

LAND AND MARITIME BOUNDARY BETWEEN CAMEROON AND NIGERIA

(Cameroon v Nigeria; Equatorial Guinea Intervening)¹

I. GEOGRAPHICAL CONTEXT²

Cameroon and Nigeria are found on Africa's west coast. Their land boundary extends from Lake Chad in the north to Bakassi Peninsula in the south. Their coastlines are adjacent in the Gulf of Guinea. Four states (Cameroon, Chad, Niger and Nigeria) border Lake Chad whose waters have varied greatly over time.

In the north, the land boundary between Cameroon and Nigeria passes through hot dry plains around Lake Chad at an altitude of about 300 metres. It then passes through mountains, cultivated high ground or pastures watered by various rivers and streams before descending in stages to areas of savannah and forest until it reaches the sea. The coastal region where the southern part of the land boundary ends is Bakassi Peninsula situated in the hollow of the Gulf of Guinea. The River Akwayafe bounds it to the west and the Rio del Rey to the east. It is an amphibious environment, characterised by plenty of water, fish stocks and mangrove vegetation. The Gulf of Guinea, lying concave at the level of the Cameroonian and Nigerian coastlines, is bound by other states including Equatorial Guinea whose Bioko Island lies opposite the disputed coastlines.

II. CHRONOLOGY OF EVENTS³

29 March 1994 – Cameroon instituted proceedings against Nigeria following a dispute mainly on the sovereignty of Bakassi Peninsula caused by an incomplete maritime boundary delimitation originally fixed in 1975. Later attempts to address this issue were not successful, leading to incidents between them. Its application relied on the parties' declarations under Article 36(2) of the Court's Statute to found the Court's jurisdiction.

¹ This case is based on the judgment of the Court available at <www.icj-cij.org>; also refer [2002] International Court of Justice Reports (forthcoming).

² See Judgment para 30.

³ See generally Judgment paras 1-29.

6 June 1994 – Cameroon filed an additional application concerning another dispute on the sovereignty over part of Cameroon in the Lake Chad area. It asked the Court to fix the boundary between the parties from Lake Chad to the sea and to join both applications into one.

16 June 1994 – The Court allowed Cameroon's request to join the applications after the Court's President and the parties met.

11 June 1998 – The Court held that Cameroon's requests were admissible. It found that it had jurisdiction to adjudicate the merits of the case and rejected Nigeria's seven preliminary objections. In relation to the eighth, the Court declared that since it did not have an exclusively preliminary character it could be dealt with later in the judgment on the merits. Following this judgment, Nigeria filed counter-claims.

28 October 1998 – Nigeria asked for the interpretation of the above judgment on the preliminary objections. This request took the form of a new case separate from the present proceedings. It was the first time the Court would rule on such a request for interpretation while the proceedings on the merits were still pending.

25 March 1999 – The Court ruled that Nigeria's request for interpretation was inadmissible.

30 June 1999 – The Court declared Nigeria's counter-claims to be admissible.

21 October 1999 – The Court permitted Equatorial Guinea to intervene in the case to the extent, in the manner and for the purposes set out in its application. Equatorial Guinea had established that its legal interest could be affected by the Court's determination on the maritime boundary between Cameroon and Nigeria.

18 February to 21 March 2002 – Public hearings were held and oral arguments heard.

10 October 2002 – The Court delivered its judgment on the merits of the case.

III. INTERVENTION BY EQUATORIAL GUINEA

On 30 June 1999, Equatorial Guinea, without seeking to become a party to the proceedings *per se*, sought permission to intervene in the case under Article 62 of the Court's Statute to protect its legal rights in the Gulf of Guinea and to inform the Court of its rights and interests *vis a vis* the maritime boundary claims. It asked the Court *inter alia*.⁴

...not to delimit a maritime boundary between Cameroon and Nigeria in areas lying closer to Equatorial Guinea than to the coasts of the two Parties or to express any opinion which could prejudice our interests in the context of our maritime boundary negotiations with our neighbours...Safeguarding the interests of the third State in these proceedings means that the delimitation between Nigeria and Cameroon decided by the Court must necessarily remain to the north of the median line between Equatorial Guinea's Bioko Island and the mainland.

IV. THE CLAIMS⁵

The history of the land boundary in dispute dated back to the 19th and early 20th centuries involving: (1) Africa's partitioning by the European powers; (2) changes in the status of relevant territories under the League of Nations mandate system followed by the United Nations trusteeship system; and (3) the territories' accession to independence. However, the dispute concerning the delimitation of the maritime boundary was more recent involving many international instruments. To address the disputes on delimitation and territorial sovereignty, the Court divided the issues as follows:⁶

- (a) boundary line in the Lake Chad area;
- (b) land boundary from Lake Chad to Bakassi Peninsula;
- (c) boundary in Bakassi and sovereignty over Bakassi Peninsula;
- (d) maritime boundary between Cameroon and Nigeria; and
- (e) state responsibility.

⁴ See generally Section V of the Judgment.

⁵ For the historical background in summary see *ibid* paras 31-38.

⁶ *Ibid*.

(a) *Boundary Line in the Lake Chad Area*⁷

To establish the boundary in this area, the Court had to (i) examine whether the 1919 Milner-Simon Declaration and later instruments on delimitation had created a binding boundary and (ii) address Nigeria's claim based on the historical consolidation of its claim.

(i) *Creation of a Binding Boundary*⁸

Cameroon argued that the instruments creating the binding boundary in the Lake Chad area were the 1919 Milner-Simon Declaration ("1919 Declaration") and the 1929-1930 Thomson-Marchand Declaration as incorporated in the 1931 Henderson-Fleuriau Exchange of Notes, including maps ("1929-1930 Declaration"). Nigeria, on the other hand, argued that there was no fully delimited boundary but through the historical consolidation of title and the acquiescence of Cameroon, it obtained title over the areas including 33 named settlements.

The Court found that the 1919 Declaration and the 1929-1930 Declaration delimited Cameroon and Nigeria in the Lake Chad area. This left two other questions to be examined, namely, (1) the precise location of the longitudinal co-ordinate of the Cameroon-Nigeria-Chad tripoint in Lake Chad and (2) the question of the mouth of River Ebeji. After examining the Declarations and the maps, the Court held that they envisaged only one "mouth of the Ebeji". Taken with other factors as described, it concluded that the mouth was the point from where the boundary should run in a straight line to the point where the River Ebeji bifurcated into two branches.

(ii) *Historical Consolidation of Title claimed by Nigeria*⁹

Nigeria based its claim to sovereignty on its presence in certain areas of Lake Chad and certain named villages. It explained that the villages were established either on what had become the dried up lakebed, or on islands either surrounded by water perennially or which appeared in the wet season only. Nigeria rested its claim on three bases:

⁷ Ibid paras 40-70.

⁸ Ibid paras 41-55.

⁹ Ibid paras 62-70.

- (1) long occupation by Nigeria and by its nationals constituting an historical consolidation of title;
- (2) effective administration by Nigeria acting as sovereign and the absence of protest; and
- (3) manifestations of sovereignty by Nigeria and Cameroon's acquiescence concerning Nigerian sovereignty over Darak and associated Lake Chad villages.

On the other hand, Cameroon claimed it held title to the disputed areas by convention. As such, it need not show its effective exercise of sovereignty over those areas because a valid conventional title prevailed over any contrary *effectivités*. During the oral pleadings it argued that Nigerian *effectivités* were *contra legem*. However, the Court held that since it had now made its findings on the boundary in the Lake Chad area, it followed that any Nigerian *effectivités* had to be evaluated for their legal consequences as acts *contra legem*.

The Court noted that the theory of historical consolidation was highly controversial and could not replace the established modes of acquisition of title under international law that considered many other important variables of fact and law. The facts and circumstances Nigeria presented spanned some 20 years only, which was far too short even according to the theory it relied upon. The Court found that although some of Nigeria's activities, such as in public health, education, policing and administration of justice, could normally be deemed to be acts *à titre de souverain*, Cameroon held a pre-existing title in the area disputed. Therefore, the pertinent legal test was whether evidence existed to show Cameroon agreed to pass its title to Nigeria. Since there was none, Nigeria's arguments were rejected on this point.

To consider the legal relationship between *effectivité* and title, the Court referred to its previous rulings on this issue. In *Frontier Dispute* (Burkina Faso/Mali), it stated that a distinction should be drawn among several eventualities. If the act did not correspond to the law, preference should go to the titleholder even if the other claimant, relying on *effectivité*, could show that it had administered the disputed territory effectively. Only where *effectivité* did not co-exist with a legal

title could it be considered.¹⁰ Since Cameroon held the legal title to territory east of the boundary as fixed by applicable instruments, its activities in that area were only pertinent to determine if it had agreed to a change to that title, which could not be wholly precluded as a possibility in law. As there was no such evidence to show that Nigerian *effectivités* corresponded to the law, the Court gave preference to Cameroon as titleholder.

(b) Land Boundary from Lake Chad to Bakassi Peninsula¹¹

After examining the question of delimitation in the Lake Chad area, the Court considered the course of the land boundary from that lake to Bakassi Peninsula.¹²

(i) Relevant instruments

The Court noted that the parties had accepted that the instruments below delimited the land boundary between their territories from Lake Chad onwards with the exception of the provisions on Bakassi found in Articles XVIII *et seq* in the 11 March 1913 Agreement:

- (1) the Thomson-Marchand Declaration (incorporated in the 1931 Henderson-Fleury Exchange of Notes);
- (2) British Order in Council of 2 August 1946; and
- (3) two Anglo-German Agreements signed on 11 March and 12 April 1913 respectively.

The Court also noted that the parties still appeared unable to agree on what its precise task should be regarding the land boundary sectors in dispute at various stages of the proceedings, either because the relevant instruments of delimitation were claimed to be defective or because the interpretation of those instruments was disputed.

The parties argued at length the difference between delimitation and demarcation and the Court's power to carry out either act. In

¹⁰ [1986] International Court of Justice Reports 587 para 63; Territorial Dispute (Libya/Chad) [1994] International Court of Justice Reports Reports 75-76 para 38.

¹¹ Judgment paras 71-192.

¹² *Ibid* paras 72-86.

*Territorial Dispute (Libya/Chad)*¹³ the Court held that delimitation of a boundary consisted in its “definition”, whereas the demarcation of a boundary, which presupposes its prior delimitation, consisted of operations marking it out on the ground. In the present case, the parties had acknowledged the existence of the instruments and their validity for delimiting their respective territories. As such, the Court’s task was not to delimit the boundary *de novo* or demarcate it.

The parties had insisted consistently that they did not want the Court to demarcate because they themselves would do this later. Instead, Cameroon asked the Court “to specify definitively” the course of the land boundary as fixed by the relevant instruments. The Court held that as the instruments had already delimited the land boundary, in order to specify the course definitively, it needed to confirm if the instruments were binding. To confirm if the instruments’ actual content was the subject of the dispute, it had to examine them more closely before it could specify the course of the boundary definitively. In fact, the dispute over certain points on the land boundary was simply on the interpretation or application of certain provisions of the instruments delimiting that boundary. It was this dispute that the Court would rule on but to do so it had to address in succession each disputed point.¹⁴

(c) *Boundary in Bakassi and Sovereignty over Bakassi Peninsula*¹⁵

(i) *Boundary in Bakassi*

Cameroon argued that the 1913 Anglo-German Agreement fixed the boundary in Bakassi Peninsula placing it on the German side of the boundary. Cameroon relied on Articles XVIII-XXI adding that when

¹³ [1994] International Court of Justice Reports 28 para 56.

¹⁴ They were: Limani (paras 87-91); Keraua/Kirewa/Kirawa River (paras 92-96); Kohom River (paras 97-102); watershed from Ngosi to Humsiki (Roumsiki)/ Kamale/Turu (the Mandara Mountains) (paras 103-114); from Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel’s map) (paras 115-119); Kotcha/Koja area (paras 120-124); source of the Tsikakiri River (paras 125-129); line of boundary passing through three beacons (from Beacon 6 to Wamni Budungo) (paras 130-134); Maio Senche area (paras 135-139); Jimbare and Sapeo (paras 140-146); Nounberou-Banglang (paras 147-152); Mayo Tipsan (paras 153-155); crossing the Maio Yin (paras 156-160); Hambere Range area (paras 161-168); from Hambere Range to Mburi River (Lip and Yang) (paras 169-179); and Bissaula-Tosso (paras 180-184).

¹⁵ Judgment paras 193-225.

Cameroon and Nigeria acceded to independence the boundary continued between them as successor states to the colonial powers under the *uti possidetis* principle.

Nigeria did not contest the meaning of those Articles allocating Bakassi Peninsula to Germany. However, it insisted that they never became effective and on the contrary were invalid on various grounds. It argued that title to sovereignty over Bakassi on which it relied was originally vested in the Kings and Chiefs of Old Calabar. It stated that the 1884 Treaty of Protection between them and Britain only conferred certain limited rights on Britain without any transfer of sovereignty over their territories to Britain. Since Britain did not have sovereignty over those territories in 1913, it could not cede them to a third party.

Responding, Cameroon argued that the Treaty had established a “colonial protectorate” and as was the practice then “there was little fundamental difference at international level, in terms of territorial acquisition, between colonies and colonial protectorates.” Any substantive differences between the status of colony and colonial protectorates were domestic law matters of the colonial powers and not international law. The key element of the colonial protectorate was the “assumption of external sovereignty by the protecting State” shown mainly through “the acquisition and exercise of the capacity and power to cede part of the protected territory by international treaty, without any intervention by the population or entity in question.”

Addressing those arguments, the Court noted that during the Congress of Berlin, European powers entered into many treaties with local rulers in the Niger delta including the 1884 Treaty. However, the treaty did not specify the territory to which Britain was to extend “gracious favour and protection” nor did it indicate the territories over which each of the Kings and Chiefs as signatory could exercise powers. The Court therefore found that Britain had a clear understanding of the area ruled at different times by the Kings and Chiefs and their standing.

Nigeria had contended that the very title of the Treaty and the reference in Article I to “protection” showed that Britain’s only entitlement was to protect. As such, it could not cede the territory concerned to third States under the principle *nemo dat quod non habet*.

In response, the Court stated that the international legal status of a "Treaty of Protection" entered into under the applicable law then could not be deduced from the title alone. Some treaties of protection were entered into with entities that retained a previously existing sovereignty under international law. This was the case whether the protected party was a "*protectorat*" or "a protected State". In sub-Saharan Africa, treaties labelled "treaties of protection" were signed not with states but with important indigenous rulers exercising local rule over identifiable areas of territory. Ruling on a similar treaty, Arbitrator Huber in *Island of Palmas* explained that such a treaty was not an agreement between equals but "a form of internal organisation of a colonial territory, on the basis of autonomy of the natives...And thus suzerainty over the native States [became] the basis of territorial sovereignty as towards other members of the community of nations."¹⁶

The Court noted that those concepts were expressed in its Advisory Opinion on *Western Sahara* where it stated that in territories that were not *terra nullius* but inhabited by tribes or people having a social and political organisation, "agreements concluded with local rulers...were regarded as derivative roots of title".¹⁷ Even if this mode of acquisition did not reflect current international law, the principle of inter-temporal law required that the legal consequences of treaties concluded then in the Niger delta be given effect today. In fact, the Court found that many factors showed that the treaty did not create an international protectorate. For example:

- (1) Nigeria was unable to point to any relevant role played by the Kings and Chiefs of Old Calabar after the Treaty was signed.
- (2) A characteristic of an international protectorate was ongoing meetings and discussions between the protecting power and the rulers of the protectorate but Nigeria showed no such evidence.
- (3) There was no reference to Old Calabar in the various British Orders in Council listing its protectorates and protected states.
- (4) There was no evidence of any protest in 1913 by the Kings and Chiefs of Old Calabar or any action by them to pass territory to Nigeria as it emerged to independence in 1960.

¹⁶ (1928) Report of International Arbitral Awards, Volume II at 858-859.

¹⁷ [1975] International Court of Justice Reports 39 para 80.

Consequently, the Court concluded that under the law at the time, Britain was in a position to determine its boundaries with Germany in respect of Nigeria including in the southern section.

(ii) Sovereignty over Bakassi Peninsula

To determine sovereignty over Bakassi Peninsula, the Court had to examine the treatment of the southern sector of the boundary as defined by the 1913 Anglo-German Agreement during 1913-1960.

Cameroon argued during the mandate and trusteeship periods and the subsequent independence process, that the international community had recognised its attachment to Bakassi Peninsula. On the other hand, Nigeria argued that when the Treaty was in force, Britain lacked the power to give Bakassi away. As such, no amount of British activity concerning Bakassi during the periods claimed could have severed Bakassi from Nigeria's protectorate.

The Court addressed those arguments by first referring to Germany renouncing its colonial possessions after World War I. Under the 1919 Treaty of Versailles, German possessions in Cameroon were divided between Britain and France. In 1922, Britain accepted the League of Nations mandate for the German colony of Cameroons west of the line drawn in the 1919 Milner-Simon Declaration, which included Bakassi. After World War II and the creation of the United Nations, although the mandate converted to a trusteeship the territorial situation remained the same. Thus, from 1922-1961 when the trusteeship ended, Bakassi fell within British Cameroon and the boundary between Bakassi and Nigeria remained an international boundary. As a result, when Nigeria could not produce any or sufficient evidence in support of its claim and in light of the above reasons, the Court rejected Nigeria's claim adding that neither the practice of the League of Nations nor the United Nations supported Nigeria's position. Further, the 1913 Anglo-German Agreement was valid and wholly applicable.

Nigeria had other claims to Bakassi that relied upon three distinct but interrelated bases of title over the Peninsula.

In the first instance, Nigeria emphasised that its title based on historical consolidation and Cameroon's acquiescence in the period since its

independence were sufficient to found its title to Bakassi. It argued that its long occupation and that of its nationals showed historical consolidation of title and confirmed the original title of the Kings and Chiefs of Old Calabar, which title vested in Nigeria on independence in 1960. Cameroon disagreed stating that a legal treaty title could not be displaced by what was more than a number of alleged *effectivités*.

Addressing Nigeria's arguments the Court referred to its earlier findings above and added that at the time of Nigeria's accession to independence it had no title capable of being confirmed later by "long occupation". It held that invocation of the theory of consolidation of historic titles could not vest title to Bakassi in Nigeria because its "occupation" of the peninsula was adverse to Cameroon's prior treaty title and its possession has been for a limited period only. On the contrary, on the date of its independence Cameroon succeeded to title over Bakassi as established by the 1913 Agreement.

The Court dealt with the second and third instances together. The former concerned Nigeria's claim to sovereign/peaceful possession and the lack of protest from Cameroon while the latter concerned Nigeria's manifestations of sovereignty over Bakassi Peninsula and Cameroon's acquiescence again.

The legal question on whether *effectivités* suggested that title was founded in one state to the exclusion of another was not the same as whether such *effectivités* could displace an established treaty title. The Court made it clear in *Frontier Dispute* (Burkina Faso/Mali) that where a conflict existed between title and *effectivités*, the former would be preferred.¹⁸ In the present proceedings, the more relevant legal question was whether Cameroon's conduct as titleholder could be deemed to be acquiescence in the loss of its treaty title inherited upon independence.

The Court added that in 1961-1962, Nigeria clearly and publicly recognised Cameroon's title to Bakassi, which continued until at least 1975 when Nigeria signed the Maroua Declaration. No Nigerian *effectivités* in Bakassi before then could be said to demonstrate Nigeria's title, which could partly explain the absence of Cameroon protests regarding health, education and tax activity in Nigeria. The

¹⁸ [1986] International Court of Justice Reports 586-587 para 63.

Court also noted that Cameroon had since its independence engaged in activities that made it clear that it did not abandon its title to Bakassi.

Therefore, the above showed that Nigeria could not have been acting *à titre de souverain* before the late 1970s as it did not deem itself to have title over Bakassi. In the ensuing period, the evidence also did not indicate Cameroon's acquiescence to abandon its own title in favour of Nigeria. For these reasons, the Court could not accept Nigeria's second and third bases of title to Bakassi instead finding that the Cameroon/Nigeria boundary in Bakassi had been delimited and that Cameroon had sovereignty in the peninsula.

(d) Maritime Boundary between Cameroon and Nigeria¹⁹

In its final oral submissions, Cameroon asked the Court to confirm that the maritime boundary appertaining respectively to Cameroon and Nigeria took into account the course it claimed. On the other hand, Nigeria asked the Court to refuse Cameroon's request because it would affect areas claimed by third States (note the eighth preliminary exception) and the requisite prior negotiations had not occurred.

The Court dealt with Nigeria's arguments first and recalled that it had to deal with the eighth preliminary objection pursuant to its judgment on 11 June 1998, which objection Nigeria continued to maintain. It observed that since its jurisdiction was founded on the consent of the parties, it could not rule on the legal rights of third states not parties to the proceedings. In the present case, there were states besides Cameroon and Nigeria whose rights could be affected, namely, Equatorial Guinea and Sao Tome and Principe. Although Equatorial Guinea had requested and was granted permission to intervene, it was not a party *per se* but only a non-party intervener. On the other hand, Sao Tome and Principe had chosen not to intervene at all.

The Court stated that in the case of delimitations where the maritime areas of several states were involved, the protection of third party legal rights under Article 59 of the Court's Statute could be insufficient. Nonetheless, the mere presence of such states whose rights might be affected by the Court's decision did not in itself preclude the Court

¹⁹ Judgment paras 226-307.

from having jurisdiction over a maritime delimitation, as long as it was mindful of the limitations on its jurisdiction imposed by that presence. Therefore, in fixing the maritime boundary between Cameroon and Nigeria the Court had to ensure that it did not affect Equatorial Guinea and/or Sao Tome and Principe.

Nigeria further argued that Articles 74(1) and 83(1) of the 1982 Convention on the Law of the Sea required disputing parties to attempt resolving their maritime disputes by negotiation first, as the prescribed primary method for equitable maritime delimitation. The Articles had established a substantive rule, not a procedural prerequisite and the Court was not a forum for negotiations. Further, as far as it was aware, there had been no attempt to negotiate.

Addressing the arguments, the Court pointed out that in its judgment of 11 June 1998 it had noted that the negotiations between Cameroon and Nigeria on the entire maritime delimitation went as far back as the 1970s, which had been unsuccessful. In fact, Articles 74 and 83 did not require the negotiations to be successful as long as they were held in good faith. Although it was true that the Court was not a negotiating forum, in such a situation the new claim would have to be dealt with exclusively by judicial means.

Even if judicial proceedings were instituted after unsuccessful negotiations were held and a party altered its claim as a result, those Articles did not require the proceedings to be suspended while new negotiations were conducted. The 1982 Law of the Sea Convention did not require such a suspension and any other solution would lead to delays and complications in the delimitation process of the continental shelves and exclusive economic zones. Further, those Articles did not preclude the Court from delimiting without prior simultaneous negotiations between Cameroon, Nigeria, Equatorial Guinea and Sao Tome and Principe. Consequently, the Court found that it could proceed to delimit the maritime boundary as long as the rights of Equatorial Guinea and Sao Tome and Principe were unaffected.

[The Court also had to consider the maritime boundary up to point G and beyond it to determine the boundary of the maritime areas.]

(e) State Responsibility²⁰

The Court rejected the parties' claims on state responsibility because the injury Cameroon suffered when Nigeria occupied its territory had been sufficiently addressed elsewhere in the judgment. In any case, there was inadequate evidence to support the allegations or their imputability to the other party.

When addressing the claims and counter claims on state responsibility the Court found that the parties had an obligation to expeditiously and unconditionally withdraw from areas under the other's sovereignty. In other words, Nigeria had to withdraw from areas of Lake Chad and Bakassi Peninsula while Cameroon had to withdraw from areas along the land boundary from Lake Chad to the Peninsula.

The parties were also required to cooperate to implement Cameroon's undertaking to protect Nigerians living in those areas. This extended to maintaining the existing educational and health services that were, in turn, deemed especially helpful to maintain security when the Nigerian administration and military and police forces had to withdraw.²¹

On Cameroon's additional submissions on guarantees of non-repetition in the future, the Court rejected them because it could not envisage a situation where either party would fail to respect the territorial sovereignty of the other now that their land and maritime boundary had been specified in definitive and mandatory terms in this judgment.

²⁰ Judgment paras 308-324.

²¹ Cameroon had stated that more than 3 million Nigerians lived in Cameroon where they engaged in various activities without restriction and were well integrated into Cameroonian society pursuant to Cameroon's traditional policy of hospitality and tolerance: *ibid.*