boundary disputes within the Lake Chad region is subject to the exclusive competence of the Lake Chad Basin Commission".

62. In support of this argument, Nigeria invokes the treaty texts governing the Statute of the Commission as well as the practice of member States. It argues that "the procedures for settlement by the Commission are binding upon the Parties" and that Cameroon was thus barred from raising the matter before the Court on the basis of Article 36, paragraph 2, of the Statute.

63. For its part, Cameroon submits to the Court that

> "no provision of the Statute of the Lake Chad Basin Commission establishes in favour of that international organization any exclusive competence in relation to boundary delimitation".

It adds that no such exclusive jurisdiction can be inferred from the conduct of member States. It therefore calls upon the Court to reject the third preliminary objection.

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64. The Court observes that the Statute of the Lake Chad Basin Commission was annexed to an Agreement of 22 May 1964 signed on that

date by Cameroon, Chad, Niger and Nigeria. According to its preamble, this convention concerning the development of the Lake Chad Basin is designed "to formulate principles of the utilization of the resources of the Basin for economic purposes, including the harnessing of the water". Article IV of the Statute develops those principles by providing that

> "[t]he development of the said Basin and in particular the utilisation of surface and ground waters shall be given its widest connotation and refers in particular to domestic, industrial and agricultural development, the collection of the products of its fauna and flora".

In addition, under Article VII of the Statute, member States undertake to "establish common rules for the purpose of facilitating navigation on the Lake and on the navigable waters in the Basin and to ensure the safety and control of navigation".

Article I of the Convention establishes the Lake Chad Basin Commission. The Commission comprises two commissioners per member State. In accordance with Article X, paragraph 3, of the Statute, the decisions of the Commission shall be by unanimous vote.

The functions of the Commission are laid down in Article IX of the same Statute. They are *inter alia* 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". The Commission exercises various powers with a view to co-ordinating action by member States regarding the use of the waters of the Basin. Finally, one of its responsibilities under Article IX, paragraph *(g)*, is "to examine complaints and to promote the settlement of disputes and the resolution of differences".

65. Member States have also entrusted to the Commission certain tasks that had not originally been provided for in the treaty texts. Further to incidents between Cameroon and Nigeria in 1983 in the Lake Chad area, an extraordinary meeting of the Commission was convened from 21 to 23 July 1983 in Lagos on the initiative of the Heads of State concerned, in order to entrust to the Commission certain boundary and security matters. Two sub-commissions of experts were then set up. They met from 12 to 16 November 1984. An agreement was immediately reached between the experts to adopt "as working documents" various bilateral conventions and agreements concluded between Germany, France and the United Kingdom between 1906 and 1931 "on the delimitation of Borders in the Lake Chad area". The experts proposed at the same time that the boundary so delimited be demarcated as early as possible.

This demarcation was carried out from 1988 to 1990 in the course of three boundary-marking operations involving the setting up of seven main and 68 intermediary boundary pillars. The Final Report on Beaconing was signed by the delegates of the four States concerned. Then,

on 23 March 1994, at the Eighth Summit of the Lake Chad Basin Commission in Abuja, the Heads of State and Government were informed that "the physical work in the field on the border demarcation exercise was fully completed". They then decided "to approve the technical document on the demarcation of the international boundaries of member States in Lake Chad", on the understanding "that each country should adopt the document in accordance with its national laws". The question of the ratification of that document came up at the Ninth Summit of Heads of State of the Commission held on 30 and 31 October 1996 in N'Djamena when Heads of State of Cameroon and Nigeria were absent and where no progress was recorded. Since then, however, on 22 December 1997, Cameroon deposited its instrument of ratification, whereas Nigeria has not done so.

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66. In the light of the treaty texts and the practice thus recalled, the Court will consider the positions of the Parties on this matter. For its part, Nigeria first of all contends that "the role and Statute of the Commission" must be understood "in the framework of regional agencies" referred to in Article 52 of the United Nations Charter. It accordingly concludes that "the Commission has an exclusive power in relation to issues of security and public order in the region of Lake Chad and that these issues appropriately encompass the business of boundary demarcation".

Cameroon argues, for its part, that the Commission does not constitute a regional arrangement or agency within the meaning of Article 52 of the Charter, pointing in particular to the fact that

> "there has never been any question of extending this category to international regional organizations of a technical nature which, like the [Commission], can include a mechanism for the peaceful settlement of disputes or for the promotion of that kind of settlement".

67. The Court notes that Article 52, paragraph 1, of the Charter refers to "regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action". According to paragraph 2 of that Article,

> "[t]he Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council".

Under Article 53, the Security Council may use these arrangements or agencies for "enforcement action under its authority".

From the treaty texts and the practice analysed at paragraphs 64 and

65 above, it emerges that the Lake Chad Basin Commission is an international organization exercising its powers within a specific geographical area; that it does not however have as its purpose the settlement at a regional level of matters relating to the maintenance of international peace and security and thus does not fall under Chapter VIII of the Charter.

68. However, even were it otherwise, Nigeria's argument should nonetheless be set aside. In this connection, the Court notes that, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, it did not consider that the Contadora process could "properly be regarded as a 'regional arrangement' for the purposes of Chapter VIII of the United Nations Charter". But it added that, in any event,

> "the Court is unable to accept either that there is any requirement of prior exhaustion of regional negotiating processes as a precondition to seising the Court; or that the existence of the Contadora process constitutes in this case an obstacle to the examination by the Court of the Nicaraguan Application" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 440).

Whatever their nature, the existence of procedures for regional negotiation cannot prevent the Court from exercising the functions conferred upon it by the Charter and the Statute.

69. Nigeria further invokes Article 95 of the United Nations Charter according to which:

> "Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

According to Nigeria, the Lake Chad Basin Commission should be seen as a tribunal falling under the provisions of this text. This would mean that, if the Court were to pronounce on this submission of Cameroon it "would be in breach of the principle of the autonomy of jurisdictional competence" and "would be exercising an appellate jurisdiction".

The Court considers that the Lake Chad Basin Commission cannot be seen as a tribunal. It renders neither arbitral awards nor judgments and is therefore neither an arbitral nor a judicial body. Accordingly, this contention of Nigeria must also be set aside.

70. Nigeria further maintains that the Convention of 22 May 1964, confirmed by the practice of the member States of the Commission, attributes to that Commission an exclusive competence for the settlement of boundary disputes. It concludes from this that the Court cannot entertain Cameroon's submissions requesting it to determine the boundary between the two countries in this sector.

The Court cannot subscribe to that reasoning. It notes first of all that no provision in the Convention ascribes jurisdiction and *a fortiori* exclusive jurisdiction to the Commission as regards the settlement of boundary disputes. In particular, such a jurisdiction cannot be deduced from Article IX, paragraph *(g)*, of the Convention (see paragraph 64 above).

The Court further notes that the member States of the Commission subsequently charged it with carrying out the demarcation of boundaries in the region on the basis of the agreements and treaties referred to in the experts' report of November 1984 (see paragraph 65 above). Thus, as pointed out by Nigeria, "the question of boundary demarcation was clearly within the competence of the [Commission]". This demarcation was designed by the States concerned as a physical operation to be carried out in the field under the authority of the Commission with a view to avoiding the reoccurrence of the incidents that had arisen in 1983.

But the Commission has never been given jurisdiction, and *a fortiori* exclusive jurisdiction, to rule on the territorial dispute now involving Cameroon and Nigeria before the Court, a dispute which moreover did not as yet exist in 1983. Consequently, Nigeria's argument must be dismissed.

71. Nigeria also argues that, from 1983 to 1994, "Cameroon had clearly and consistently evinced acceptance of the régime of exclusive recourse to the Lake Chad Basin Commission"; Cameroon then appealed to the Court contrary to the commitments it had entered into. This course of conduct, it was argued, had been prejudicial to Nigeria, deprived as it was of the "consultation" and "negotiation" procedures afforded by the Commission. Nigeria claims that Cameroon is estopped from making its Application.

The Court points out that the conditions laid down in its case-law for an estoppel to arise, as set out in paragraph 57 above, are not fulfilled in this case. Indeed, Cameroon has not accepted that the Commission has jurisdiction to settle the boundary dispute now submitted to the Court. This argument must also be set aside.

72. In the alternative, Nigeria finally argues that, on account of the demarcation under way in the Lake Chad Basin Commission, the Court "cannot rule out the consideration of the need for judicial restraint on grounds of judicial propriety" and should decline to rule on the merits of Cameroon's Application, as it did in 1963 in the case concerning *Northern Cameroons*.

In that case, the Court had noted that the United Nations General Assembly had terminated the trusteeship agreement in respect of the Northern Cameroon by resolution 1608 (XV); it observed that the dispute between the parties "about the interpretation and application [of that agreement therefore concerned a treaty] no longer in force"; it went on to say that "there can be no opportunity for a future act of interpretation or application of that treaty in accordance with any judgment the

Court might render". It had concluded that any adjudication would thus be "devoid of purpose" and that no purpose "would be served by undertaking an examination of the merits in the case". Observing that the limits of its judicial function "do not permit it to entertain the claims submitted to it [by Cameroon, it had considered itself unable to] adjudicate upon the merits of [those] claim[s]" (*Northern Cameroons, Judgment, I.C.J. Reports 1963*, pp. 37-38).

The Court considers that the situation in the present case is entirely different. Indeed, whereas in 1963 Cameroon did not challenge the validity of the General Assembly resolution terminating the trusteeship, Nigeria, in the present case, does not regard the technical document on the demarcation of the boundaries, approved at the Abuja Summit of the Lake Chad Basin Commission, as a document definitively settling boundary problems in that region. Nigeria reserved its position before the Court as regards the binding character of that document. It contends that the document requires ratification and recalls that it has not ratified it. Lastly, it specified at the Ninth Summit of the Commission at N'Djamena in 1996 that "Nigeria could not even start processing ratification unless the issue was out of Court".

Cameroon for its part considers that Nigeria is obliged to complete the process of approval of the document concerned and, that, even in the absence of so doing, the boundary between the two countries in this sector is "legally defined", "marked out on the ground" and "internationally recognized".

It is not for the Court at this stage to rule upon these opposing arguments. It need only note that Nigeria cannot assert both that the demarcation procedure initiated within the Lake Chad Commission was not completed and that, at the same time, that procedure rendered Cameroon's submissions moot. There is thus no reason of judicial propriety which should make the Court decline to rule on the merits of those submissions.

73. In the light of the above considerations, Nigeria's third preliminary objection must be rejected.

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FOURTH PRELIMINARY OBJECTION

74. The Court will now turn to the fourth preliminary objection raised by Nigeria. This objection contends that:

> "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."

75. Nigeria holds that the location of the tripoint within Lake Chad directly affects a third State, the Republic of Chad, and that the Court

therefore cannot determine this tripoint. Nigeria maintains that the finding of the Chamber in the case concerning the *Frontier Dispute(Burkina Faso/Republic of Mali)*

> "that its jurisdiction is not restricted simply because the end-point of the frontier lies on the frontier of a third State not party to the proceedings. The rights of the neighbouring State, Niger, are in any event safeguarded by the operation of Article 59 of the Statute . . ." (*I.C.J. Reports 1986*, p. 577, para. 46)

is not applicable in the present case. It says there is a difference because the 1986 *Frontier Dispute* case was instituted by Special Agreement, which reflected the agreement of the Parties to have the entire boundary delimited. In addition, in the *Frontier Dispute* case Niger was treated as a wholly third party, while in the present case there is the Lake Chad Basin Commission in which the States bordering Lake Chad co-operate. Because of that co-operation, boundary or other agreements relating to Lake Chad between Nigeria and Cameroon are not *res inter alios acta* for the other member States of the Commission. Therefore, neither Niger nor Chad are simple third parties in this case. According to Nigeria, "the régime of Lake Chad is subject to multilateral co-operation, and is not susceptible to the thorough-going bilateralization" which the Chamber adopted in the *Frontier Dispute* case.

Nigeria also alleges that it is not the case that Chad as a third party is merely theoretically or contingently involved in the question of boundaries; there had been clashes between Nigeria and Chad in and in relation to Lake Chad. Finally, Nigeria questions the distinction which the Chamber in the *Frontier Dispute* case drew between maritime and land delimitation. "Criteria of equidistance, proportionality and equity have been applied to the delimitation of lacustrine boundaries, especially in large lakes." Nigeria's position is such that it would warrant the conclusion that its fourth preliminary objection goes not only to the jurisdiction of the Court (by analogy with the principle in the case of the *Monetary Gold Removed from Rome in 1943, Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 19), but also to the admissibility of the Application, as the objection is in its view well founded on either basis.

76. Cameroon claims that the Court must exercise its jurisdiction over the totality of the disputed boundary, as far as the northern end-point within Lake Chad; Nigeria's fourth preliminary objection directly conflicts with consistent case-law relating to tripoints. Cameroon particularly rejects the Nigerian argument which distinguishes the *Frontier Dispute* decision from the present case: the absence of a special agreement, and therefore the consent of Nigeria to the institution of the proceedings, is irrelevant; Nigeria does not cite any precedent in which a differentiation was made between "wholly third States" and States which would not be

real third States. *Inter se* boundary agreements from which third States are absent are frequent. Article 59 suffices as protection of the third States' rights. The concept of theoretical involvement of a third State in a boundary question is, in the view of Cameroon, not pertinent. There is no support for this concept, the implications of which are not clearly explained. Lastly Cameroon contests the efforts made by Nigeria to exclude the applicability of the *Frontier Dispute* Judgment to delimitation in lakes.

77. The Court notes that, to the extent that Nigeria's reference to the Lake Chad Basin Commission is to be understood as referring to an exclusive competence of the Commission for boundary delimitation in Lake Chad, this argument has been dealt with under the third preliminary objection. As the third preliminary objection has not been upheld, the Court need not deal with this argument again.

78. The Court moreover notes that the submissions of Cameroon addressed to it in the Additional Application (para. 17) and as formulated in the Memorial of Cameroon (Memorial of Cameroon, pp. 669-671, para. 9) do not contain a specific request to determine the localization of the tripoint Nigeria-Cameroon-Chad in the Lake. The Additional Application requests the Court "to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea" (para. 17 *(f)* of the Additional Application), while the Memorial requests the Court to adjudge and declare:

> "that the lake and land boundary between Cameroon and Nigeria takes the following course:
>
> — from the point at longitude 14° 04′ 59″ 9999 E of Greenwich and latitude 13° 05′ 00″ 0001 N, it then runs through the point located at longitude 14° 12′ 11″ 7 E and latitude 12° 32′ 17″ 4 N" (p. 669, para. 9.1 *(a)*).

These submissions nevertheless bear upon the localization of the tripoint. They could lead either to a confirmation of the localization of the tripoint as accepted in practice up to now on the basis of acts and agreements of the former colonial powers and the demarcation carried out by the Commission (see paragraph 65 above), or they could lead to a redetermination of the situation of the tripoint, possibly as a consequence of Nigeria's claims to Darak and adjacent islands. Thus these claims cannot be considered on the merits by the Court at this stage of the proceedings. However, the Court notes, at the present stage, that they are directed against Cameroon and that in due course the Court will be in a position to take its decision in this regard without pronouncing on interests that Chad may have, as the Court will demonstrate hereafter.

79. The Court therefore now turns to the crux of Nigeria's fourth preliminary objection, namely the assertion that the legal interests of Chad

would be affected by the determination of the tripoint, and that the Court can therefore not proceed to that determination.

The Court recalls that it has always acknowledged as one of the fundamental principles of its Statute that no dispute between States can be decided without their consent to its jurisdiction (*Monetary Gold Removed from Rome in 1943, Judgment, I.C.J. Reports 1954,* p. 32.) Nevertheless, the Court has also emphasized that it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case; and the Court has only declined to exercise jurisdiction when the interests of the third State "constitute the very subject-matter of the judgment to be rendered on the merits" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 261, para. 55; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, pp. 104-105, para. 34).

The Court observes that the submissions presented to it by Cameroon refer to the frontier between Cameroon and Nigeria and to that frontier alone. These submissions do not refer to the frontier between Cameroon and the Republic of Chad either as contained in the Additional Application of Cameroon or as formulated in the Memorial. Certainly, the request to "specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea" (para. 17 *(f)* of the Additional Application) may affect the tripoint, i.e., the point where the frontiers of Cameroon, Chad and Nigeria meet. However, the request to specify the frontier between Cameroon and Nigeria from Lake Chad to the sea does not imply that the tripoint could be moved away from the line constituting the Cameroon-Chad boundary. Neither Cameroon nor Nigeria contests the current course of that boundary in the centre of Lake Chad as it is described in the "technical document on the demarcation of the . . . boundaries" mentioned in paragraph 65 above. Incidents between Nigeria and Chad in the Lake, as referred to by Nigeria, concern Nigeria and Chad but not Cameroon or its boundary with Chad. Any redefinition of the point where the frontier between Cameroon and Nigeria meets the Chad-Cameroon frontier could in the circumstances only lead to a moving of the tripoint along the line of the frontier in the Lake between Chad and Cameroon. Thus, the legal interests of Chad as a third State not party to the case do not constitute the very subject-matter of the judgment to be rendered on the merits of Cameroon's Application; and therefore, the absence of Chad does not prevent the Court from proceeding to a specification of the border between Cameroon and Nigeria in the Lake.

80. The Court notes also that, in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, the tripoint where the boundary between Libya and Chad meets the western boundary of the Sudan, on the 24th meridian east of Greenwich, was determined without involve-

ment of the Sudan. The eastern end-points of the principal lines taken into consideration by the Court in that case for the delimitation of the boundary between Libya and Chad were situated at various locations on the western boundary of the Sudan.

Furthermore, in that case, the Court, in the absence of Niger, fixed the western boundary between Libya and Chad as far as the point of intersection of the 15th meridian east and the parallel 23° of latitude north, a point at which, according to Chad, the frontiers of Chad, Libya and Niger meet.

81. The factual situation underlying the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* was quite different from the present case in the sense that the relevant part of the boundary of Niger at the time was not delimited; in that case the fixing of the tripoint therefore immediately involved Niger as a third State, which, however, did not prevent the Chamber from tracing the boundary between Burkina Faso and the Republic of Mali to its furthest point. Whether the location of the tripoint in Lake Chad has actually to be changed from its present position will follow from the judgment on the merits of Cameroon's Application. Such a change would have no consequence for Chad.

82. Finally the Court observes that, since neither Cameroon nor Nigeria challenge the current course of the boundary, in the centre of Lake Chad, between Cameroon and the Republic of Chad (see paragraph 79 above), it does not have to address — even if that was possible at the present preliminary stage — the argument presented by Nigeria concerning the legal principles applicable to the determination of boundaries in lakes and especially in large lakes like Lake Chad.

83. The fourth preliminary objection is accordingly rejected.

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Fifth Preliminary Objection

84. In its fifth preliminary objection Nigeria alleges that 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, subject, within Lake Chad, to the question of the title over Darak and adjacent islands, and without prejudice to the title over the Bakassi Peninsula.

85. In the course of the oral proceedings, it became clear that in addition to Darak and Bakassi, there are competing claims of Nigeria and Cameroon in respect of the village of Tipsan, which each Party claims to be on its side of the boundary. Also, in the course of the oral proceedings, a question was asked of the Parties by a Member of the Court as to whether Nigeria's assertion that there is no dispute as regards the land

boundary between the two States (subject to the existing problems in the Bakassi Peninsula and the Darak region) signifies,

> "that, these two sectors apart, there is agreement between Nigeria and Cameroon on the geographical co-ordinates of this boundary as they result from the texts relied on by Cameroon in its Application and its Memorial".

The reply given to this question by Nigeria will be examined below (paragraph 91).

86. For Cameroon its existing boundary with Nigeria was precisely delimited by the former colonial powers and by decisions of the League of Nations and acts of the United Nations.

These delimitations were confirmed or completed by agreements made directly between Cameroon and Nigeria after their independence. Cameroon requests that the Court "specify definitively the frontier between Cameroon and Nigeria from Lake Chad to the sea" (Additional Application, para. 17 *(f)*) along a line the co-ordinates of which are given in Cameroon's Memorial.

The fact that Nigeria claims title to the Bakassi Peninsula and Darak, and adjacent islands, means, in the view of Cameroon, that Nigeria contests the validity of these legal instruments and thus calls into question the entire boundary which is based on them. That, in the view of Cameroon, is confirmed by the occurrence, along the boundary, of numerous incidents and incursions. Nigeria's claims to Bakassi as well as its position regarding the Maroua Declaration also throw into doubt the basis of the maritime boundary between the two countries. In Cameroon's view, and contrary to what Nigeria asserts, a dispute has arisen between the two States concerning the whole of the boundary.

87. The Court recalls that,

> "in the sense accepted in its jurisprudence and that of its predecessor, a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between parties (see *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11; *Northern Cameroons, Judgment, I.C.J. Reports 1963*, p. 27; and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947, Advisory Opinion, I.C.J. Reports 1988*, p. 27, para. 35)" (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, pp. 99-100, para. 22);

and that,

> "[i]n order to establish the existence of a dispute, 'It must be shown that the claim of one party is positively opposed by the other' (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*,

p. 328); and further, 'Whether there exists an international dispute is a matter for objective determination' (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74)" (*I.C.J. Reports 1995*, p. 100).

On the basis of these criteria, there can be no doubt about the existence of disputes with respect to Darak and adjacent islands, Tipsan, as well as the Peninsula of Bakassi. This latter dispute, as indicated by Cameroon, might have a bearing on the maritime boundary between the two Parties.

88. All of these disputes concern the boundary between Cameroon and Nigeria. However, given the great length of that boundary, which runs over more than 1,600 km from Lake Chad to the sea, it cannot be said that these disputes in themselves concern so large a portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary.

89. Further, the Court notes that, with regard to the whole of the boundary, there is no explicit challenge from Nigeria. However, a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated *expressis verbis*. In the determination of the existence of a dispute, as in other matters, the position or the attitude of a party can be established by inference, whatever the professed view of that party. In this respect the Court does not find persuasive the argument of Cameroon that the challenge by Nigeria to the validity of the existing titles to Bakassi, Darak and Tipsan, necessarily calls into question the validity as such of the instruments on which the course of the entire boundary from the tripoint in Lake Chad to the sea is based, and therefore proves the existence of a dispute concerning the whole of the boundary.

90. The occurrence of boundary incidents certainly has to be taken into account in this context. However, not every boundary incident implies a challenge to the boundary. Also, certain of the incidents referred to by Cameroon took place in areas which are difficult to reach and where the boundary demarcation may have been absent or imprecise. And not every incursion or incident alleged by Cameroon is necessarily attributable to persons for whose behaviour Nigeria's responsibility might be engaged. Even taken together with the existing boundary disputes, the incidents and incursions reported by Cameroon do not establish by themselves the existence of a dispute concerning all of the boundary between Cameroon and Nigeria.

91. However, the Court notes that Nigeria has constantly been reserved in the manner in which it has presented its own position on the matter. Although Nigeria knew about Cameroon's preoccupation and concerns, it has repeated, and has not gone beyond, the statement that there is no

dispute concerning "boundary delimitation as such". Nigeria has shown the same caution in replying to the question asked by a Member of the Court in the oral proceedings (see paragraph 85 above). This question was whether there is agreement between the Parties on the geographical co-ordinates of the boundary as claimed by Cameroon on the basis of the texts it relies upon. The reply given by Nigeria reads as follows:

> "The land boundary between Nigeria and Cameroon is not described by reference to geographical co-ordinates. Rather, the relevant instruments (all of which pre-date the independence of Nigeria and Cameroon) and well-established practice, both before and after independence, fix the boundary by reference to physical features such as streams, rivers, mountains and roads, as was common in those days. Since independence, the two States have not concluded any bilateral agreement expressly confirming or otherwise describing the pre-independence boundary by reference to geographical co-ordinates. Nevertheless, the course of the boundary, which was well established before independence and related United Nations procedures, has continued to be accepted in practice since then by Nigeria and Cameroon."

92. The Court notes that, in this reply, Nigeria does not indicate whether or not it agrees with Cameroon on the course of the boundary or on its legal basis, though clearly it does differ with Cameroon about Darak and adjacent islands, Tipsan and Bakassi. Nigeria states that the existing land boundary is not described by reference to geographical co-ordinates but by reference to physical features. As to the legal basis on which the boundary rests, Nigeria refers to "relevant instruments" without specifying which these instruments are apart from saying that they pre-date independence and that, since independence, no bilateral agreements "expressly confirming or otherwise describing the pre-independence boundary by reference to geographical co-ordinates" have been concluded between the Parties. That wording seems to suggest that the existing instruments may require confirmation. Moreover, Nigeria refers to "well-established practice both before and after independence" as one of the legal bases of the boundary whose course, it states, "has continued to be accepted in practice"; however, it does not indicate what that practice is.

93. The Court is seised with the submission of Cameroon which aims at a definitive determination of its boundary with Nigeria from Lake Chad to the sea (see paragraph 86 above). Nigeria maintains that there is no dispute concerning the delimitation of that boundary as such throughout its whole length from the tripoint in Lake Chad to the sea (see paragraph 84 above) and that Cameroon's request definitively to determine

that boundary is not admissible in the absence of such a dispute. However, Nigeria has not indicated its agreement with Cameroon on the course of that boundary or on its legal basis (see paragraph 92 above) and it has not informed the Court of the position which it will take in the future on Cameroon's claims. Nigeria is entitled not to advance arguments that it considers are for the merits at the present stage of the proceedings; in the circumstances however, the Court finds itself in a situation in which it cannot decline to examine the submission of Cameroon on the ground that there is no dispute between the two States. Because of Nigeria's position, the exact scope of this dispute cannot be determined at present; a dispute nevertheless exists between the two Parties, at least as regards the legal bases of the boundary. It is for the Court to pass upon this dispute.

94. The fifth preliminary objection raised by Nigeria is thus rejected.

* *

SIXTH PRELIMINARY OBJECTION

95. The Court will now turn to Nigeria's sixth preliminary objection which is to the effect that there is no basis for a judicial determination that Nigeria bears international responsibility for alleged frontier incursions.

96. Nigeria contends that the submissions of Cameroon do not meet the standard required by Article 38 of the Rules of Court and general principles of law regarding the adequate presentation of facts on which Cameroon's request is based, including dates, the circumstances and precise locations of the alleged incursions and incidents into and on Cameroonian territory. Nigeria maintains that what Cameroon has presented to the Court does not give Nigeria the knowledge which it needs and to which it is entitled in order to prepare its reply. Similarly, in Nigeria's view, the material submitted is so sparse that it does not enable the Court to carry out fair and effective judicial determination of, or make determination on, the issues of State responsibility and reparation raised by Cameroon. While Nigeria acknowledges that a State has some latitude in expanding later on what it has said in its Application and in its Memorial, Cameroon is said to be essentially restricted in its elaboration to the case as presented in its Application.

97. Cameroon insists that it stated clearly in its pleadings that the facts referred to in order to establish Nigeria's responsibility were only of an indicative nature and that it could, where necessary, amplify those facts when it comes to the merits. Cameroon refers to the requirements established in Article 38, paragraph 2, of the Rules and which call for a "succinct" presentation of the facts. It holds that parties are free to develop

the facts of the case presented in the application or to render them more precise in the course of the proceedings.

98. The decision on Nigeria's sixth preliminary objection hinges upon the question of whether the requirements which an application must meet and which are set out in Article 38, paragraph 2, of the Rules of Court are met in the present instance. The requirements set out in Article 38, paragraph 2, are that the Application shall "specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based". The Court notes that "succinct", in the ordinary meaning to be given to this term, does not mean "complete" and neither the context in which the term is used in Article 38, paragraph 2, of the Rules of Court nor the object and purpose of that provision indicate that it should be interpreted in that way. Article 38, paragraph 2, does therefore not preclude later additions to the statement of the facts and grounds on which a claim is based.

99. Nor does Article 38, paragraph 2, provide that the latitude of an applicant State, in developing what it has said in its application is strictly limited, as suggested by Nigeria. That conclusion cannot be inferred from the term "succinct"; nor can it be drawn from the Court's pronouncements on the importance of the point of time of the submission of the application as the critical date for the determination of its admissibility; these pronouncements do not refer to the content of applications (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 26, para. 44; and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 130, para. 43). Nor would so narrow an interpretation correspond to the finding of the Court that,

> "whilst under Article 40 of its Statute the subject of a dispute brought before the Court *shall be* indicated, Article 32 (2) of the Rules of Court [today Article 38, paragraph 2] requires the Applicant 'as far as possible' to do certain things. These words apply not only to specifying the provision on which the Applicant founds the jurisdiction of the Court, but also to stating the precise nature of the claim and giving a succinct statement of the facts and grounds on which the claim is based." (*Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 28.)

The Court also recalls that it has become an established practice for States submitting an application to the Court to reserve the right to present additional facts and legal considerations. The limit of the freedom to present such facts and considerations is "that the result is not to transform the dispute brought before the Court by the application into

another dispute which is different in character" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 427, para. 80). In this case, Cameroon has not so transformed the dispute.

100. As regards the meaning to be given to the term "succinct", the Court would simply note that Cameroon's Application contains a sufficiently precise statement of the facts and grounds on which the Applicant bases its claim. That statement fulfils the conditions laid down in Article 38, paragraph 2, and the Application is accordingly admissible.

This observation does not, however, prejudge the question whether, taking account of the information submitted to the Court, the facts alleged by the Applicant are established or not, and whether the grounds it relies upon are founded or not. Those questions belong to the merits and may not be prejudged in this phase of the proceedings.

101. Lastly, the Court cannot agree that the lack of sufficient clarity and completeness in Cameroon's Application and its inadequate character, as perceived by Nigeria, make it impossible for Nigeria to respond effectively to the allegations which have been presented or makes it impossible for the Court ultimately to make a fair and effective determination in the light of the arguments and the evidence then before it. It is the applicant which must bear the consequences of an application that gives an inadequate rendering of the facts and grounds on which the claim is based. As the Court has stated in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*:

> "[u]ltimately . . . however, it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved, but is not to be ruled out as inadmissible *in limine* on the basis of an anticipated lack of proof." (*Ibid.*, p. 437, para. 101.)

102. The Court consequently rejects the sixth preliminary objection raised by Nigeria.

* *

SEVENTH PRELIMINARY OBJECTION

103. In its seventh preliminary objection Nigeria contends 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.

104. Nigeria says that this is so for two reasons: in the first place, no determination of a maritime boundary is possible prior to the determination of title in respect of the Bakassi Peninsula. 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 prior sufficient action by the Parties, on a footing of equality, to effect a delimitation "by agreement on the basis of international law". In Nigeria's view, the Court cannot properly be seised by the unilateral application of one State in relation to the delimitation of an exclusive economic zone or continental shelf boundary if that State has made no attempt to reach agreement with the respondent State over that boundary, contrary to the provisions of Articles 74 and 83 of the United Nations Convention on the Law of the Sea. Any such unilateral application, in the view of Nigeria, is inadmissible.

105. Cameroon is of the view that the first argument invoked by Nigeria concerns neither jurisdiction nor the admissibility of its Application, but simply the method whereby the merits of the case are best addressed, a decision which falls within the discretion of the Court. As to the second argument put forward by Nigeria, Cameroon denies that the conduct of negotiations is a precondition for instituting proceedings before the Court in cases of delimitation. Cameroon views the identical paragraphs 2 of Articles 74 and 83 of the United Nations Convention on the Law of the Sea not as barring recourse to third party settlement, but as an obligation for such recourse in order to avoid unilateral delimitations.

Cameroon says that, in any event, it had sufficiently negotiated with Nigeria before it seised the Court, and it seised the Court only when it became clear that any new negotiation would be doomed to failure. In this respect, it contends that since the actual occupation of the Bakassi Peninsula by Nigeria, any negotiation on the delimitation of the maritime boundary has become impossible.

106. The Court will initially address the first argument presented by Nigeria. The Court accepts that it will be difficult if not impossible to determine the delimitation of the maritime boundary between the Parties as long as the title over the Peninsula of Bakassi has not been determined. The Court notes, however, that Cameroon's Application not only requests the Court

> "to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions" (Application of Cameroon of 29 March 1994, p. 15, para. 20 *(f)*),

but also,

> "to adjudge and declare:
>
> *(a)* that sovereignty over the Peninsula of Bakassi is Cameroonian, by virtue of international law, and that that Peninsula is an integral part of the territory of Cameroon" (*ibid.*, para. 20).

Since, therefore, both questions are before the Court, it becomes a matter for the Court to arrange the order in which it addresses the issues in such a way that it can deal substantively with each of them. That is a matter which lies within the Court's discretion and which cannot be the basis of a preliminary objection. This argument therefore has to be dismissed.

107. As to the second argument of Nigeria, the Court notes that, while its first argument concerned the whole maritime boundary, the second one seems only to concern the delimitation from point G seawards. That was accepted by counsel for Nigeria and seems to correspond to the fact that there were extensive negotiations between the two Parties in the period between 1970 and 1975 on the maritime boundary from the landfall on Bakassi to point G, which resulted in the disputed Maroua Declaration.

Moreover, the Court recalls that, in dealing with the cases brought before it, it must adhere to the precise request submitted to it. Nigeria here requests the Court to hold that,

> "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' ".

What is therefore in dispute between the Parties and what the Court has to decide now is whether the alleged absence of sufficient effort at negotiation constitutes an impediment for the Court to accept Cameroon's claim as admissible or not.

This matter is of a genuinely preliminary character and has to be decided under Article 79 of the Rules of Court.

108. In this connection, Cameroon and Nigeria refer to the United Nations Convention on the Law of the Sea, to which they are parties. Article 74 of the Convention, relating to the exclusive economic zone, and Article 83, concerning the continental shelf, provide, in their first identical paragraphs, that the delimitation

> "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".

These are followed by identical paragraphs 2 which provide that "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." One of these procedures is the submission of the case to the Court for settlement by contentious proceedings.

109. However, the Court notes that, in this case, it has not been seised on the basis of Article 36, paragraph 1, of the Statute, and, in pursuance

of it, in accordance with Part XV of the United Nations Convention on the Law of the Sea relating to the settlement of disputes arising between the parties to the Convention with respect to its interpretation or application. It has been seised on the basis of declarations made under Article 36, paragraph 2, of the Statute, which declarations do not contain any condition relating to prior negotiations to be conducted within a reasonable time period.

The second argument of Nigeria cannot therefore be upheld.

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110. In addition to what has been put forward by the Parties, the question could arise whether, beyond point G, the dispute between the Parties has been defined with sufficient precision for the Court to be validly seised of it. The Court observes not only that the Parties have not raised this point, but Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary. It was during these negotiations that the Maroua Declaration relating to the course of the maritime boundary up to point G was drawn up. This declaration was subsequently held to be binding by Cameroon, but not by Nigeria. The Parties have not been able to agree on the continuation of the negotiations beyond point G, as Cameroon wishes. The result is that there is a dispute on this subject between the Parties which, ultimately and bearing in mind the circumstances of the case, is precise enough for it to be brought before the Court.

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111. The Court therefore rejects the seventh preliminary objection.

* *

Eighth Preliminary Objection

112. The Court will now deal with the eighth and last of the preliminary objections presented by Nigeria. With that objection Nigeria contends, in the context of and supplementary to the seventh preliminary objection, that the question of maritime delimitation necessarily involves the rights and interests of third States and is to that extent inadmissible.

113. Nigeria refers to the particular concave configuration of the Gulf of Guinea, to the fact that five States border the Gulf and that there are no agreed delimitations between any two of those States in the disputed

area. In these circumstances, the delimitation of the maritime zones appertaining to two of the States bordering the Gulf will necessarily and closely affect the others. Nigeria also holds that the situation between Cameroon and Nigeria is distinct from that underlying the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* (*Judgment, I.C.J. Reports 1986*, p. 554) as that case concerned a land boundary to the delimitation of which apply principles that are different from those applying to the delimitation of maritime boundaries. The case concerning the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* (*Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 3) was different from the present case in the sense that the areas to which the claims of the third State (Italy) related, were known; and in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (*Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 3) the Court was merely laying down principles applicable to the delimitation of the continental shelf in a given context without actually drawing any particular line. Nigeria acknowledges that by virtue of Article 59 of the Statute, third States are not formally bound by decisions of the Court; it maintains nevertheless that Article 59 of the Statute gives insufficient protection, since in specific situations, in spite of that Article, decisions of the Court may have clear and direct legal and practical effects on third States, as well as on the development of international law.

114. Cameroon holds that the maritime delimitation which it is requesting the Court in part to confirm and in part to determine, concerns only the Parties to the present dispute. In Cameroon's view, the interests of all other States are preserved by Article 59 of the Statute and by the principle according to which any delimitation as between two States is *res inter alios acta*. Referring to the jurisprudence of the Court, Cameroon claims that the Court has not hesitated to proceed to maritime delimitations in cases where the rights of third States were more clearly in issue than they are in the present case. Cameroon also finds that practice of State treaties confirms that a delimitation is in no way made impossible by the existence of the interests of neighbouring States.

115. The Court notes, as do the Parties, that the problem of rights and interests of third States arises only for the prolongation, as requested by Cameroon, of the maritime boundary seawards beyond point G. As to the stretch of the maritime boundary from point G inwards to the point of landfall on the Bakassi Peninsula, certainly a dispute has arisen because of the rival claims of the Parties to Bakassi and the fact that the Maroua Declaration is considered binding by Cameroon but not by Nigeria.

That dispute however does not concern the rights and interests of third States. That is so because the geographical location of point G is clearly

closer to the Nigerian/Cameroonian mainland than is the location of the tripoint Cameroon-Nigeria-Equatorial Guinea to the mainland.

116. What the Court has to examine under the eighth preliminary objection is therefore whether prolongation of the maritime boundary beyond point G would involve rights and interests of third States and whether that would prevent it from proceeding to such prolongation. The Court notes that the geographical location of the territories of the other States bordering the Gulf of Guinea, and in particular Equatorial Guinea and Sao Tome and Principe, demonstrates that it is evident that the prolongation of the maritime boundary between the Parties seawards beyond point G will eventually run into maritime zones where the rights and interests of Cameroon and Nigeria will overlap those of third States. It thus appears that rights and interests of third States will become involved if the Court accedes to Cameroon's request. The Court recalls that it has affirmed, "that one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction" (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 101, para. 26). However, it stated in the same case that, "it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case" (*ibid.*, p. 104, para. 34).

Similarly, in the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, it adopted the same approach:

> "a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, but no finding in respect of that legal situation will be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly, the Court cannot decline to exercise its jurisdiction." (*I.C.J. Reports 1992*, pp. 261-262, para. 55.)

The Court cannot therefore, in the present case, give a decision on the eighth preliminary objection as a preliminary matter. In order to determine where a prolonged maritime boundary beyond point G would run, where and to what extent it would meet possible claims of other States, and how its judgment would affect the rights and interests of these States, the Court would of necessity have to deal with the merits of Cameroon's request. At the same time, the Court cannot rule out the possibility that the impact of the judgment required by Cameroon on the rights and interests of the third States could be such that the Court would be prevented from rendering it in the absence of these States, and that consequently Nigeria's eighth preliminary objection would have to be upheld at least in part. Whether such third States would choose to exercise their rights to intervene in these proceedings pursuant to the Statute remains to be seen.

117. The Court concludes that therefore the eighth preliminary objec-

tion of Nigeria does not possess, in the circumstances of the case, an exclusively preliminary character.

* * *

118. For these reasons,

THE COURT,

(1) *(a)* By fourteen votes to three,

Rejects the first preliminary objection;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Vice-President* Weeramantry; *Judge* Koroma; *Judge* ad hoc Ajibola;

(b) By sixteen votes to one,

Rejects the second preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judges* ad hoc Mbaye, Ajibola;

AGAINST: *Judge* Koroma;

(c) By fifteen votes to two,

Rejects the third preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Judge* Koroma; *Judge* ad hoc Ajibola;

(d) By thirteen votes to four,

Rejects the fourth preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Oda, Koroma, Parra-Aranguren; *Judge* ad hoc Ajibola;

(e) By thirteen votes to four,

Rejects the fifth preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

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

(f) By fifteen votes to two,

Rejects the sixth preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Judge* Koroma; *Judge* ad hoc Ajibola;

(g) By twelve votes to five,

Rejects the seventh preliminary objection;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Oda, Koroma, Higgins, Kooijmans; *Judge* ad hoc Ajibola;

(2) By twelve votes to five,

Declares that the eighth preliminary objection does not have, in the circumstances of the case, an exclusively preliminary character;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Parra-Aranguren, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Judges* Oda, Koroma, Higgins, Kooijmans; *Judge* ad hoc Ajibola;

(3) By fourteen votes to three,

Finds that, on the basis of Article 36, paragraph 2, of the Statute, it has jurisdiction to adjudicate upon the dispute;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Vice-President* Weeramantry; *Judge* Koroma; *Judge* ad hoc Ajibola;

(4) By fourteen votes to three,

Finds that the Application filed by the Republic of Cameroon on 29 March 1994, as amended by the Additional Application of 6 June 1994, is admissible.

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Mbaye;

AGAINST: *Vice-President* Weeramantry; *Judge* Koroma; *Judge* ad hoc Ajibola.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this eleventh day of June, one thousand

nine hundred and ninety-eight, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Cameroon and the Government of the Federal Republic of Nigeria, respectively.

(Signed) Stephen M. SCHWEBEL,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judges ODA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN and KOOIJMANS append separate opinions to the Judgment of the Court.

Vice-President WEERAMANTRY, Judge KOROMA and Judge *ad hoc* AJIBOLA append dissenting opinions to the Judgment of the Court.

(Initialled) S.M.S.
(Initialled) E.V.O.