

III. LAND AND MARITIME BOUNDARY BETWEEN CAMEROON
AND NIGERIA (*CAMEROON v NIGERIA:: EQUATORIAL GUINEA
INTERVENING*), MERITS, JUDGMENT OF 10 OCTOBER 2002¹

A. Introduction

On 10 October 2002 the International Court of Justice gave its decision on the merits in the case brought by the Republic of Cameroon against the Federal Republic of Nigeria over their land and maritime boundary. The judgment, which addresses a number of issues of general international law concerning maritime boundaries and territorial sovereignty, as well as providing a detailed treatment of the particular facts, concludes a case that began in 1994 and has had an unusual history. As this background had a significant bearing on the eventual outcome, a brief recapitulation may be useful.

The proceedings, initiated by Cameroon in March 1994 by application, originally concerned a disputed area known as the Bakassi Peninsula, together with the maritime boundary between Cameroon and Nigeria. As the foundation for the Court's jurisdiction, Cameroon relied on declarations by the two states made under Article 36(2) of the Statute of the Court (the optional clause). In an additional application in June, Cameroon asked the Court 'to specify definitively' the whole of the frontier between the parties from Lake Chad to the sea, and, as in the original application, again sought reparation for alleged damage. The Court then joined the two applications so that it could deal with them as a single case. As neither state had a judge of its nationality on the bench, Cameroon chose Mr Keba Mbaya and Nigeria Mr Bola Ajibola to sit as *ad hoc* judges in accordance with Article 31(3) of the Statute.

In February 1996 Cameroon submitted a request for the indication of provisional measures of protection under Article 41 of the Statute and in the following month the Court made an order indicating certain measures.² Meanwhile, Nigeria had filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of the case which were dealt with in a judgment in 1998.³ Four months after the Court's decision Nigeria requested an interpretation of that judgment under Article 60 of the Statute, but in a further judgment in March 1999 the request was ruled inadmissible.⁴ On another procedural point, however, Nigeria was more successful. In its Counter-Memorial Nigeria raised a number of counter-claims relating to alleged border incursions by Cameroon, and in an order in June 1999 the Court decided that these were admissible and should form part of the proceedings in the case.⁵

One of the objections to admissibility considered in the Court's 1998 judgment related to the maritime boundary which Nigeria claimed could not be determined without

¹ *Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)*, Judgment of 10 Oct 2002, ICJ Rep 2002. For the text see the Court's website which also contains a comprehensive summary of the judgment in Press Release 2002/26 bis.

² See the Court's Order of 15 Mar 1996, ICJ Rep 1996, 13 and the author's case note in (1997) 46 *ICLQ* 676.

³ See the Court's Judgment of 11 June 1998, ICJ Rep 1998, 275 and the author's case note in (1999) 48 *ICLQ* 651.

⁴ See the Court's Judgment of 25 Mar 1999, ICJ Rep 1999, 31 and the above case note at 657–8.

⁵ See the Court's Order of 30 June 1999, ICJ Rep 1999, 24 and the author's case note in (2000) 49 *ICLQ* 720 at 723.

involving the rights and interests of third states bordering on the Gulf of Guinea. The Court, however, found that to decide whether such rights and interests would actually be affected by its judgment, it would first have to hear argument on the substantive issues. It therefore decided that this objection should be joined to the merits and at the same time drew attention to the opportunity for third states to intervene provided by Article 62 of the Statute. Responding to this hint, one of the states concerned, Equatorial Guinea, applied to intervene in the case in June 1999 and the Court in October made an order allowing the intervention 'to the extent, in the manner and for the purposes set out in its Application'.⁶ On the basis of this authorisation Equatorial Guinea was able during the proceedings on the merits to provide the Court with details of its boundary claim and to take part in the oral hearings.

Deciding this case required the Court to consider arguments on many specific points, but the subject matter of the dispute concerned three broad issues. The first was the location of the land boundary between Cameroon and Nigeria which called for examination of the relevant colonial history and an assessment of the parties' conduct. Secondly, there was the maritime boundary, where the Court had both to rule on its competence to decide the issue and take account of the position of Equatorial Guinea. And thirdly, there were the questions of state responsibility raised by Cameroon's claims and Nigeria's counter-claims. The Court began by considering the land boundary which for legal purposes could be divided into three sectors.

B. The Land Boundary

1. The Lake Chad Area

For the northern sector of the boundary, in the area near Lake Chad, the main issue was whether various instruments dating from the colonial era had delimited the boundary, as Cameroon submitted, or whether, as Nigeria argued, there was no fully delimited boundary in this area, leaving scope for the latter to acquire title by historical consolidation in conjunction with Cameroon's acquiescence.

Reviewing the historical evidence, the Court found that the main instrument invoked by Cameroon, the Milner-Simon Declaration of 1919, was an international agreement between France and Great Britain defining the frontier between their respective colonial possessions. Its legal effect was confirmed in Article 1 of the Mandate conferred on Great Britain by the League of Nations in 1922 and subsequently given detailed application in further agreements. Noting that when Nigeria achieved its independence no suggestion was made that the frontier had still to be delimited, the Court found further confirmation of its settled character in the work of the Lake Chad Basin Commission (LCBC), which from 1983 to 1991 had been engaged in demarcation on the basis of the relevant instruments.⁷

The Court's ruling that the Lake Chad area had already been delimited left just two points of detail to be resolved. The first was the location of the Cameroon-Nigeria-Chad tripoint in Lake Chad and the other was the location of 'the mouth of the Ebeji'. As points arising from the delimitation agreements needing to be clarified, both issues had been addressed by the LCBC which had expressed its views. Although these were

⁶ See the Court's Order of 21 Oct 1999, ICJ Rep 1999, and the author's case note n 5 above.

⁷ See paras 41–55 of the judgment.

not binding on Nigeria, the Court, having examined the evidence, agreed with the Commission's reasoning and adopted its conclusions.⁸

Where, then, did this leave Nigeria's claim based on historical consolidation, effective administration and Cameroon's alleged acquiescence? Cameroon maintained that as the holder of a treaty title to the disputed areas, it had no need to show that its sovereignty had been effectively exercised and the Court agreed. Casting doubt on the whole idea of historical consolidation as a basis of title and explaining that its findings that the frontier had been delimited meant that the consequences of any Nigerian *effectivités* fell to be evaluated as acts *contra legem*, the Court ruled that the only question was whether Cameroon, holding an established title, might be said to have acquiesced in its passing to Nigeria.⁹ Finding, however, that there was no evidence of acquiescence, the Court decided that sovereignty in this sector of the frontier remained with Cameroon.¹⁰

2. *From Lake Chad to the Bakassi Peninsula*

For the longest sector of the boundary, running from the Lake Chad area almost to the sea, Cameroon and Nigeria were agreed that instruments dating from the colonial era already provided for delimitation. However, a number of points of detail concerning the effect of those instruments had to be decided, along with the preliminary issue of what the application meant when it asked the Court 'to specify definitively' the course of the land boundary. On this general point the Court decided that its task was to interpret or apply any disputed provisions. This it then proceeded to do by examining this part of the boundary section by section.

No purpose would be served by examining this part of the judgment in detail. It will suffice to note that the problems encountered in determining this section of the boundary were of a type which will be familiar to anyone with experience of disputes involving imprecise agreements from Africa and elsewhere. The Court, for example, had to decide what was meant by a reference to 'a river' in a place with several rivers;¹¹ how the 'source' of a river was to be interpreted when the river in question has several sources;¹² the meaning of a reference to 'a fairly prominent' peak;¹³ the location of a watershed;¹⁴ the identity of points defined by reference to three beacons, at least two of which had disappeared;¹⁵ and so on. All these and other similar questions the Court resolved for the benefit of the parties by means of a careful study of the documents and a healthy dose of common sense.

⁸ See paras 56–61 of the judgment.

⁹ On the legal relationship between *effectivités* and titles the Court here recalled its observation in the Burkina Faso/Mali *Frontier Dispute* case that 'Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing legal title, preference should be given to the holder of the title', ICJ Rep 1986, 587, para 63.

¹⁰ See paras 62 to 70 of the judgment.

¹¹ See paras 87–91 of the judgment, dealing with the Limani area.

¹² See paras 125–9 of the judgment, dealing with the Tsikakiri River.

¹³ See paras 161–68 of the judgment, dealing with the Hambere Range area.

¹⁴ See paras 135–9 of the judgment, dealing with the Maio Senche area.

¹⁵ See paras 130–4 of the judgment, dealing with the boundary between Beacon 6 and Wamni Budungo.

3. Sovereignty over the Bakassi Peninsula and the Boundary in this Area

The last part of the disputed land boundary concerned the section to the coast, where sovereignty over the Bakassi Peninsula was also in issue. In many respects this question lay at the heart of the case as it will be recalled that Cameroon's original application identified the dispute as essentially one relating to sovereignty over Bakassi, with the maritime boundary as a further question and it was only later, in Cameroon's additional application, that the issues concerning the other sections of the land boundary were introduced. The fact that politically the Bakassi Peninsula was certainly the most sensitive territory for the two parties made the Court's treatment of this part of the case particularly important.

Cameroon's argument was very simple. It was that in 1913 an Anglo-German Agreement fixed the boundary between the two colonial powers in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary, with the result that when Nigeria and Cameroon became independent, it became part of Cameroon in accordance with the principle of *uti possidetis*. Nigeria's argument was more subtle. Whilst recognising that the 1913 treaty intended to allocate the Bakassi Peninsula to Germany, Nigeria maintained that it could not do so because at the time Great Britain had no sovereignty over the area which it was capable of transferring by cession. This was because, according to Nigeria, the Treaty of Protection of 1884 concluded between Great Britain and the Kings and Chiefs of Old Calabar, and from which British rights over Bakassi derived, conferred only certain limited rights and in no way transferred sovereignty. Consequently, sovereignty over Bakassi remained with the Kings and Chiefs of Old Calabar with the result that throughout the colonial period the area remained a protectorate of Nigeria. Accordingly, when Nigeria became independent in 1961, it acquired Bakassi as part of its territory.

To evaluate these arguments the Court began by considering the status and effect of the 1884 Treaty. Observing that some treaties of protection created protected States, which retained their sovereignty in international law, whilst others were essentially a means of acquiring territorial title,¹⁶ the Court found that all the evidence pointed to the 1884 Treaty as falling into the second category. In particular, the absence of any indications that the Kings and Chiefs of Old Calabar had been treated as rulers of a protected State, or had acted as such, was highly significant. There was therefore good reason to accept Cameroon's view of the territorial consequences of the 1913 Anglo-German Agreement.

Confirmation of the conclusion that sovereignty over Bakassi had been ceded was to be found in the treatment of the southern sector of the boundary in the period from 1913 to 1960 which the Court examined next. Here it accepted Cameroon's argument that throughout the mandate and trusteeship period and during the subsequent independence process, Bakassi had been regarded by the international community as forming part of Cameroon. Thus when Germany renounced its colonial possessions and Great Britain in 1922 accepted the League of Nations mandate for part of Cameroon, Bakassi was necessarily included. Likewise, when the mandate was converted to a

¹⁶ Here the Court quoted the view of the arbitrator in the *Island of Palmas* case that in this second type of case 'suzerainty over the native States becomes the basis of territorial sovereignty towards other members of the community of nations' (RIAA Vol II, 858-9), and also its own observation in the *Western Sahara* case that agreements with local rulers may provide 'derivative roots of title', ICJ Rep 1975, 39, para 80.

trusteeship after the Second World War. Nigeria, for its part, had acknowledged the frontier line when the trusteeship was terminated and in many other acts since independence had accepted that Bakassi belonged to Cameroon. In the light of all this evidence the Court concluded that the Anglo-German Agreement of 1913 was valid and applicable in its entirety.

One further matter remained to be dealt with. As well as questioning Cameroon's title and challenging the effect of the 1913 Treaty, Nigeria had put forward its own claim to Bakassi, relying on 'three distinct but interrelated bases of title', namely: long occupation of Nigeria constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar; peaceful possession by Nigeria and an absence of protest by Cameroon; and manifestations of sovereignty by Nigeria, together with acquiescence by Cameroon. Cameroon, on the other hand, argued that a legal treaty title could not be displaced by what it regarded as no more than a number of alleged *effectivités*.

The legal issue here, as Cameroon's response made clear, was similar to the issue the Court had already considered when dealing with the Lake Chad area, and, not surprisingly, the Court dealt with it in an identical way. Noting that in view of the Court's findings in relation to the Treaty of 1884, on the date of its independence Cameroon succeeded to title over Bakassi, as established by the Agreement of 1913, the Court held that consequently consolidation could not vest title in Nigeria since the occupation on which it was based was adverse to Cameroon's prior treaty title. Similarly, the effect of any *effectivités* depended on whether they could be said to have displaced an established treaty title.¹⁷ Since the Court found that Nigeria had clearly and publicly recognised Cameroon's title in 1961–2, no *effectivités* were legally significant at that period, nor were any protests by Cameroon necessary. In sum, the Court concluded that all Nigeria's legally relevant actions were rather recent and Cameroon had never acquiesced in the loss of its title. Like the position in the Lake Chad area, the Court's conclusion was therefore that the treaty title prevailed.

C. The Maritime Boundary

In its final submissions to the Court Cameroon sought a ruling that the two states' maritime boundary followed a particular course. Nigeria, on the other hand, claimed that the Court was unable to carry out any delimitation, first because it would affect areas claimed by third states, and secondly because there was a requirement of prior negotiations which had not been satisfied. Before it could consider the course of any boundary line, the Court therefore had to address Nigeria's objections.

The possible impact of a decision on the rights of third states had been raised as a preliminary objection at an earlier stage of the case and in the Court's judgment of June 1998 was held over for later consideration on the ground that it did 'not possess, in the circumstances of the case, an exclusively preliminary character'.¹⁸ Observing in the present judgment that its jurisdiction is founded on consent, the Court now pointed out that it followed from this that it could not decide upon the rights of third states who were not a party to the proceedings. Here the states whose rights might be affected were

¹⁷ As with its ruling with regard to the Lake Chad area, the Court again relied here on its observations in the *Frontier Dispute* case, see n 9 above.

¹⁸ See ICJ Rep 1998, 275, para 117, and Merrills, op cit n 3 at 654–5.

Equatorial Guinea and Sao Tome and Principe, both of which, like Cameroon and Nigeria, border on the Gulf of Guinea. Although the former had obtained permission to intervene, this was merely as a non-party intervener, whilst the latter had chosen not to intervene at all. Explaining that the two states might not be sufficiently protected by Article 59 of the Statute, the Court ruled that in fixing the maritime boundary between Cameroon and Nigeria it must therefore avoid adopting any position which might affect their neighbours' rights. However, the Court then held that the mere presence of those states was not enough to deprive it of jurisdiction over the maritime delimitation, although it did restrict that jurisdiction.¹⁹ Nigeria's objection was therefore rejected.

Nigeria's other argument was that according to Articles 74(1) and 83(1) of the 1982 United Nations Convention on the Law of the Sea, the parties to a dispute over maritime delimitation must first attempt to resolve it by negotiation. Nigeria conceded that negotiations had taken place in relation to some parts of the delimitation, but argued that much of the boundary had never been discussed. On this point, however, the Court recalled its judgment on admissibility and jurisdiction in which, when the same point was raised, it found that negotiations on the entire maritime delimitation had taken place.²⁰ Explaining that to satisfy the Convention's requirements, it is not necessary for negotiations to be successful, the Court added that in the present situation there was no need either for simultaneous negotiations with Equatorial Guinea and Sao Tome and Principe. The Court therefore concluded that it was in a position to delimit the maritime boundary between Cameroon and Nigeria in so far as the rights of the other two states were not affected.²¹

To determine the course of the maritime boundary the Court split the area in dispute into two sectors. The first sector ran from the mouth of the Akwayafe River on the coast to a point known as point G. Here, according to Cameroon, a boundary had already been established by the Anglo-German Agreement of 1913, assigning sovereignty over the Bakassi Peninsula (thereby determining the starting point), and a later treaty, the Maroua Declaration of June 1975, in which Cameroon and Nigeria had agreed the boundary line to point G. In the light of its earlier ruling on the Bakassi Peninsula the Court accepted that the maritime boundary began at the mouth of the Akwayafe and agreed also that it had been defined by the Maroua Declaration.²²

To reach the above conclusion the Court rejected an argument from Nigeria that the Maroua Declaration was invalid on account of constitutional rules regarding the conclusion of treaties that were not complied with. Although acknowledging that Article 46 of the 1969 Vienna Convention on the Law of Treaties recognises this as a possible ground for invalidity, as does customary international law, the Court held that since the Maroua Declaration had been signed by Nigeria's Head of State, the fact that the Government had not been consulted could not be regarded as a 'manifest' violation of Nigeria's internal law which is what the Vienna Convention requires.²³

Beyond point G no maritime boundary had been agreed and so for this sector the Court was required to 'achieve an equitable solution', as provided in Articles 74(1) and 83(1) of the 1982 Law of the Sea Convention, to which both Cameroon and Nigeria are parties. Whilst they agreed that delimitation should be effected by a single line for both

¹⁹ See paras 237 to 238 of the judgment.

²⁰ See ICJ Rep 1998, 275 paras 107–111.

²¹ See paras 239–245 of the judgment.

²² See paras 247–268 of the judgment.

²³ On a related point the Court also rejected Nigeria's argument that the Maroua Declaration was invalid because it was never ratified, holding that the Declaration was the type of treaty that entered into force upon signature.

the continental shelf and exclusive economic zone, the two States differed as to how it should be constructed. Nigeria supported application of the equidistance principle of delimitation, while Cameroon maintained that in view of the concavity of the coastline and various other special circumstances, a different line was required. Not for the first time therefore, the Court had to decide the bearing of geographical and other features on a maritime boundary.

In previous delimitation cases the Court has often begun by drawing the equidistance line and then considering whether there were any circumstances calling for an adjustment of that line.²⁴ It adopted that approach here. First, it identified the relevant base points and rejected certain arguments from Cameroon as to the relevant coastlines,²⁵ then it examined the relevance of the factors put forward as special circumstances. In relation to the latter Cameroon's case relied on three elements, the concavity of the Gulf of Guinea, the presence of Bioko Island, located off the coast of Cameroon and under the sovereignty of Equatorial Guinea, and the alleged disparity in the length of the parties' respective coastlines on the Gulf. The Court, however, rejected all three.

As regards the concavity of the coast, the Court pointed out that though the Gulf as a whole is concave, the sectors of coastline relevant to the present delimitation were not. As regards Bioko Island, it held that any bearing it might have on delimitation was a matter for Cameroon and Equatorial Guinea. Finally, as regards the relevant coastlines, the Court found there was no disparity in length. Nigeria, for its part, had urged the Court to take into account the parties' practice with regard to oil concessions. The Court, however, held that such practice is relevant to delimitation only when it reflects the parties' agreement. As this was not the case here, this element too was dismissed. Having rejected Cameroon's arguments about special circumstances and Nigeria's reliance on oil practice, the Court concluded that beyond point G the maritime boundary should follow the equidistance line.²⁶ But bearing in mind the rights of Equatorial Guinea, the Court observed that the line concerned could not be extended very far. It therefore confined itself to indicating the general direction.

D. State Responsibility

Having dealt with all the boundary and territorial issues, the Court, in the final part of its judgment, turned to the parties' submissions on the question of state responsibility, where, as noted earlier, the claims of Cameroon had been met with counter-claims from Nigeria. Deciding that as a consequence of its rulings Nigeria was under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the Bakassi Peninsula and the area of Lake Chad within Cameroon's sovereignty, the Court added that both sides were under a similar obligation with regard to the remainder of the boundary in places where they currently occupied territory belonging to the other. After noting that implementation of the judgment would give the parties an opportunity to cooperate in the interests of the people affected, the Court rejected as unnecessary Cameroon's request for a guarantee of non-repetition of

²⁴ See, eg, the *Libya/Malta* case, ICJ Rep 1985, 13 and the *Jan Mayen* case, ICJ Rep 1993, 38.

²⁵ Cameroon had argued that the whole of the coastline of the Gulf of Guinea should be taken into account, but that most of the coastline of Bioko Island, belonging to Equatorial Guinea, should be ignored. The Court, however, rejected both arguments.

²⁶ See paras 269–307 of the judgment. However, as point G, which had already been designated, lay to the east of the equidistance line, it was jointed to the latter by a linking line.

the unlawful occupation of its territory and decided that as implementation of the judgment would sufficiently address any injury suffered by Cameroon, there was no need to examine Nigeria's responsibility. As regards various boundary incidents which the two states had cited, the Court found that neither side had sufficiently proved the facts which it alleged, or their imputability to the other party. With respect to these incidents the Court therefore unanimously rejected both Cameroon's claims and Nigeria's counter-claims.²⁷

E. The Dissenting and Separate Opinions

This case raised many difficult and complex points, yet the Court, as in the proceedings on the various preliminary matters, achieved a large measure of consensus, with only two judges delivering dissenting opinions, although several others gave separate opinions or made declarations.

For Judge Koroma and Judge *ad hoc* Ajibola, who dissented, the Court was wrong to have decided that the Bakassi Peninsula belonged to Cameroon and should have accepted Nigeria's arguments as regards both the character of the 1884 Treaty and the effect of acts subsequently consolidating its title. Judge Rezek agreed with their view of the Treaty, as did Judge Al-Khasawneh, but whereas the former also voted against the judgment on this issue, the latter held that the Kings and Chiefs of Old Calabar had consented to a transfer of sovereignty by their subsequent behaviour and failure to protest. Judge Ranjeva considered that when analysing the 1884 Treaty the Court should have distinguished more sharply between colonial law and international law, but, like Judge Al-Khasawneh, supported the final decision. Judge Parra-Aranguren likewise agreed that sovereignty over Bakassi lay with Cameroon, but considered that the Court should not have taken note of Cameroon's undertaking to protect Nigerians living there in the *dispositif*, on the ground that the parties had not requested this in their submissions.

Judges Koroma and Ajibola also dissented on the issue of sovereignty in the Lake Chad area, where they again supported Nigeria's claim on the basis of historical consolidation and acquiescence. For Judge *ad hoc* Mbaya, on the other hand, not only was the Court's recognition of Cameroon's title legally correct, but it could have buttressed its position by emphasising the *uti possidetis* principle which the parties had discussed at length, but the Court scarcely mentioned. On the central part of the land boundary, where the Court, as noted earlier, interpreted and applied various historical instruments, there was near unanimity among the judges, only Judge Koroma disagreeing with respect to certain details.

As regards the maritime boundary, the only member of the Court to question the seaward delimitation beyond point G was Judge Oda who, though not disagreeing with the line selected, considered that the Court had no authority to decide this boundary.²⁸ In contrast, Judge Herczegh, in a short declaration, took a more oblique point and criticised the Court's comments on the insufficient protection given to third States by Article 59 of the Statute. On the delimitation between point G and the coast, Judges Koroma, Rezek and Ajibola voted against the judgment on the ground that their decision that the Bakassi Peninsula belonged to Nigeria required a different line. For Judge Oda, on the other hand, the Court's ruling on Bakassi (which he supported), meant that

²⁷ See paras 308–24 of the judgment.

²⁸ See further n 29 below.

there was no maritime boundary to resolve, merely certain consequences for the territorial sea, which he thought there was no need to specify. Furthermore, on a preliminary procedural point, Judge Oda repeated the view he had expressed at the time of the Court's 1998 judgment and held that the Court was not entitled to decide the maritime boundary on the basis of a unilateral request by Cameroon.²⁹ He therefore voted against the part of the *dispositif* dealing with the question of jurisdiction and admissibility. As in the earlier proceedings, Judges Koroma and Ajibola voted with Judge Oda on this point.

F. Conclusions

In some international boundary cases such is the focus on the specific facts that it is hard to find material in the judgment of any general significance. This was clearly not the position here, where the Court's consideration of the land boundary, though naturally concerned with the evidence in some detail, also had much to say about the relation between treaty rights and obligations and subsequent activity on the ground in the form of *effectivités*. In this respect the key point in the judgment, made by the Court, as has been seen, in relation to both the Lake Chad area and Bakassi, is that once a treaty boundary is in place, a heavy burden lies on the party seeking to argue for its displacement. Perhaps therefore the true significance of *effectivités* will often lie at an earlier stage of the analysis, when they can be used to throw doubt on the nature and purpose of any treaty arrangements, something which Nigeria was unable to do in the present case.

Notable features of the decision on the maritime boundary are the Court's confirmation of its view that such disputes do not require elaborate negotiations before they can be adjudicated, its enthusiasm for equidistance as a presumptive principle of delimitation, and its rejection of states' oil practice as a relevant factor, except where it reflects an express or tacit agreement. Also to be noted (though in no way surprising), is the ruling that the presence of third states in the region was no bar to the Court's deciding the case, although they did have the effect of limiting the scope of its ruling, a result that was emphasised by Equatorial Guinea's intervention. It has been clear since the *Libya-Tunisia*³⁰ and *Libya-Malta* cases³¹ that bilateral adjudication is an awkward way of establishing maritime boundaries in a multilateral setting and the *Cameroon-Nigeria* case simply corroborates this.

Other points of interest in this case are the decision with regard to the issue of state responsibility and the Court's treatment of Article 46 of the Vienna Convention on the Law of Treaties. By applying the latter strictly, and holding Nigeria to its obligations in the Maroua Declaration, the Court reached a result in line with both the language of Article 46 and the Convention's underlying policy of supporting treaty obligations.³² On the issue of state responsibility, on the other hand, Nigeria's tactic of making

²⁹ In the *Jan Mayen* case in 1993 Judge Oda argued that Denmark's unilateral application to the Court should likewise be dismissed, although both Denmark and Norway had accepted the Court's jurisdiction under the optional clause. For a review of Judge Oda's thinking on this and related issues see JM Van Dyke, 'Judge Shigeru Oda and Maritime Boundary Delimitation', in N Ando, E McWhinney, and R Wolfrum, *Liber Amicorum Judge Shigeru Oda* (The Hague: Kluwer, 2002), vol 2, 1197.

³⁰ ICJ Rep 1982, 18.

³¹ ICJ Rep 1985, 13.

³² See I Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd edn (Manchester: Manchester University Press, 1984), at 169–71.

counter-claims may have been a factor in the Court's decision not to pursue the question of compensation.³³

As the effect of the Court's judgment in relation to the various parts of the land boundary is to award each state territory currently occupied by the other, implementation of the decision will require the withdrawal of Nigerian forces and administration from the Bakassi Peninsula and the Lake Chad area, together with such mutual withdrawals as may be needed in the central boundary sector. Directives to this effect, as already indicated, formed part of the Court's *dispositif*, but Nigeria's initial response to the judgment has not been encouraging. There are, of course, several examples of judicial decisions changing the territorial *status quo* and being implemented successfully to be found in previous practice.³⁴ Bearing in mind, however, that the post-adjudication phase of a case, like the pre-adjudication phase, involves political decisions and one can appreciate why in a case such as this, where Cameroon's recourse to the Court was resisted by Nigeria from the very beginning, implementation of a decision so dependent on the latter's co-operation may prove problematic.

JG MERRILLS

IV. SOVEREIGNTY OVER PULAU LIGITAN AND PULAU SIPADAN (*INDONESIA V MALAYSIA*), MERITS, JUDGMENT OF 17 DECEMBER 2002¹

A. Introduction

On 17 December 2002 the International Court gave its judgment in a dispute over two small islands in the Celebes Sea claimed by both Indonesia and Malaysia. The islands in question, Ligitan and Sipadan, are located off the north-east coast of Borneo and lie approximately 15.5 nautical miles apart. Both are very small and Ligitan is uninhabited; Sipadan, on the other hand, was developed by Malaysia into a tourist resort for scuba diving in the 1980s. In 1998 Indonesia and Malaysia referred the dispute to the Court by means of a Special Agreement, asking for a decision 'on the basis of the treaties, agreements and any other evidence furnished by the Parties' on whether sovereignty over the islands belonged to Indonesia or to Malaysia.

Since the Court included no judge of the nationality of either of the parties, Indonesia and Malaysia each appointed a judge *ad hoc* in accordance with Article 31

³³ It is interesting to note that Cameroon claimed that Nigeria's international responsibility was based *inter alia* on its failure to comply with the order indicating provisional measures of protection which the Court made in 1996. Following the Court's recent ruling in the *LaGrand* case, ICJ Rep 2001, it appears that failure to comply with such an order could entitle a State in the position of Cameroon to compensation.

³⁴ See the *Arbitral Award* case, ICJ Rep 1960, 192 and, more recently, the *Territorial Dispute* case, ICJ Rep 1994, 6 involving Honduras/Nicaragua and Libya/Chad, respectively. On the implementation of these decisions and the role of external assistance, see JG Merrills, 'The International Court of Justice and the Adjudication of Territorial and Boundary Disputes', (2000) 13 *LJIL* 873, at 898–901.

¹ *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment of 17 Dec 2002, ICJ Rep 2002. For the text see the Court's website which also contains a comprehensive summary of the judgment in Press Release 2002/39 bis.