

INTERNATIONAL DECISIONS

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Territorial and maritime boundary delimitation—colonial arrangement establishing conventional title—conventional title prevailing over effectivities absent acquiescence of title holder—single maritime boundary—equitable principles/relevant circumstances rule—equidistant line representing an equitable result for delimitation absent relevant circumstances—interests of nonparty intervenor

LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA (CAMEROON V. NIGERIA; EQUATORIAL GUINEA INTERVENING). At <<http://www.icj-cij.org>>. International Court of Justice, October 10, 2002.

On March 29, 1994, Cameroon filed an application¹ with the International Court of Justice (ICJ) requesting that it determine the question of sovereignty over the oil-rich Bakassi Peninsula and a parcel of land in the area of Lake Chad (principally Darak and its region), both of which were in dispute between Cameroon and Nigeria. Cameroon also asked the Court to specify the land and maritime boundary between the two states, and to order an immediate and unconditional withdrawal of Nigerian troops from alleged Cameroonian territory in the disputed areas.² As the basis of the Court's jurisdiction, Cameroon relied on the declarations made by the parties under Article 36(2) of the ICJ Statute.

In its judgment of June 11, 1998, the Court rejected Nigeria's seven preliminary objections alleging that the Court lacked jurisdiction and that Cameroon's application was inadmissible, but it reserved the remaining, eighth objection—relating to the parties' maritime boundary—for consideration at the merits stage.³ The Court's order of June 30, 1999, allowed Nigeria to introduce certain counterclaims, and its subsequent order of October 21, 1999, unanimously authorized Equatorial Guinea to intervene in the case as a nonparty.⁴

On October 10, 2002, the Court ruled, by 13 votes to 3 (Judges Koroma and Rezek and Judge *ad hoc* Ajibola, chosen by Nigeria, dissenting), that sovereignty over the Bakassi Peninsula and the Lake Chad area lay with Cameroon. Upholding the validity of certain colonial arrangements invoked by Cameroon, the Court fixed, by clear majorities, the land boundary from Lake Chad in the north to the Bakassi Peninsula in the south. In fixing the portion of the maritime boundary between the two states over which it had jurisdiction, the Court agreed with Nigeria that the equidistant line between them produced an equitable result. It did not, however, specify the location of the point off the coast of Equatorial Guinea at which the maritime boundary between Cameroon and Nigeria terminates (the "tripoint"). The Court ordered

¹ Amended without objection on June 6, 1994, as noted in the Court's order, 1994 ICJ REP. 105, of June 16. The basic documents, decisions, pleadings, hearing transcripts, press releases, and other materials of the Court are available online at <<http://www.icj-cij.org>>.

² See also the Court's order, 1996 ICJ REP. 13, of March 15, 1996, by which it indicated certain provisional measures.

³ See *Land and Maritime Boundary Between Cameroon and Nigeria* (Cameroon v. Nig.), Preliminary Objections, 1998 ICJ REP. 275 (June 11) [hereinafter Preliminary objections judgment], and my case report at 92 AJIL 751 (1998). The Court subsequently rejected, 1999 ICJ REP. 31 (Mar. 25), Nigeria's request for interpretation of this judgment.

⁴ See the Court's orders at 1999 ICJ REP. 983 (June 30) & 1029 (Oct. 21).

each party to withdraw all administration and military or police forces present on territories falling under the sovereignty of the other party. Finally, it unanimously rejected for lack of proof both Cameroon's claims concerning Nigeria's state responsibility and Nigeria's counterclaims concerning Cameroon's responsibility.⁵

The Land Boundary in the Area of Lake Chad

The Court first dealt with the question of the delimitation of the parties' land boundary in the Lake Chad area. Pointing to the various bilateral agreements providing for colonial boundaries entered into by France, Germany, and Great Britain in the late nineteenth and early twentieth centuries, the Court confirmed that the goal of reestablishing the boundary between the newly created British and French mandates following World War I was achieved through a 1919 Franco-British declaration (Milner-Simon Declaration), which was invoked by Cameroon. This declaration, subsequently clarified by another declaration (Thomson-Marchand Declaration) signed by the colonial powers in December 1929/January 1930, was approved and incorporated in an exchange of notes between France and Britain in January 1931, and has the status of an international agreement. It determined the frontier separating the British and French Cameroons, and specified the tripoint in Lake Chad, as confirmed by the Council of the League of Nations.⁶

The Court found that the 1919 declaration, despite having some technical imperfections, provided for a delimitation that was generally sufficient for demarcation (that is, marking out the course of the boundary on the ground). The demarcation work carried out by the Lake Chad Boundary Commission (LCBC) after Cameroon (a French colony) and Nigeria (a British colony) gained independence presupposed that a frontier line already was regarded as essentially delimited. Nigeria at no time had suggested that the frontiers in the Lake Chad area remained to be delimited—which was confirmed by the work of the LCBC from 1983 to 1991 and by its emphasis on the technical exercise of demarcation based on legal instruments agreed upon by Cameroon and Nigeria as delimiting the frontier in Lake Chad.⁷ Consequently, the Court concluded, by 14 votes to 2, that the Lake Chad border area was delimited by the international legal instruments invoked by Cameroon.⁸

Addressing Nigeria's claim to title to the disputed Lake Chad area based on historical consolidation of title (presence) and Cameroon's acquiescence or tacit consent,⁹ the Court observed that the notion of historical consolidation has been used as a basis of title in territorial disputes only in the *Anglo-Norwegian Fisheries* case—and only in connection with certain

⁵ Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nig.; Eq. Guinea intervening), Judgment, para. 325 (Int'l Ct. Justice Oct. 10, 2002) [hereinafter Judgment].

⁶ *Id.*, paras. 48–49.

⁷ *Id.*, paras. 50–55.

⁸ *Id.*, paras. 55, 325(I) (A) (dissenting on this point: Judge Koroma and Judge *ad hoc* Ajibola). Based on its examination of the governing instruments, the Court reached the same conclusions as the Lake Chad Basin Commission (LCBC) regarding the precise location of the longitudinal coordinate of the Cameroon-Nigeria-Chad tripoint in Lake Chad, from where the boundary starts, although the Court also found that the LCBC had no authority to engage in interpretation on its own. Regarding the question of the mouth of the Ebeji River—to which the boundary followed a straight line—the Court explained that its task in the present case was to ascertain the parties' 1931 intention as to the meaning of the expression "mouth," and not to determine the river's "main channel" as in the *Kasikili/Sedudu Island* case between Botswana and Namibia. See *Kasikili/Sedudu Island* (Bots./Namib.), 1999 ICJ REP. 1045, paras. 30–40 (Dec. 13). The Ebeji no longer has a single mouth, however, through which it discharges its waters into Lake Chad. Instead, it divides into two channels as it approaches the lake. Faced with this problem, the Court fixed the geographical coordinates for the mouth of the Ebeji as it was in 1931, based on the coordinates that were identified both in the governing maps and by the LCBC. The Court found that the 1931 mouth was, with respect to those coordinates, north of the "mouth" suggested by Cameroon and Nigeria (based, respectively, on the river's current western and eastern channels). See Judgment, *supra* note 5, paras. 56–61.

⁹ In support of its claim, Nigeria pointed to the Nigerian nationality of the inhabitants of the disputed villages, the exercise of authority by the traditional chiefs, the long settlement of Nigerian nationals in the area, and Nigeria's peaceful administration of the villages, in which Cameroon was said to have acquiesced. Judgment, *supra* note 5, para. 62.

maritime delimitation decrees promulgated by Norway and applied in practice without opposition.¹⁰ The Court characterized the theory of historical consolidation as “highly controversial” and as incapable of replacing the established modes of acquisition of title to territory under international law.¹¹ Nothing in the Court’s case law suggests that historical consolidation allows land occupation to set aside an established conventional territorial title.

Regarding the legal relationship between *effectivités* and titles, the Court recalled its earlier findings that preference should be given to the holder of the title over another state administering a disputed territory.¹² Although policing, the administration of justice, and the organization of health and education facilities could typically be considered as *actes à titre de souverain*, or manifestations of sovereignty, the pertinent legal test was whether Cameroon had acquiesced in the passing of its preexisting title from itself to Nigeria. In the Court’s view, the evidence showed that Cameroon had not so acquiesced: in addition to its modest administrative activity (including tax collection) and exercise of control, Cameroon had firmly protested Nigeria’s diplomatic note of April 14, 1994, in which Nigeria first claimed sovereignty over Darak.¹³

The Land Boundary from Lake Chad to the Sea (the Bakassi Peninsula)

The Court next considered the course of the parties’ land boundary from Lake Chad to the sea, which Cameroon had asked the Court “to specify definitively” by confirming that certain colonial agreements defining the boundary were binding on the parties and were applicable.

Cameroon invoked four instruments that provided for the definition, or “delimitation,” of three sectors of the frontier. The Thomson-Marchand Declaration, incorporated in the 1931 exchange of notes,¹⁴ was said to govern the first sector, extending from the conventional mouth of the Ebeji River to “Mount Kombon.” The second sector, running from Mount Kombon to “pillar 64” as referred to in the Anglo-German Agreement of April 12, 1913, was claimed by Cameroon to have been defined in the British “Order in Council Providing for the Administration of the Nigeria Protectorate and Cameroons” of August 2, 1946. Cameroon claimed that the third sector, running from pillar 64 to the Bakassi Peninsula, had been delimited by two Anglo-German Agreements of March 11 and April 12, 1913, and cartographic material annexed to them.¹⁵

Accepting the applicability, in principle, of the instruments invoked by Cameroon, Nigeria submitted that the Court’s task was to “clarify” the delimitation in the areas (especially the third sector) in which the governing instruments were said to be defective, and that the boundary line claimed by Cameroon should be corrected in the areas where it was not observing the clear terms of the governing delimitation instruments.¹⁶

The Court noted that the parties agreed that the land boundary between their respective territories from Lake Chad onward had already been delimited by the instruments invoked by Cameroon. Except for the provisions concerning Bakassi contained in Articles XVIII *et seq.* of the Anglo-German Agreement of March 1913, both states accepted the validity of those instruments delimiting the frontier. The Court’s task was limited to settling the parties’ dispute

¹⁰ Fisheries (UK v. Nor.), 1951 ICJ REP. 116 (Dec. 18).

¹¹ Judgment, *supra* note 5, para. 65 (citing Fisheries, 1951 ICJ REP. at 130).

¹² *Id.*, para. 68 (citing Frontier Dispute (Burk. Faso/Mali), 1986 ICJ REP. 554, para. 63 (Dec. 22)). The term “*effectivités*” is used to refer generally to acts demonstrating the effective exercise of authority over an area.

¹³ *Id.*, paras. 68–70.

¹⁴ See *supra* text accompanying note 6.

¹⁵ Judgment, *supra* note 5, paras. 72–75.

¹⁶ *Id.*, para. 78.

over the interpretation or application of particular provisions of the instruments delimiting certain points of their land boundary.¹⁷

For this purpose, the Court examined, point by point, seventeen sectors of the land boundary from Lake Chad to the Bakassi Peninsula, and it did so in their order of appearance along a north-south line following the course of the land boundary from Lake Chad toward the sea. The Court specified for each sector how the colonial instruments (notably, the 1929/30 Thomson-Marchand Declaration and the 1946 British Order in Council) should be interpreted. The solutions adopted by the Court—based on its review and interpretation of the governing instruments and map evidence—were in some cases favorable to Nigeria, whereas in others they were closer to Cameroon's positions or were "intermediate or neutral positions."¹⁸

The Court next addressed the issue of the boundary in Bakassi and the question of sovereignty over the Bakassi Peninsula, which is situated in the hollow of the Gulf of Guinea and is bounded by the River Akwayafe to the west and by the Rio del Rey to the east. The central question for the Court to decide here was whether Great Britain was entitled to pass title to Bakassi through the Anglo-German Agreement of March 1913. Relying on the Bakassi provisions (Articles XVIII–XXI) of that Agreement, Cameroon claimed that it fixed the course of the boundary in Bakassi and placed the peninsula on the German side of the boundary. Consequently, when Cameroon and Nigeria reached independence, they inherited this boundary pursuant to the *uti possidetis* principle. Bakassi therefore had belonged to Cameroon and its predecessors since 1913.¹⁹

Nigeria attempted to undercut this conclusion by referring to the Treaty of Protection concluded between the kings and chiefs of Old Calabar and Britain in September 1884. In Nigeria's view, the 1884 Treaty demonstrated that Great Britain had no sovereignty over the Bakassi Peninsula and, therefore, had no legal power to cede it to a third party by treaty in 1913. The Court observed, however, that the 1884 Treaty did not specify the territory to which Britain was to extend protection, nor did it indicate the territories over which the kings and chiefs exercised powers. It was also apparent, the Court noted, that Great Britain had a clear understanding of the area ruled at different times by these kings and chiefs, and of their standing. In the Court's view, many factors pointed to the 1884 Treaty as not establishing an international protectorate—notwithstanding its being entitled a treaty of protection. Ongoing meetings and discussions between the protecting power and the local rulers of the protectorate are characteristic of such relationships, but Nigeria failed to provide the necessary evidence.²⁰ Consequently, the Court rejected Nigeria's arguments that the 1884 Treaty rendered the Anglo-German Agreement of March 1913 defective,²¹ and it concluded that, under the law at the time, Great Britain was in a position to determine its boundaries with Germany in respect of Nigeria, including the boundaries in its southern section.

The Court next examined the treatment, in the period 1913 to the parties' independence in 1960, of the southern sector of the boundary as defined in the 1913 Agreement. It noted that following Germany's renunciation of its colonial possessions after the First World War, the Treaty of Versailles divided the German possessions of Cameroon between Great Britain and France. Subsequently (from 1922), Bakassi was comprised within the British League of Nations mandate of British Cameroon. After the Second World War, the mandate was converted

¹⁷ *Id.*, paras. 82–85.

¹⁸ Statement to the Press by President Guillaume (Oct. 10, 2002). For the discussion of all seventeen sectors, see Judgment, *supra* note 5, paras. 86–192.

¹⁹ Judgment, *supra* note 5, paras. 193–94, 200, 202.

²⁰ *Id.*, paras. 203–09.

²¹ *Id.*, paras. 193–99, 201. Nigeria sought to sever from the 1913 Agreement the provisions concerning the Bakassi Peninsula, which Cameroon argued was not possible under the law of treaties. The dissenting judges (Judges Koroma and Rezek, and Judge *ad hoc* Ajibola) fundamentally disagreed with the majority's treatment of the 1884 Treaty.

to a UN trusteeship until its termination in 1961, with the boundary between Bakassi and Nigeria remaining an international boundary. Nigeria acknowledged the frontier line by voting in favor of General Assembly Resolution 1608 (XV) of April 21, 1961, which terminated the British trusteeship while also approving the results of the plebiscite (see next paragraph).

The Court rejected Nigeria's claim that, notwithstanding the 1913 Agreement, Bakassi had remained under the sovereignty of the Old Calabar kings and chiefs until Nigeria's independence in 1961. It also found no evidence proving that upon independence Nigeria acquired the peninsula from those kings and chiefs. In 1960, at the time of the British Southern Cameroons Plebiscite Order in Council, it was clearly established that Bakassi formed part of the Southern Cameroons under British trusteeship. Diplomatic correspondence concerning certain oil-licensing blocks and official Nigerian maps confirmed that Nigeria regarded the Bakassi Peninsula as part of Cameroon, at least until the late 1970s. Following the parties' decision to carry out a total delimitation and demarcation of their boundaries in 1970, the relevant instruments and the geographic pattern of the oil concessions granted by the two parties up to 1991 made it clear that the parties took it as a given that Bakassi belonged to Cameroon. Nigeria also had acknowledged the preexisting Cameroon title in Bakassi by taking formal diplomatic steps prior to visiting Nigerian nationals residing in Bakassi.²² Based on these considerations, the Court concluded that the Anglo-German Agreement of March 1913 was valid and applicable in its entirety.²³

Finally, the Court addressed three distinct, but interrelated, bases of title to Bakassi, as advanced by Nigeria: Nigeria's long occupation of Bakassi constituting a historical consolidation of title; Nigeria's peaceful possession, acting as sovereign, together with the lack of protest by Cameroon (also resulting in historical consolidation of title); and Nigeria's manifestations of sovereignty in the area, together with Cameroon's acquiescence in Nigerian sovereignty over Bakassi.²⁴

The Court rejected all three bases. It found that invocation of historical consolidation could not vest title to Bakassi in Nigeria when its "occupation" of the peninsula was adverse to Cameroon's preexisting treaty title. When Nigeria became independent, there existed no title capable of being confirmed subsequently by occupation (whose length, the Court also noted, was limited in this case).²⁵

As to the other two bases, which it dealt with together since they were interrelated, the Court pointed out that the growing number of Nigerian residents in Bakassi, the toponymy of certain settlements, and their relationships with Nigeria did not, in themselves, establish Nigerian title over Bakassi territory and could not serve as an element in a claim for historical consolidation of title. As regards Nigeria's administrative activities, which it claimed were acts *à titre de souverain* that Cameroon failed to protest, the Court dismissed the precedents invoked by Nigeria as irrelevant, given that in none of them were the acts referred to acts *contra legem*. The question of whether *effectivités* suggest that title lies with one country rather than another must be distinguished from the question of whether such *effectivités* can serve to displace an established treaty title. The Court confirmed the rule that preference will be given to title where there is a conflict between title and *effectivités*.²⁶ It determined, based on the evidence submitted, that Nigeria could not have been acting *à titre de souverain* before the late 1970s. Finally, as regards the key question whether Cameroon's conduct could be viewed

²² *Id.*, paras. 212–16.

²³ *Id.*, para. 217. The Court found it unnecessary either to address the parties' arguments regarding the severability of treaty provisions (whether generally or as regards boundaries) or to pronounce upon the parties' *uti possidetis* arguments.

²⁴ *Id.*, para. 218.

²⁵ *Id.*, para. 220.

²⁶ *Id.*, para. 223 (citing *Frontier Dispute (Burk. Faso/Mali)*, 1986 ICJ REP. 554, para. 63 (Dec. 22)).

as an acquiescence in the loss of the treaty title that it inherited upon independence, the Court concluded that there was no evidence of such an acquiescence in the ensuing period.²⁷

For all of the above reasons, the Court decided, by 13 votes to 3, that the Bakassi boundary was delimited by Articles XVIII–XX of the Anglo-German Agreement of March 1913, and that sovereignty over the Bakassi Peninsula lay with Cameroon.²⁸

The Maritime Boundary—Admissibility

The second task carried out by the Court concerned its determination of the maritime boundary between Cameroon and Nigeria, whose coastlines are adjacent and are washed by the waters of the Gulf of Guinea.

In connection with its earlier finding that Nigeria's eighth preliminary objection did not possess an exclusively preliminary character and should be settled at the merits phase, the Court had noted that the rights and interests of third states—specifically, Equatorial Guinea (a nonparty intervenor in this case) and São Tomé and Príncipe (which had chosen not to intervene)—might become involved. Of particular concern here were the Court's potential determinations of where a prolonged maritime boundary beyond "Point G" (at a distance of some seventeen nautical miles from the coast) would run, of where and to what extent that such a prolonged boundary might trigger adverse territorial claims of other states, and of how the Court's judgment would affect the rights and interests of those states.²⁹ The Court acknowledged that "Article 59 [of the Statute] may not sufficiently protect Equatorial Guinea or Sao Tome and Principe from the effects—even if only indirect—of a judgment affecting their legal rights."³⁰ The Court observed, however, that the mere geographical presence of Equatorial Guinea and São Tomé and Príncipe in the area to be delimited did not in itself preclude the Court from having jurisdiction over a maritime delimitation between Cameroon and Nigeria. Nevertheless, it concluded that it could not rule on Cameroon's claims insofar as they might affect rights of those two other states.

The Maritime Boundary to Point G

In delimiting the maritime boundary to Point G, the Court first addressed the sector of the parties' maritime boundary from the mouth of the Akwayafe River up to Point G. In the Court's view, having found both that the Anglo-German Agreement of March 1913 was valid and applicable in its entirety and that territorial title to the Bakassi Peninsula lay with Cameroon, it followed that the maritime boundary between the parties lay to the west of Bakassi and not, as Nigeria had argued, to the east in the Rio del Rey. Accordingly, the Court agreed with Cameroon that the maritime boundary between the parties was "anchored" to the mainland at the intersection of the straight line from Bakassi Point to King Point, with the center ("thalweg") of the navigable channel of the Akwayafe River lying northeast of Bakassi, in accordance with Articles XVIII and XXI of the 1913 Agreement.³¹

Nigeria disputed the validity of the so-called Maroua Declaration of June 1, 1975, in which the parties' heads of state declared that they had "reached full agreement on the exact course of the maritime boundary." Noting the absence of a legal obligation for states to keep themselves informed of legislative and constitutional developments in other states that are or may become important for the international relations of these states, the Court concluded that the Declaration's text made it clear that this instrument entered into force immediately upon

²⁷ *Id.*, para. 224.

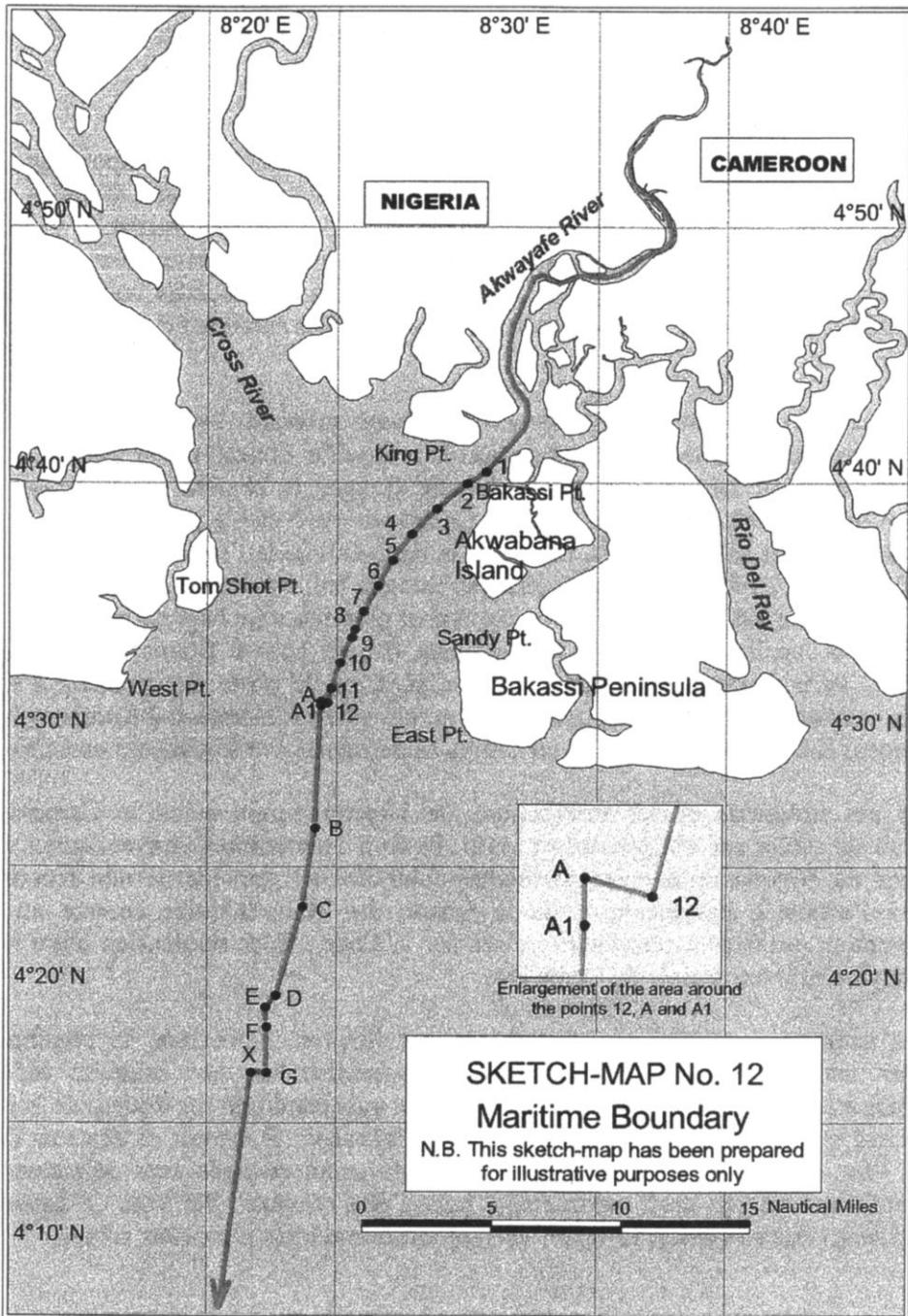
²⁸ *Id.*, paras. 225, 325 (III) (A), (B).

²⁹ See Preliminary objections judgment, *supra* note 3, paras. 116–17. The vote rejecting the eighth objection was 12-5.

³⁰ Judgment, *supra* note 5, para. 238.

³¹ *Id.*, para. 261.

MAP 1. SKETCH-MAP NO. 12 FROM *LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA*



its signature, without the need for subsequent ratification.³² The Court therefore found, by 13 votes to 3, that the international instruments invoked by Cameroon established and defined—on a conventional basis—the course of the maritime boundary between Cameroon and Nigeria from the mouth of the Akwayafe River up to and including Point G.³³

The Maritime Boundary Beyond Point G

The Court then turned to the sector of the maritime boundary beyond Point G, where no maritime boundary delimitation had been agreed upon by the two parties. Given that the maritime areas in this sector lay beyond the outer limit of the respective territorial seas of the two states, the Court was called upon to apply Articles 74 and 83 of the 1982 UN Convention on the Law of the Sea³⁴ (LOS Convention), which deal with delimitation of the exclusive economic zone and continental shelf, respectively, and require that such delimitation be effected in such a way as to “achieve an equitable solution.” The drawing of a single line of delimitation covering several zones of coincident jurisdictions is based on practice and is governed by the “equitable principles/relevant circumstances” method. According to this method, which is very similar to the “equidistance/special circumstances” method applicable in territorial-sea delimitation, the Court must first draw an equidistant line and then consider whether there are factors (“relevant circumstances”) calling for the adjustment or shifting of the provisional median line in order to achieve an “equitable result.”³⁵

In order to apply this method, the Court must first define the relevant coastlines, for it is by reference to those coastlines that the base points to be used in constructing the equidistant line will be determined.³⁶ Having observed that the maritime boundary between Cameroon and Nigeria could be determined only by reference to points on the coastlines of those two states (not of third states), the Court noted that the island of Bioko in the Gulf of Guinea was a constituent part of a third state. The Court determined that the land-based anchorage points to be used in the construction of the equidistant line, which in this case could not be extended beyond a point where it might affect rights of Equatorial Guinea, were West Point and East Point, as indicated on the 1994 edition of British Admiralty Chart No. 3433. Those two points correspond to the most southerly points on the low-water line for Cameroon and Nigeria to either side of the bay formed by the estuaries of the Akwayafe and Cross Rivers.³⁷

The Court next considered whether there were circumstances that might make it necessary to adjust the equidistant line, so construed, in order to achieve an equitable result.³⁸ Cameroon pointed out that if the Court drew a strict equidistant line, Cameroon would be entitled to practically no exclusive economic zone or continental shelf, even though it has a longer coastline than Nigeria. Cameroon consequently argued that the particular geography of the Gulf of Guinea called for a determination of the relevant area within which the delimitation itself was to be undertaken—which in the particular circumstances of the instant case required consideration of the coastlines of third states. Specifically, it pointed to the presence opposite its coast of Bioko Island, which is the seat of the capital of Equatorial Guinea but is closer

³² *Id.*, paras. 265–68. Invoking the Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, Arts. 7, 46, 1155 UNTS 331, Nigeria argued that the Maroua Declaration was never properly ratified by Nigeria after being signed by its head of state—a shortcoming that should have been objectively evident to Cameroon. Judgment, *supra* note 5, paras. 258–59.

³³ Judgment, *supra* note 5, paras. 268, 325(III)(C).

³⁴ *Opened for signature* Dec. 10, 1982, 1833 UNTS 397 (1983). Cameroon and Nigeria have both ratified the Convention.

³⁵ *Id.*, paras. 285–88.

³⁶ *Id.*, para. 290. In its previous law of the sea ruling, the Court defined the equidistant line as “the line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.” Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (*Qatar v. Bahr.*), para. 177 (Int’l Ct. Justice Mar. 16, 2001).

³⁷ Judgment, *supra* note 5, paras. 291–92.

³⁸ *Id.*, para. 293 (citing Continental Shelf (Libya/Malta), 1985 ICJ REP. 13, para. 63 (June 3)).

to Cameroon's coast than to that of mainland Equatorial Guinea. Cameroon submitted that these circumstances required both that the Court not give Bioko its full (blocking) effect and that it make an adjustment of the equidistant line in order to achieve an equitable result.³⁹

In the view of Equatorial Guinea, the nonparty intervenor in this case, Cameroon's "equitable" line encroached upon the median lines between Cameroon and Equatorial Guinea and also between Nigeria and Equatorial Guinea, and it ignored the three states' substantial oil practice. Equatorial Guinea also claimed that Cameroon's line would result in the complete encroachment of Bioko Island.⁴⁰

Although the Court agreed with Cameroon that concavity of a coastline may be a circumstance relevant to delimitation, it pointed out that this relevance is restricted to situations in which such concavity lies within the area to be delimited. In the instant case, the sectors of coastline relevant to the Court's delimitation exhibited no particular concavity. Consequently, the configuration of the coastlines relevant to the delimitation did not represent a circumstance justifying the adjustment of the equidistant line as requested by Cameroon.⁴¹

Notwithstanding its acknowledgment that islands have sometimes been taken into account as a relevant circumstance in delimitation—in particular, when such islands lay within the zone to be delimited and fell under the sovereignty of one of the parties—the Court observed that the effect of Bioko Island on the seaward projection of Cameroon's coastal front was an issue between Cameroon and Equatorial Guinea, but was not relevant to the issue of the maritime boundary delimitation between Cameroon and Nigeria.⁴²

Finally, the disparity between the length of the parties' coastlines in the Gulf of Guinea—which, if substantial, may have been a relevant circumstance—also was no ground to shift the equidistant line in favor of Cameroon, given that the relevant coastline of Cameroon was not longer than that of Nigeria.⁴³

Accordingly, the Court decided that the equidistant line in this case represented an equitable result for the delimitation of the area in respect of which it had jurisdiction to give a ruling. Still, given that Point G did not lie on the equidistant line between Cameroon and Nigeria, but was situated to the east of that line, the Court determined that from Point G the delimitation line should join the equidistant line at a point X, from which point the delimitation line would turn southward and continue along the equidistant line. Nevertheless, since the Court could take no decision that might affect the rights of Equatorial Guinea, it confined itself to indicating the general direction, from point X, of the equidistant line forming the boundary between the parties' maritime areas without fixing the Cameroon-Nigeria-Equatorial Guinea tripoint. The Court's decision on this particular issue was unanimous.⁴⁴

Issues of State Responsibility

Having determined the land and maritime boundary between Cameroon and Nigeria, the Court was left to address Cameroon's submissions concerning Nigeria's state responsibility and Nigeria's counterclaims regarding Cameroon's state responsibility. Cameroon complained of Nigeria's invasion and occupation of the Lake Chad area and the Bakassi Peninsula in violation of the international law principles of nonuse of force and nonintervention. It demanded Nigeria's immediate withdrawal from those areas and claimed reparation. Nigeria argued that it was in peaceful possession of the disputed areas at the time of the alleged invasions,

³⁹ *Id.*, paras. 270–75.

⁴⁰ *Id.*, para. 284.

⁴¹ *Id.*, para. 297.

⁴² *Id.*, para. 299.

⁴³ *Id.*, para. 301.

⁴⁴ *Id.*, paras. 307, 325(IV)(C), (D).

that it had acted in lawful self-defense, and that, in any event, Nigeria's presence was the result of reasonable mistake or honest belief.⁴⁵

Based on its earlier findings regarding the parties' land boundary and sovereignty, and recalling its own precedents,⁴⁶ the Court found that Nigeria was obligated expeditiously and without condition to withdraw its administration and its military and police forces from the Bakassi Peninsula and from those areas of Lake Chad that the Court determined to fall within the sovereignty of Cameroon. Cameroon was held to have the same obligation with regard to the areas along the land boundary from Lake Chad to the Bakassi Peninsula falling within the sovereignty of Nigeria.⁴⁷

The Court rejected Cameroon's claim for guarantees of nonrepetition in the future. While recognizing that such a claim was surely admissible, the Court deemed its determination of the parties' land and maritime boundary to have been "definitive and mandatory," to have dispelled all uncertainty, and to have sufficiently addressed, without the need for any further remedy, "the injury suffered by Cameroon by reason of the occupation of its territory."⁴⁸

The Court also rejected, for reasons of insufficient proof, Cameroon's claim that Nigeria had failed to comply with the Court's provisional measures order of March 15, 1996.⁴⁹

Finally, with regard to Cameroon's claims and Nigeria's counterclaims concerning various incidents along the disputed boundary, the Court found that it was unable to uphold either those claims or those counterclaims because neither of the parties had sufficiently proved either the facts that it alleged or the imputability of the incidents to the other party.⁵⁰

* * *

This case is perhaps the most remarkable one in the Court's recent history. Procedurally, the case involves an unprecedented combination of incidental proceedings: provisional measures, preliminary objections, interpretation, counterclaims, and intervention.⁵¹ Of these various proceedings, interpretation and intervention no doubt were the most prominent: the Court never before had been seised of a request to interpret⁵² a judgment on preliminary objections while the related proceedings on the merits were still pending, and no third party ever before had been granted permission to intervene as a nonparty in a case before the full Court. The Court's 1999 judgment declaring inadmissible Nigeria's request for interpretation was its very first judgment that was not preceded by hearings.⁵³

The Judgment contains statements of general interest regarding the evidentiary weight of oil practice in disputed land and maritime areas. As was explained by President Guillaume following the reading of the Judgment, the delimitation effected by the Court for the most part respects existing oil installations and preserves Equatorial Guinea's rights. While the Court found support for Cameroonian sovereignty over the Bakassi Peninsula in the geographic pattern of the oil concessions granted by Cameroon and Nigeria up to 1991, the Judgment made clear that oil licensing was not a cession of territory and that the geographic pattern

⁴⁵ *Id.*, paras. 310–11.

⁴⁶ *Id.*, para. 313 (citing *Temple of Preah Vihear (Cambodia v. Thail.)*, 1962 ICJ REP. 6, 37 (June 15); *Territorial Dispute (Libya/Chad)*, 1994 ICJ REP. 6 (Feb. 3)).

⁴⁷ *Id.*, paras. 314–15, 325(V) (A), (B).

⁴⁸ *Id.*, paras. 318–19.

⁴⁹ *Id.*, para. 322. Oddly, the Judgment contains no operative subparagraph on either this claim or the claim for guarantees of nonrepetition. Contrast this absence with the operative paragraph in *LaGrand (Ger. v. U.S.)* (Int'l Ct. Justice June 27, 2001), para. 128(5), (6).

⁵⁰ See Judgment, *supra* note 5, 323–24, para. 325(V) (D), (E). Remarkably, the Court takes only a single sentence to dispose of the counterclaims in the case. See *id.*, para. 324.

⁵¹ For a summary and review of each of these proceedings, see PIETER H. F. BEKKER, *WORLD COURT DECISIONS AT THE TURN OF THE MILLENNIUM (1997–2001)*, at 103, 137, 185, 189 (2002).

⁵² See 1999 ICJ REP. 31 (Mar. 25).

⁵³ See *id.*

of the licensing did not constitute direct evidence (but served only to corroborate evidence that the Court found elsewhere).⁵⁴ In addition, the Court concluded that the parties' oil practice was not a factor to be taken into account for purposes of maritime delimitation in the instant case. Although the Court agreed with Nigeria that the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled, it made clear that oil concessions and oil wells are not in themselves to be considered as relevant circumstances justifying the adjustment or shifting of a provisional delimitation line. Only if such concessions are based on express or tacit agreement (they were not in this case) "may they be taken into account."⁵⁵

The Judgment also contains significant holdings potentially relevant to long-standing territorial disputes involving occupation of a contested region elsewhere in the world. In connection with Nigeria's claim for historical consolidation of title to certain settlements in the disputed area, the Court noted that the facts of the growth over time in Nigerian population in such settlements, the toponomy of such settlements, and their relationship with Nigeria did not, in themselves, establish title over the disputed territory and could not serve as an element in a claim for historical consolidation of title.⁵⁶

The Court's refusal to award damages to Cameroon for Nigeria's invasion and occupation of Bakassi is regrettable. It is doubtful that Cameroon's injury was sufficiently addressed by the Court's recognition of Cameroon's claims to sovereignty and by its order to evacuate the disputed territories. This point is underscored by the unusually defiant position that Nigeria took in the aftermath of the decision. Specifically, Nigeria engaged in an ad hominem attack on individual members of the Court—in particular, President Guillaume (France) and Judges Higgins (United Kingdom) and Fleischhauer (Germany)—in a manner not seen since the *Nicaragua* case in the 1980s. Nigeria's embassy in Washington, D.C., posted on its Web site the following official reaction of the Nigeria Information Service Centre:

In the instant case, for purely political reasons, the Court, headed by a French President, upheld a legal position which is contrary to all known laws and conventions, thus legitimizing and promoting the interests of former colonial powers at our expense. The French President of the Court and the English and German Judges should have disqualified themselves since the countries which they represent are, in essence, parties to the action or have substantial stakes. These judges, as citizens of the colonial powers whose action had come under scrutiny, have acted as judges in their own cause and thereby rendered the judgment virtually null and void.⁵⁷

More fundamentally, the Nigerian statement also implies a reluctance to implement the Judgment with respect to both the Bakassi Peninsula and the Nigerians living there:

Nigeria thanks all leaders of the international community who have expressed concern over the issue and re-assures them that she will spare no efforts to maintain peace between Nigeria and Cameroon and indeed in the entire region. However, Government wishes to assure Nigerians of its constitutional commitment to protect its citizenry. On no account will Nigeria abandon her people and their interests. For Nigeria, it is not a matter of oil or natural resources on land or in coastal waters; it is a matter of welfare and well-being of her people on their land.⁵⁸

⁵⁴ Judgment, *supra* note 5, para. 215. In the Court's view, Cameroon's granting of hydrocarbon licenses over the Bakassi Peninsula and its waters also evidenced that it had not abandoned its title. *Id.*, para. 223.

⁵⁵ *Id.*, para. 304. See paragraphs 282–83 for the parties' arguments on oil practice.

⁵⁶ *Id.*, para. 221.

⁵⁷ "Nigeria's Reaction to the Judgement of the International Court of Justice at The Hague (Nigeria, Cameroon with Equatorial Guinea Intervening)" (Nov. 7, 2002), at <http://www.nigeriaembassyusa.org/110802_1.shtml>. Through this statement, Nigeria ignored both the ICJ Statute, to which it is a long-standing party, and the system of compulsory jurisdiction that it has accepted since 1965. Pursuant to Article 20, ICJ judges undertake to exercise their powers impartially and conscientiously. The same applies to judges *ad hoc*. According to Article 31, even if a judge has the nationality of a party in a case, he or she retains the right to sit in the case.

⁵⁸ *Id.*

On November 15, 2002, following the delivery of the Judgment, the presidents of Cameroon and Nigeria met in Geneva and asked the UN Secretary-General, who arranged the meeting, to establish a mixed commission comprising representatives from both sides.⁵⁹ This mixed commission, which is chaired by the Secretary-General's special representative for West Africa, is entrusted with the task of demarcating the land boundary between the two states. It is also charged with formulating recommendations on confidence-building measures; developing projects to promote joint economic ventures and cross-border cooperation; overseeing troop withdrawals from relevant areas along the land boundary, as well as the eventual demilitarization of the Bakassi Peninsula; and reactivating the Lake Chad Basin Commission. The mixed commission reportedly held its first formal meeting in Yaoundé (Cameroon) on December 2–3, 2002. It decided to dispatch an assessment mission to the Bakassi Peninsula with a view to grasping the issues related to the countries' disagreement. It also established a subcommission—made up of legal experts and cartographers from Cameroon, Nigeria, and the United Nations—responsible for the demarcation of the land boundary between the two states. This effort could prove to be an important precedent for other inter-African border disputes, including the case between Benin and Niger.

The Court noted at the end of the Judgment that its "implementation . . . will afford the Parties a beneficial opportunity to co-operate in the interests of the population concerned, in order notably to enable it to continue to have access to educational and health services comparable to those it currently enjoys."⁶⁰ In this context, the Court approvingly noted Cameroon's commitment—undertaken at the hearings for the case—that it "will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area."⁶¹ One hopes that the millions of residents affected by the Court's ruling will not be the victims of the political bickering and territorial aspirations of the parties to this case—at least not more than they already have been.

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Title to territory—interpretation of colonial treaties—assessment of effectivités

SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN (INDONESIA/MALAYSIA). At <<http://www.icj-cij.org>>. International Court of Justice, December 17, 2002.

On December 17, 2002, the International Court of Justice (ICJ) rendered its decision in *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia/Malaysia).¹ The case was brought

⁵⁹ The parties' heads of state apparently also met in the presence of the UN Secretary-General regarding the case on September 5, 2002, exactly five weeks prior to the delivery of the Judgment. Remarkably, this meeting is not referred to in the Judgment itself, but only in President Guillaume's Statement to the Press on the day that the Judgment was delivered. (The opening paragraph of Judge Ranjeva's separate opinion does refer to the meeting.) This situation differs markedly from the approach followed by the Court's chamber in the 1986 *Frontier Dispute* case. In addition to noting with satisfaction that the heads of state of Burkina Faso and Mali had agreed in a communiqué "to withdraw all their armed forces from either side of the disputed area and to effect their return to their respective territories," the chamber stated that it was "happy to record the adherence of both Parties to the international judicial process and to the peaceful settlement of disputes." *Frontier Dispute* (Burk. Faso/Mali), 1986 ICJ REP. 554, para. 178 (Dec. 22). As Nigeria's post-judgment remarks make clear, it would have been helpful if the Court had included at least the latter statement in its Judgment.

⁶⁰ Judgment, *supra* note 5, para. 316.

⁶¹ *Id.*, paras. 317, 325(V)(C).

¹ *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indon./Malay.) (Int'l Ct. Justice Dec. 17, 2002) [hereinafter Judgment]. The decisions, pleadings, and basic documents of the International Court of Justice are available online at <<http://www.icj-cij.org>>. On March 13, 2001, the Philippines filed an application for permission to intervene. The Philippine application concerned historical claims that it maintains in North Borneo. By a judgment of October 23, 2001, the Court denied the application.