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NIGERIA AND CAMEROON: THE BAKASSI DISPUTE*

Abstract

The eight year old legal battle (1994 – 2002), between Nigeria and Cameroon legally speaking came to an end on 10 October, 2002 when the International Court of Justice (ICJ) sitting at the Hague handed down its decision in favour of the government of Cameroon over the disputed oil-rich area of Bakassi Peninsula. The case has generated huge discussion at the national, regional and international levels amongst writers, jurists and judicial commentators. Some Nigerians have questioned the approach adopted by the Nigerian government in resolving this international dispute, particularly, the decision to go to Court. Did Nigeria act properly in accepting judicial authority of the ICJ when it reserved the right to either appear or not to appear before the court? Having accepted ICJ compulsory jurisdiction, could it turn around to dishonour its judgment? Was there any other available option for Nigeria at that juncture? What are the legal implications of the verdict on Nigeria, the international relationship consequences—cum the enforceability of the verdict? The ICJ decision has also put in contention the nationality of the inhabitants of the Bakassi area who consider themselves as Nigerian nationals. Is the judgment about territorial integrity only or also about people living in the Bakassi Peninsula? What about the right to self-determination of the Bakassi people? This paper discusses the legal issues arising from that judgment.

1. Introduction

This discussion on the Nigeria and Cameroon dispute over the Bakassi Peninsula will be divided into seven parts. Part one is the introduction. Part Two examines the nature of the case and contentious issues while Part Three attempts to summarize the decision of the World Court (ICJ). Part Four examines the ICJ decision as Solomonic but devoid of any consideration for the humanity of the Bakassi people. *Vox populi* on Bakassi discussed

* Joy Ngozi Ezeilo, Ph.D.; Senior Lecturer, Dept. of Public & Private Law, Faculty of Law, UNEC “Nigeria And Cameroon: The Bakassi Dispute”, was first presented at the Conference organized by the Centre for International Studies, Department of Politics and International Relations, titled “Nigeria’s Foreign Policy After The Cold War: Domestic, Regional and External Influences” held at St. Anthony College, University of Oxford, UK, 11-12 July, 2003.

in Part Five is an articulation of responses and reactions of Nigerians to the issue. The paper in Part Six considers available option(s) for Nigeria after the ICJ judgment particularly in respect of enforcement of the Court's verdict. The paper concludes in Part Seven that Nigeria should comply with the judgment and take advantage of any concession made by Cameroon.

2. Conflict between Nigeria and Cameroon over Bakassi- The Legal Context and Contention

The case between Nigeria and Cameroon that took the parties to the ICJ- the World Court - focuses primarily on the land and maritime boundaries between the two countries in the Lake Chad and Bakassi Peninsula areas where both neighbouring countries shared common boundary.¹ Thus, what was in contention was the delimitation and demarcation of the land boundary from Lake Chad to the Bakassi and also the Maritime boundary between Cameroon and Nigeria. The relevant instruments for the determination of sovereignty in relation to the land and maritime boundary between the two countries were also in contest. These instruments in contention namely: Milner- Simon Declaration, 1919; Thomson-Marchand Declaration, 1929-1930; Henderson – Fleuriat Exchange Notes, 1931;² and Anglo-German Agreement of 11 March and 12 April 1913³ were part of the colonial heritage of both countries that had been at various stages under Germany, France and Great Britain's colonial rule.⁴ Cameroon in its claim of sovereignty over the Lake Chad and Bakassi Peninsula areas

¹ For many, the case is just about Bakassi and little attention is paid to the Lake Chad boundary dispute. The focus on Bakassi is driven by economic and strategic importance of the area. In this article and for holistic analysis, I will bring into focus the Lake Chad perspective of the dispute between Cameroon and Nigeria within the context of the article.

² These three instruments mentioned were particularly relevant to determining the land boundary in Lake Chad area.

³ This Instrument was the basis for Cameroon's claim of sovereignty over Bakassi. The document evidenced transfer by Great Britain of Bakassi to Germany under the Anglo- German Agreement of 11 March, 1913 during which time Cameroon was a German colony.

⁴ Cameroon was first colonized by Germany and after the First World War, by France while Nigeria was under British colonial rule. Britain administered part of Northern and Southern Cameroon as part of Northern and Southern Colony and Protectorate until independence when plebiscites were conducted by the United Nations.

relied mainly on these colonial instruments⁵ as a basis of its title and claim of ownership while Nigeria challenged validity of these instruments on grounds either that the contracting colonial parties lacked the power to make such treaties on behalf of the colonized States or that they were improperly made.⁶ Furthermore, Nigeria's claims were based on historical consolidation of the title, peaceful possession of certain Lake Chad areas and Bakassi coupled with acts of administration, which represents the manifestation of sovereignty.⁷ Cameroon initiated the case against Nigeria at the Court in The Hague on 29th March, 1994⁸ and specifically in two separate but later consolidated applications, asked the Court to adjudge and declare as *follows*:

- (a) that sovereignty over the Peninsula of Bakassi and disputed area of Lake Chad is Cameroonian, by virtue of international law, and that the Peninsula is an integral part of the territory of Cameroon;
- (b) that the Federal Republic of Nigeria has violated and is violating the fundamental principle of respect for frontiers inherited from colonization (*uti possidentis juris*); and its recent legal commitments concerning the demarcation of frontiers in Lake Chad;

⁵ Note that in the claim of sovereignty over Bakassi Cameroon relied also on two major post – independence instruments adopted by the heads of States of both countries. These instruments are the Yaounde' II and Maroua Declarations.

⁶ See the International Court of Justice Decision of 10 October, 2002 in the Case concerning the land and Maritime Boundary Between Cameroon and Nigeria. The main contention of Nigeria in the case of Bakassi was that Great Britain lacked the power based on the treaty of Protection between Great Britain and Kings and Chiefs of Old Calabar to transfer title over Bakassi under the Anglo- German Agreement of 11 March 1913. Further, Nigeria argued that the Anglo- German agreement were defective because no – approval by German Parliament were obtained in conformity to the Preamble to General Act of Berlin Conference, 1885.

⁷ In other words, Nigeria was claiming that Cameroon acquiesced in relinquishment of its title in favour of Nigeria by not challenging Nigeria's presence and acts of administration in Bakassi and the Lake Chad areas.

⁸ Cameroon's first application to the Court was initially in respect of Bakassi Peninsula but by subsequent application dated 6 June 1994 it extended its claim to question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad. Thus, requesting the Court to "specify definitively" the frontier between the two States from Lake Chad to the Sea, and asked it to join the two applications and "to examine the whole in a single case". See Paragraphs 1-3 of the Courts judgment.

- (c) that by using force against the Republic of Cameroon, the Federal Republic of Nigeria has violated and is violating its obligations under international treaty law and customary international law;
- (d) that the Federal Republic of Nigeria, by militarily occupying the Cameroonian Peninsula of Bakassi, and parcels of area of Lake Chad has violated and is violating the obligations incumbent upon it by virtue of treaty law and customary law;
- (e) that in view of these breaches of legal obligation, mentioned above, the Federal Republic of Nigeria has the express duty of putting an end to its military presence in Cameroonian territory, and effecting an immediate and unconditional withdrawal of its troops from the Cameroonian Peninsula of Bakassi;
- (f) that the internationally unlawful acts referred to under (a), (b), (c), (d) and (e) above involved the responsibility of the Federal Republic of Nigeria;
- (g) that, consequently, and on account of the material and non-material damage inflicted upon the Republic of Cameroon, reparation in an amount to be determined by the Court is due from the Federal Republic of Nigeria to the Republic of Cameroon, which reserves the introduction before the Court of [proceedings for] a precise assessment of the damage caused by the Federal Republic of Nigeria.
- (h) In order to prevent any dispute arising between the two States concerning their maritime boundary, the Republic of Cameroon requests the Court to proceed to prolong the course of its maritime boundary with the Federal Republic of Nigeria up to the limit of the maritime zones which international law places under their respective jurisdictions.”
- (i) That in view of the repeated incursions of Nigerian groups and armed forces into Cameroonian territory, all along the frontier between the two countries, the consequent grave and repeated incidents, and the vacillating and contradictory attitude of the Federal Republic of Nigeria in regard to the legal instruments defining the frontier between the two countries and the exact course of that frontier, the Republic of Cameroon respectfully asks the Court to specify definitively the frontier between Cameroon and the Federal Republic of Nigeria from Lake Chad to the sea.”⁹

⁹ See Paragraph 25 of the ICJ Judgment Concerning the Land and Maritime Boundary between Cameroon and Nigeria.

On the other hand, Nigeria submitted its Counter –Memorial to the following, urging the Court to:

- (1) as a preliminary matter decide to deal with the issues relating to the land boundary;
- (2) as to Lake Chad, adjudge and declare:
 - (a) that sovereignty over the areas in Lake Chad defined in Chapter 14 of this Counter-Memorial (including the Nigerian settlements identified in paragraph 14.5 hereof) is vested in the Federal Republic of Nigeria;
 - (b) that the proposed ‘demarcation’ under the auspices of the Lake Chad Basin Commission, not having been ratified by Nigeria, is not binding upon it;
 - (c) that outstanding issues of the delimitation and demarcation within the area of Lake Chad are to be resolved by the Parties to the Lake Chad Basin Commission within the framework of the Constitution and procedures of the Commission;
- (3) *as to the central sectors of the land boundary:* acknowledging that the parties recognize that the boundary between the mouth of the Ebeji River and the point on the Thalweg of the Akpa Yafe which is opposite the mid-point of the mouth of Archibong Creek was delimited by the following instruments:
 - (a) paragraphs 3-60 of the Thomson/March and Declaration, confirmed by the Exchange of Letters of 9 January 1931,
 - (b) the Nigeria (Protectorate and Cameroons) Order in Council of 2 August 1946, section 6 (1) and the Second Schedule thereto
 - (c) paragraphs 13-21 of the Anglo-German Demarcation Agreement of 12 April 1913,
 - (d) Articles XV-XVII of the Anglo-German Treaty of 11 March 1913; and acknowledging further that uncertainties as to the interpretation and application of these instruments, and established local agreements in certain areas, mean that the actual course of the boundary cannot be definitively specified merely by reference to those instruments; affirm that the instruments mentioned above are binding on the parties (unless lawfully varied by them) as to the course of the land boundary;
- (4) *as to the Bakassi Peninsula*, adjudge and declare:

That sovereignty over the Peninsula (as defined in Chapter 11 hereof) is vested in the Federal Republic of Nigeria;

- (5) *as to the maritime boundary*, adjudge and declare:
 - (a) that the Court lacked jurisdiction to deal with Cameroon's claim-line, to the extent that it impinges on areas claimed by Equatorial Guinea and/or Sao Tomé e Príncipe (which areas are provisionally identified in Figure 20.3 herein), or alternatively that Cameroon's claim is inadmissible to that extent; and
 - (b) that the parties are under an obligation, pursuant to Articles 76 and 83 of the United Nations Law of the Sea Convention, to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective maritime zones, such delimitation to take into account, in particular, the need to respect existing rights to explore and exploit the mineral resources of the Continental shelf, granted by either party prior to 29 March 1994 without written protest from the other, and the need to respect the reasonable maritime claims of third States;
- (6) *as to Cameroon's claims of State responsibility*, adjudge and declare that those claims are unfounded in fact and law; and
- (7) *as to Nigeria's counter-claims as specified in Part VI of this Counter-Memorial*, adjudge and declare that Cameroon bears responsibility to Nigeria in respect of those claims, the amount of reparation due therefore, if not agreed between the parties within six months of the date of judgment, to be determined by the Court in a further judgment.¹⁰

From the foregoing claims and counter claims by Cameroon and Nigeria respectively it is clear that an international dispute has arisen between both countries. A dispute means a disagreement on a point of law or fact, a conflict of legal views or interests between parties.¹¹ According to the International Court of Justice,

¹⁰ See generally paragraph 26 of the Judgment for a restatement of Nigeria's claims in the counter-claim.

¹¹ See *Mavrommatis Palestine Concessions*, Judgment, P.C.I. J., Series A, No. 2 p.11; *Northern Cameroons*, Judgment, I.C.J. Reports 1963, p.27; and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, advisory Opinion, I.C.J.

“[ICJ] in order to establish the existence of a dispute, ‘It must be shown that the claim of one party is positively opposed by the other’.¹² The case of Cameroon and Nigeria were competing claims, diametrically opposite and as such amounted to international dispute. The fact that Nigeria claims title to the Bakassi Peninsula and Lake Chad areas of Darak, adjacent islands, as well as Tipsan means in the view of Cameroon that Nigeria contests the validity of these legal instruments and thus called into questions the entire boundary which are based on them. That, in the view of Cameroon, is confirmed by the occurrence, along the boundary, of numerous incidents, and incursions. Nigeria’s claim to Bakassi as well as its position regarding the Maroua Declaration also throws into doubt the basis of the maritime boundary between the two countries. In Cameroon’s view and contrary to what Nigeria asserted, a dispute has arisen between the two States concerning the whole of the boundary.¹³ Having established that the case between Cameroon and Nigeria amounted to a dispute within international legal context to require the intervention of ICJ, this paper will now turn to consider the Court’s decision concerning this land and maritime boundary dispute.

3. The World Court Decides

The International Court of Justice (hereinafter referred to either as ICJ, World Court or the Court) exists for judicial settlement of disputes¹⁴. The ICJ is one of the six principal organs of the United Nations and was established by the Charter of the UN as the

Reports 1988, P.27, para 35)” (*East Timor*, *Portugal V. Australia*), Judgment, I.C. J. Reports 1995 , pp.99-100, para.22).

¹² See *South West Africa, Preliminary Objections*, I.C.J. Reports 1962, Recueil 1962, P. 328; and further whether there exists an international dispute is a matter for objective determination’ (Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74) “ See I.C.J. 1995, p. 100.

¹³ See the I. C. J. judgment on the *preliminary* objections filed by Nigeria on this case to challenge the jurisdiction of the court. I.C.J. Reports 1998, P.275 at P.315 the Court stated that “All of these disputes concern the boundary, which runs over more than 1600KM from the Lake Chad to sea, it cannot be said that these disputes in themselves concern so large a portion of the boundary that they would necessarily constitute a dispute concerning the whole of the boundary”.

¹⁴ Article 92 of the Un Charter 1945 established the court as the principle organ of the UN.

principal judicial organ of the United Nations¹⁵. According to the UN Charter, “parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice¹⁶. The United Nations encourage peaceful settlement of disputes hence the establishment of the World Court. The court is composed of a body of 15 independent Judges, elected regardless of their nationality among persons of high moral character with requisite qualifications, and no two of who may be nationals of the same State¹⁷. The seat of the Court is at The Hague, Netherlands and the Court by statute remains permanently in session.¹⁸

The jurisdiction of the court comprises all cases, which the parties refer to it, and all matters specially provided for in the Charter of the United Nations or in treaties or conventions in force.¹⁹ It is for States Parties to accept compulsory jurisdiction of the court in all legal dispute relating to interpretation of treaty; any question of international law, the existence of any fact which, if established, would constitute a breach of international obligations or to determine the nature or extent of the reparation to be made for the breach of an international obligation.²⁰ Parties can accept the court’s jurisdiction unconditionally or on condition of reciprocity on the part of the several or certain States or for a certain time.²¹ All members of the United Nations are *ipso facto*, parties to the statute of the ICJ²². However, it is important to note that States do not submit to the Jurisdiction of the court as a result of signing the statute. In practice, the jurisdiction of the court to hear and decide a case on the merits depends on the will of the

¹⁵ The court *functions* in accordance with the provisions of the statute of the *International Court of Justice*.

¹⁶ Article 33 (1).

¹⁷ See Articles 2 and 3.

¹⁸ Article 23, erupt during the Judicial actions, the dates and durations of which shall be fixed by the court.

¹⁹ Article 36(1)

²⁰ See Article 36(2)

²¹ See Article 38 of the ICJ statute for sources of law which the Court can apply in discharge of its functions.

²² Article 93 (1) of the UN Charter.

parties.²³ In contentious cases between States, the court will assume jurisdiction based on the consent of the parties.²⁴ Also, a party to a case before the court has a right to representation in the court by a national judge, and if there is no Judge of its nationality, a Judge *ad hoc* may be appointed who may be of some other nationality.²⁵ In the case of Cameroon and Nigeria, two Judges were appointed respectively by both parties as Judges *ad hoc*.²⁶

The jurisdiction of the International Court falls into two distinct parts; its capacity to decide disputes between States, and its capacity to give advisory opinions when requested by the United Nations and its organs.²⁷ The Bakassi dispute between Cameroon and Nigeria fell under the contentious Jurisdiction of the court and the parties gave their consent that empowered the court to assume Jurisdiction.²⁸ Having established that the World Court has power to decide in the Cameroon and Nigeria case, we shall turn now specifically to examine the court's decision on the case concerning the land and maritime boundary between Cameroon and Nigeria.

The court examined the claims of both parties relating to the boundary line in the Lake Chad area and the boundary line from Lake Chad to the Bakassi Peninsula. The judgment of the court is divided into three parts: the first part dealt with land boundary in the Lake Chad and Bakassi Peninsula; the second addressed the question of the delimitation between the two States respective maritime areas. The final part of the judgment was devoted to the issues of State responsibility raised by the parties.

In relation to the issue of the delimitation of the boundary with the Lake Chad area, it was Cameroon's contention that the boundary with Nigeria in Lake Chad was the subject of a conventional delimitation between France and the United

²³ See Jan Brownlie, *Principles of Public International Law* 5th edition, (Oxford: Oxford University Press: 1998) p. 714. Note Article 36 of the statute of the International Court of Justice.

²⁴ Note the consent of the parties may be given *ad hoc* to the exercise of jurisdiction over a dispute the existence of which is recognized by both parties. *Ibid* p. 716.

²⁵ Article 31

²⁶ Cameroon appointed Keba Mbaye while Nigeria appointed Bola Ajibola

²⁷ Article 96 of the UN Charter. See also M.N. Shaw, *International Law* 3rd edn. (Grotius Publications, Cambridge University Press) 1991 p. 661.

²⁸ Both Countries have accepted by declaration compulsory jurisdiction of the court in accordance with Article 36(2) of the ICJ Statute.

Kingdom, the former colonial powers, and of a demarcation under the auspices of the Lake Chad Basin Commission (LCBC). The following instruments were relied on by the Cameroon to establish its claim: Milner-Simon Declaration of 1919 and the Thomson -Marchand Declaration of 1929 – 1930, the text of the later was subsequently incorporated in the Henderson-Fleurian Exchange of Notes 1931. Accordingly, Cameroon claimed that this later instrument delimited the boundary in the Lake Chad²⁹ with the map annexed thereto, and therefore has acquired the value of a “territorial title”. Importantly, Cameroon pointed out that these maps had “never been the subject of the slightest representation or objection from the United Kingdom or the Federal Republic of Nigeria” and that there existed no map, not even a Nigerian one, showing a boundary line as claimed by Nigeria in Lake Chad.³⁰ Cameroon contended that the line of the boundary was expressly incorporated in the Trusteeship Agreement for the Territory of Cameroon under French administration approved by the General Assembly of the United Nations on 13 December 1946 and was subsequently “transferred to Cameroon and Nigeria on independence by application of the principle of *Uti Possidetis*.”³¹

On the other hand, Nigeria argued in its final submissions, that the proposed delimitation and demarcation under the auspices of the Lake Chad Basin Commission (LCBC), not having been accepted by Nigeria, was not binding upon it. That in any event, the process which had taken place within the framework of the LCBC, and which was intended to lead to an overall delimitation and demarcation of boundaries on Lake Chad, was legally without prejudice to the title to particular areas of the Lake Chad region inhering in Nigeria as a consequence of the historical consolidation of title and the acquiescence of Cameroon. Further, Nigeria contended that the Lake Chad region has never been the subject of any form of delimitation, rejecting as conclusive delimitation and demarcation, the Thomson-Marchand

²⁹ (Certain maps, which are claimed to confirm the course of the conventionally delimited boundary. For example the Moised map were annexed to the Milner – Simon Declaration, which it argues, constitutes the official map annexed to the Henderson – Fleunau Exchange notes of 1931).

³⁰ See paragraph 42 of the ICJ Judgement 10th October 2002, General list No. 94

³¹ *Uti possidetis* means retaining possession of and immovable thing, granted to one who, at the time of contesting suit, was in possession of that thing. In this case, Cameroon is requesting ICJ to make an order to declare Cameroon the Legal Possessor based on this principle of ‘*Uti possidetis*’.

Declaration of 1929-190 and 1931 Henderson-Fleurian Exchange of notes in relation to Lake Chad. These instruments according to Nigeria did not involve a final determination of the Anglo-French boundary in regard to Lake Chad but provided for delimitation by boundary Commission. Nigeria further contends that the work of the LCBC involved both delimitation and demarcation of the boundary within Lake Chad and that it did not produce a result which was final and binding on Nigeria in the absence of a ratification of the documents relating to that work. The court rejected Nigeria's argument that the frontier in the Lake Chad area was not delimited. The court was of the view that while no demarcation had taken place in Lake Chad before the independence of Nigeria and Cameroon, the governing instruments show that, certainly by 1931, the frontier in the Lake Chad area was indeed delimited and agreed by Great Britain and France³². The court also observed that Nigeria was consulted during the negotiation for its independence and again during the plebiscites that were to determine the future of the populations of the Northern and Southern Cameroon³³. The court did not accept Nigeria's contention that the LCBC was from 1983 to 1991 engaged in both delimitation and demarcation.³⁴

In sum, the court found that the Milner- Simon Declaration of 1919, as well as the 1929 -1930 Thomson – Marchand Declaration as incorporated in the Henderson-Fleuniaui Exchange of Notes of 1931, delimited the boundary between Cameroon and Nigeria in the Lake Chad area. The map attached by the parties to the Exchange of Notes is to be regarded as an agreed clarification of the Moisel map. The Lake Chad border area was thus delimited notwithstanding that there were two questions that remained to be examined by the court, namely, the precise location of the Cameroon – Nigeria – Chad tripoint in Lake Chad and the question of the mouth of the Ebeji. The court refused to accept the request of Cameroon urging the court to find that the proposals of the LCBC as regards the tripoint and the mouth of the Ebeji “Constituted an authoritative interpretation of the Milner-Simon Declaration and the Thomson-Marchand

³² *Ibid.*, para. 52.

³³ (According to ICJ, Nigeria at not time suggested, either so far as the Lake Chad area was concerned, or elsewhere, that the frontiers there remained to be delimited) paragraph 53.

³⁴ The nature of LCBC work was that of demarcation according to the Court. See paragraph 54 of the Judgement.

Declaration of letters of a January 1931³⁵. The court opined that the very fact that the out-zone of the technical demarcation work was agreed upon in March 1994 to require adoption under national laws indicated that it was in no position to engage in “authoritative interpretation” *Sua Sponte*. However, on examination of the Moisel map annexed to the Milner Simon Declaration of 1919 and the map attached to the Henderson Fleurian Exchange of Notes 1931 reached the same conclusions as the LCBC.³⁶

The Court rejected Nigeria’s claim of sovereignty over areas in Lake Chad, which included certain named villages³⁷ on grounds of historical consolidation of title and the acquiescence by Cameroon³⁸. The court noted, however, that, there was a pre-existing title held by Cameroon in this area of the Lake. The pertinent legal test was whether there was evidence of acquiescence by Cameroon in the passing of the title from itself to Nigeria. The court held that from the evidence that there was no acquiescence by Cameroon in the abandonment of its title in the area of favour of Nigeria. Accordingly, the court concluded that the situation was essentially one where the *effectivites* adduced by Nigeria did not correspond to the law, and that accordingly “preference should be give to the holder of the title”³⁹. The court accordingly concluded that, in the disputed areas, the land boundary between Cameroon and Nigeria from Lake Chad to the Bakassi Peninsula is fixed by the relevant instruments of delimitation⁴⁰ already mentioned.

³⁵ *Ibid.*, para. 56

³⁶ See para. 57.

³⁷ Aisa Kura, Bashakka, Chika’a, Darak, Darak Gana, Doron Liman, Doron Mallam (Doro Kirta), Dororoya, Fagge, Garin Wanzam, Gorea Changi, Gorea Gutun, Jibrillaram, Kafuram, Kamunna, Kanumburi, Karakaya, Kasuram Mareya, Katti Kime, Kirta Wulgo, Koloram, Logon Labi, Loko Naira, Mukdala, Murdas, Naga’a, Naira, Nimeri, Njia Buniba, Ramin Dorinna, Sabon Tumbu, Sagir and Sokotoram

³⁸ Nigeria contended that it was effectively administering these villages, acting as sovereign without any protest by Cameroon before April 1994 and that according to Nigeria amounts to acquiescence.

³⁹ See the Frontier Dispute (Burkina Faso v. Republic of Mali) Judgment, I.C.J. Reports 1986, p. 5 587, para. 63.

⁴⁰ As specified in paragraphs 73 to 75 and as interpreted by the Court in paragraphs 87 to 191 of this judgement.

We shall now turn to the decision of the court concerning the most contested and popularized part of the dispute⁴¹ relating to the land and Maritime Boundary between Cameroon and Nigeria. That is the area known as Bakassi Peninsula. In fact, the entire case between Nigeria and Cameroon has been reduced by several people to only the “Bakassi dispute.”⁴²

On the issue of boundary in Bakassi and the question of sovereignty over the Bakassi Peninsula, the Cameroon requested the court to adjudge and declare that the Anglo-German Agreement of 11 March 1913, determined the land boundary between Cameroon and Nigeria⁴³. Therefore, that sovereignty over the Peninsula of Bakassi is Cameroonian. Nigeria on the contrary argued that the sovereignty over the Peninsula was vested in the Federal Republic of Nigeria and that Nigeria’s sovereignty over Bakassi extended up to the boundary with Cameroon as described in Nigeria’s Counter-Memorial.

Cameroon contended that the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary. Hence, when Cameroon and Nigeria acceded to independence, this boundary became that between the two countries, successor States to the colonial powers and bound by the principle of *uti possidetis*. For its part, Nigeria argued generally that title lay in 1913 with the Kings and Chiefs of Old Calabar, and was retained by them until the territory passed to Nigeria upon independence. Great Britain was therefore unable to pass title over Bakassi because it had no title to pass (*nemo dat quod non habet*); as a result, the relevant provisions of the Anglo-German Agreement of 11 March 1913 must be regarded as ineffective.⁴⁴

⁴¹ At least, within the Nigeria context.

⁴² The area in dispute along the land boundary from Lake Chad to the Bakassi Peninsula is as follows: (1) Limani; (2) the Kerawa (Kirewa or Kirawa) River; (3) the Kohom River; (4) the watershed from Ngosi to Humsiki (Roumsiki)/Kamale/Turu (the Mandara Mountains); (5) from Mount Kuli to Bourha/Maduguva (incorrect watershed line on Moisel’s map); (6) Kotcha (Koja); (7) source of the Tsikakiri River; (8) from Beacon 6 to Wamni Budungo; (9) Maio Senche; (10) Jimbare and Sapeo; (11) Noumberou-Banglang; (12) Tipsan; (13) crossing the Maio Yin; (14) the Hambere Range area; (15) from the Hambere Range to the Mburi River (Lip and Yang); (16) Bissaula-Tosso; (17) the Sama River.

⁴³ Relevant paragraphs relied upon by Cameroon includes paras XVI to XX.

⁴⁴ See paragraph 194 of the I.C.J. judgment 2002, *op. cit.*

The Court noted that Germany itself considered that the procedures prescribed by its domestic law had been complied with; nor did Great Britain ever raise any question in relation thereto. The Agreement had, moreover, been officially published in both countries. It was therefore irrelevant that the German Parliament did not approve the Anglo-German Agreement of 11 March, 1913. Nigeria's argument on this point accordingly could not be upheld.⁴⁵ On the main document relied on by Cameroon, i.e. the Anglo-German Agreement of 11 March, 1913, Nigeria asked the court to sever that part of the agreement purporting to prescribe a boundary which, if effective, would have involved a cession of territory to Germany. In reply, Cameroon contended that Nigeria's argument that Great Britain had no legal power to cede the Bakassi Peninsula by treaty was manifestly unfounded and contended that the agreement of 11 March 1913 formed an indivisible whole and that it is not possible to sever from it the parts concerning the Bakassi Peninsula.⁴⁶

The Court first observed that during the era of the Berlin Conference, the European Powers entered into many treaties with local rulers. Great Britain concluded some 350 treaties with the local chiefs of the Niger delta. Among these were treaties in July 1884 with the Kings and Chiefs of Opobo and, in September 1884, with the Kings and Chiefs of Old Calabar. That these were regarded as notable personages is clear from the fact that these treaties were concluded by the consul, expressly as the representative of Queen Victoria, and the British undertakings of "gracious favour and protection" were those of Her Majesty the Queen of Great Britain and Ireland. In turn, under Article II of the Treaty of 10 September 1884, "The King and Chiefs of Old Calabar agree [d] and promise [d] to refrain from entering into any correspondence, Agreement, or Treaty with any foreign nation or Power, except with the knowledge and sanction of Her Britannic Majesty's Government."⁴⁷ The court observed that the Treaty with the Kings and Chiefs of Old Calabar did not specify the territory to which the British Crown was to extend "gracious favour and protection", nor did it indicate the territories over which each of the Kings and Chiefs signatory to the Treaty exercised his powers.⁴⁸ However, the court observed that Great Britain had

⁴⁵ *Ibid.* Para. 197.

⁴⁶ *Ibid.* Para. 201.

⁴⁷ Court's judgment Paragraph 203.

⁴⁸ However, the consul who negotiated and signed the Treaty, said of Old Calabar "This country with its dependencies extends from Tom shots --- to the

clear understanding of the area ruled at different times by the Kings and Chiefs of Old Calabar, and of their standing.

The international legal status of a “Treaty of Protection” was examined by the court and the following observations were made: “Treaty of Protection” entered into under the law obtaining at the time cannot be deduced from its title alone. Some treaties of protection were entered into with entities, which retained thereunder a previously existing sovereignty under international law. This was the case whether the protected party was henceforth termed “*Protectorate*” (as in the case of Morocco, Tunisia and Madagascar (1885; 1895) in their treaty relations with France) or “a Protected State” (as in the case of Bahrain and Qatar in their treaty relations with Great Britain). In sub-Saharan Africa, however, treaties termed “treaties of protection” were entered into not with States, but rather with important indigenous rulers exercising local rule over identifiable areas of territory.⁴⁹

The Court pointed out that these concepts also found expression in the *Western Sahara* Advisory Opinion. In this instance, the Court stated that in territories that were not *terra nullius*, but were inhabited by tribes or people having a social and political organization, “agreements concluded with local rulers . . . were regarded as derivative roots of title”.⁵⁰ Importantly, the court concluded that, under the law at the time, Great Britain was in a position in 1913 to determine its boundaries with Germany in respect of Nigeria, including in the southern section. Equally, the court found no evidence that Nigeria thought that upon independence, it was acquiring Bakassi from the Kings and Chiefs of Old Calabar. Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence⁵¹.

River Rumby (on the west of the Cameroon Mountains) both inclusive. Some six years later, in 1890, another British consul, Johnston, reported to the Foreign Officer that “the rule of the Old Calabar Chief extends far beyond the Akpayage River to the very base of the Cameroon Mountains”. *Ibid.*

⁴⁹ See Para. 205.

⁵⁰ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 39, para. 80.

⁵¹ See paragraph 213 of the ICJ Judgment. The Court noted in particular that there was nothing which might have led Nigeria to believe that the plebiscite which took place in the Southern Cameroons in 1961 under United Nations supervision did not include Bakassi. It is true that the Southern Cameroons Plebiscite Order in Council, 1960 made no mention of any polling station bearing the name of a Bakassi village. Nor, however, did the Order in Council specifically exclude Bakassi from its scope. The Order simply referred to the Southern Cameroons as a whole. But at that time, it was already clearly established that Bakassi formed part of the Southern Cameroons under British Trusteeship.

The court further observed that this frontier line was acknowledged in turn by Nigeria when it voted in favour of General Assembly resolution 16008 (XV), which both terminated the Trusteeship and approved the results of the plebiscite. This common understanding of where title lay in Bakassi continued until the late 1970s, when the parties were engaging in discussions on their maritime frontier. For all these reasons, the court found that the Anglo-German agreement of 11 March 1913 was valid and applicable in its entirety. The court examined the “distinct but interrelated bases of title over the Bakassi Peninsula advanced by Nigeria namely:

- (i). Long occupation by Nigeria and by Nigerian nationals constituting an historical consolidation of title and confirming the original title of the Kings and Chiefs of Old Calabar, which title vested in Nigeria at the time of independence in 1960;
- (ii) Peaceful possession by Nigeria, acting as sovereign, and an absence of protest by Cameroon; and
- (iii) Manifestations of sovereignty by Nigeria together with acquiescence by Cameroon in Nigerian sovereignty over the Bakassi Peninsula.

Nigeria particularly emphasized that the title on the basis of historical consolidation, together with acquiescence, in the period since the independence of Nigeria, “constitutes an independent and self-sufficient title to Bakassi”.⁵² The court rejected the first basis of title over Bakassi relied on by Nigeria. According to the Court that at the time of Nigeria’s accession to independence there existed no Nigerian title capable of being confirmed subsequently by “long occupation”. On the contrary, on the date of its independence Cameroon succeeded to title over Bakassi as established by the Anglo-German Agreement of 11 March 1913.⁵³

On the second and third bases of title advanced by Nigeria, the court observed that the legal question of whether *effectivités* could suggest that title lay with one country rather than another is not the same legal question as whether such *effectivités* could serve to displace an established treaty title. It opined that the title was already established and in 1961-1962, Nigeria clearly and publicly recognized *the Cameroonian* title to Bakassi. This continued to be the position until at least 1975, when Nigeria signed the Maroua Declaration. No Nigerian *effectivités* in

⁵² *Ibid.* Para. 218.

⁵³ See paragraphs 213 – 214 of the ICJ Judgment.

Bakassi before that time can be said to have legal significance for demonstrating a Nigerian title; this may in part explain the absence of Cameroon protests regarding health, education and tax activity in Nigeria. The Court also notes that Cameroon had since its independence engaged in activities which made clear that it in no way was it abandoning its title to Bakassi. Cameroon and Nigeria participated from 1971 to 1975 in the negotiations leading to the Yaoundé, Kano and Maroua Declarations, with the maritime line clearly being predicated upon Cameroon's title to Bakassi. Cameroon also granted hydrocarbon licences over the peninsula and its waters, again evidencing that it had not abandoned title in the face of the significant Nigerian presence in Bakassi or any Nigerian *effectivités contra legem*. In addition, protest was immediately made regarding Nigerian military action in 1994.⁵⁴

Based on the foregoing, the court refused to accept the second and third basis of title to Bakassi advanced by Nigeria. The court accordingly concluded that Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913 delimited the boundary between Cameroon and Nigeria in Bakassi and that sovereignty over the Peninsula lay with Cameroon. On the question of the maritime boundary between Cameroon and Nigeria that formed second part of the Court's judgment, Cameroon requested the Court in order to avoid further incidents between the two countries to determine the course of the maritime boundary between the two States. Nigeria urged the court to refuse to carry out in whole or in part the delimitation requested by Cameroon, first because the delimitation affected areas claimed by third States.⁵⁵ Secondly, because the requirement of prior negotiations has not been satisfied, Nigeria maintained in particular that the maritime delimitation line claimed by Cameroon encroached on claimed areas. Accordingly, Nigeria stated that if the court were to uphold the line claimed by Cameroon vis-à-vis Nigeria, it would be clear and by implication *reject* the claims of Equatorial Guinea concerning these areas.⁵⁶

⁵⁴ *Ibid.*, para. 223.

⁵⁵ Equatorial Guinea and Sao Tome and Principe are referred to as Third States here.

⁵⁶ It should be recalled that Equatorial Guinea application to intervene under Article 62 of the ICJ statute was accepted by the court. The Nigeria assertion here is that since Equatorial Guinea has not intervened as a party, the court has no additional substantive jurisdiction over that State by reason of the intervention under Article 62 of the statute. Nigeria argued that the role of a

Nigeria accordingly concluded that the court lacked the jurisdiction to deal with the maritime delimitation line claimed by Cameroon, to the extent that it impinges on areas claimed by Equatorial Guinea or by Sao Tome and Principe, or alternatively that the maritime delimitation line claimed by Cameroon is inadmissible to that extent.

Cameroon for its part claimed that no delimitation in this case could affect Equatorial Guinea or Sao Tome and Principe, as the court's judgment will be *res inter alios acta* for all States other than itself and Nigeria⁵⁷.

The jurisdiction of the Court was founded on the consent of the parties. The Court could not therefore decide upon legal rights of third States not parties to the proceedings. In the present case, there were States other than the parties to these proceedings whose rights might be affected, namely, Equatorial Guinea and Sao Tome and Principe. Those rights could not be determined by decision of the Court unless Equatorial Guinea and Sao Tome and Principe had become parties to the proceedings. Equatorial Guinea had indeed requested and granted permission to intervene, but as a non-party intervener only. Sao Tome and Principe had chosen not to intervene on any basis. The Court considered that, in particular, in the case of maritime delimitations where the maritime areas of several States are involved, the protection afforded by Article 59 of the Statute may not always be sufficient. In view of the foregoing, the Court concluded that it could not rule on Cameroon's claims in so far as they might affect rights of Equatorial Guinea and Sao Tome and Principe. Nonetheless, the mere presence of those two States, whose rights might be affected by the decision of the Court, did not in itself preclude the Court from having jurisdiction over a maritime delimitation between the Parties to the case before it, namely Cameroon and Nigeria.⁵⁸

On the issue of prior negotiation between the parties in relation to the maritime delimitation, Nigeria had argued, *inter alia*, that the court could not properly be seized of jurisdiction by the unilateral application of one State in relation to the

non-party intervener in a case before the court was to inform the court of its position, so that the court may refrain from encroaching in its decision on credible claims of that third party, thus enabling it to safeguard those claims without adjudicating upon them.

⁵⁷ In adopting this position Cameroon relied on the judgment of the court concerning the continental shelf (Tunisia/Libyan Arab Jamahiriya), see I.C.J. Reports 1982, p. 91, para. 130.

⁵⁸ *Ibid.* 238.

delimitation of an exclusive economic zone or continental shelf boundary if that State had made no attempt to reach agreement with the respondent State over the boundary⁵⁹. The United Nations Convention on the Law of the Sea⁶⁰ requires that the parties to a dispute over maritime delimitation should first attempt to resolve their dispute by negotiation. According to Nigeria, these provisions lay down a substantive rule, not a procedural prerequisite. Negotiation is prescribed as the proper and primary way of achieving an equitable maritime delimitation and the court is not a forum for negotiation.

Cameroon argued that, while point ‘G’⁶¹ may be the last point on which there was agreement between the Parties in the delimitation of their maritime boundary, it was not the last point on which there were negotiations. It insisted that, even if they proved to be unfruitful, there were in fact intense negotiations between the two States which, from the outset, focused on the entire maritime boundary, a fact which was acknowledged in the Court’s Judgment of 11 June, 1998, in which it found that **“Cameroon and Nigeria entered into negotiations with a view to determining the whole of the maritime boundary”**.⁶²

The court, while rejecting Nigeria’s argument based on no prior negotiation, noted that in its judgment of 11 June, 1998,⁶³ negotiations between the Governments of Cameroon and Nigeria concerning the entire maritime delimitation up to point ‘G’ and beyond were conducted as far back as the 1970s. These negotiations did not lead to an agreement. The United Nations Law of the Sea Convention does not require that delimitation negotiations should be successful; like all similar obligation to negotiate in international law, the negotiations have to be conducted in good faith. The Court reaffirmed its finding in regard to the preliminary objections that negotiations had indeed taken place.

⁵⁹ This Nigeria argued is contrary to Articles 74 and 83 of the United Nations Convention on the Law of the Sea of 10 December 1982.

⁶⁰ The Convention was adopted by the United Nations Conference on the Law of Sea 29 April 1958.

⁶¹ Maritime boundary map description or chart adopted and submitted by Cameroon in its claim of ownership of the Bakassi Peninsula. Some of those descriptions and charts formed part of previous treaties and declarations entered into by the colonialist (Britain, France and Germany) on behalf of the colonized territories of Nigeria and Cameroon.

⁶² *I.C.J. Reports 1998*, p. 322, para. 110; emphasis added by Cameroon.

⁶³ *ICJ Reports 1998*, p. 321, para. 107 and p. 322, para. 110

Cameroon accordingly maintained that the Yaoundé II Declaration and the Maroua Declaration thus provided a binding definition of the boundary delimiting the respective maritime spaces of Cameroon and Nigeria. Cameroon argued that the signing of the Maroua Agreement by the Heads of State of Nigeria and Cameroon on 1 June, 1975 expressed the consent of the two States to be bound by that treaty. Cameroon further argued that these conclusions were confirmed by the publicity given to the partial maritime boundary established by the Maroua Agreement, which was notified to the Secretariat of the United Nations and published in a whole range of publications which have widespread coverage and are well known in the field of maritime boundary delimitation.⁶⁴

Nigeria for its part drew no distinction between the area up to point G and the area beyond. It denied the existence of a maritime delimitation up to that point, and maintained that the whole maritime delimitation must be undertaken *de novo*.⁶⁵

In relation to the Yaoundé II Declaration, Nigeria contended that it was not a binding agreement, but simply represented the record of a meeting which “formed part of an ongoing programme of meetings relating to the maritime boundary”, and that the matter “was subject to further discussion at subsequent meetings”.

The court held that the Yaoundé II Declaration and Maroua Declaration were binding on the parties. The court considered that the Maroua Declaration constituted an international agreement concluded between States in written form and tracing a boundary; it was thus governed by international law and constituted a treaty in the sense of the Vienna Convention on the Law of Treaties,⁶⁶ to which Nigeria had been a party since 1969 and Cameroon since 1991, and which in any case reflects customary international law in this respect. Thus, the court refused to accept the argument that the Maroua Declaration was invalid under international law because it was signed by the Nigerian Head of State of the time, but never ratified. In the Court’s view, that Declaration entered into force immediately

⁶⁴ *Ibid.* 253.

⁶⁵ *Ibid.* 254.

⁶⁶ See Article 2, para. 1 of the Vienna Convention on the Law of Treaties (1969).

upon its signature.⁶⁷ Article 46 of the Vienna Convention reinforced the Courts position in rejecting Nigeria's argument⁶⁸.

By thirteen votes to three,⁶⁹ the Court determined the maritime boundary between Nigeria and Cameroon.⁷⁰ The boundary followed the line adopted in the Declaration signed by the Heads of State of Cameroon and Nigeria at Maroua on 1 June, 1975, (Maroua Declaration), as corrected by the exchange of letters between the said Heads of State of 12 June and 17 July, 1975.⁷¹ Unanimously, the court decided that, from point G, the

⁶⁷ See paragraph 264 of the Court's Judgment.

⁶⁸ It provides that State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as in validating its consent, unless that violation is manifest and concerned a rule of its law of fundamental importance.

⁶⁹ IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mbaye; AGAINST: *Judges* Koroma, Rezek; *Judge ad hoc* Ajibola.

⁷⁰ Decided that, up to point G below, the boundary of the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria takes the following course: □starting from the point of intersection of the centre of the navigable channel of the Akwayafe River with the straight line joining Bakassi Point and King Point as referred to in point III (C) above, the boundary follows the "compromise line" drawn jointly at Yaoundé on 4 April 1971 by the Heads of State of Cameroon and Nigeria on British Admiralty Chart 3433 (Yaoundé II Declaration) and passing through 12 numbered points, whose co-ordinates are as follows: *Longitude Latitude*
point 1: 8° 30' 44" E, 4° 40' 28" N
point 2: 8° 30' 00" E, 4° 40' 00" N
point 3: 8° 28' 50" E, 4° 39' 00" N
point 4: 8° 27' 52" E, 4° 38' 00" N
point 5: 8° 27' 09" E, 4° 37' 00" N
point 6: 8° 26' 36" E, 4° 36' 00" N
point 7: 8° 26' 03" E, 4° 35' 00" N
point 8: 8° 25' 42" E, 4° 34' 18" N
point 9: 8° 25' 35" E, 4° 34' 00" N
point 10: 8° 25' 08" E, 4° 33' 00" N
point 11: 8° 24' 47" E, 4° 32' 00" N
point 12: 8° 24' 38" E, 4° 31' 26" N;

⁷¹ That line passes through points A to G, whose co-ordinates are as follows: *Longitude Latitude* point A: 8° 24' 24" E, 4° 31' 30" N
point A1: 8° 24' 24" E, 4° 31' 20" N
point B: 8° 24' 10" E, 4° 26' 32" N
point C: 8° 23' 42" E, 4° 23' 28" N
point D: 8° 22' 41" E, 4° 20' 00" N
point E: 8° 22' 17" E, 4° 19' 32" N

boundary line between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria followed a loxodrome having an azimuth of 270° as far as the equidistance line passing through the midpoint of the line joining West Point and East Point. The boundary meets this equidistance line at a point X, with co-ordinates $8^\circ 21' 20''$ longitude east and $4^\circ 17' 00''$ latitude north.⁷²

By fourteen votes to two, the Court decided that the Federal Republic of Nigeria was under an obligation expeditiously and without condition to withdraw its administration and its military and police forces from the territories, which fall within the sovereignty of the Republic of Cameroon.⁷³ The World Court by fifteen votes to one,⁷⁴ took note of the commitment undertaken by the Republic of Cameroon at the hearings that: “faithful to its traditional policy of hospitality and tolerance”, it “will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area”.⁷⁵

The ICJ unanimously rejected all other submissions of the Republic of Cameroon regarding the State responsibility of the Federal Republic of Nigeria; and also the counter-claims of the Federal Republic of Nigeria on the issue of state responsibility.⁷⁶

point F: $8^\circ 22' 19''$ E, $4^\circ 18' 46''$ N

point G: $8^\circ 22' 19''$ E, $4^\circ 17' 00''$ N.

⁷² Unanimously decides that, from point X, the boundary between the maritime areas appertaining respectively to the Republic of Cameroon and to the Federal Republic of Nigeria follows a loxodrome having an azimuth of $187^\circ 52' 27''$.

⁷³ IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judge ad hoc* Mbaye AGAINST: *Judge* Koroma; *Judge ad hoc* Ajibola.

⁷⁴ IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Oda, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; *Judges ad hoc* Mbaye, Ajibola; AGAINST: *Judge* Parra-Aranguren.

⁷⁵ See the Judgment of the Court paragraph 325 (C).

⁷⁶ In General the Judgment of Court was signed by the following:

(*Signed*) Gilbert GUILLAUME, President.

(*Signed*) Philippe COUVREUR, Registrar.

Judge ODA appended a declaration to the Judgment of the Court; Judge RANJEVA appended a separate opinion to the Judgment of the Court; Judge HERCZEGH appends a declaration to the Judgment of the Court; Judge KOROMA appends a dissenting opinion to the Judgment of the Court; Judge PARRA-ARANGUREN appends a separate opinion to the Judgment of the Court; Judge REZEK appends a declaration to the Judgment of the Court;

The Judgment of the World Court finally had delimited the land and maritime boundary of Cameroon and Nigeria and decided that sovereignty over the Bakassi Peninsula lay with the Republic of Cameroon⁷⁷ thereby putting to rest the eight year old legal battle between both countries started at the instance of Cameroon.

4. The Solomonic Judgment and the Bakassi People: Any Consideration for Humanity?

The World Court has acquired an enviable status as an umpire of justice with impeccable members serving as Judges. Increasingly, it is showing a greater degree of geographical diversification without any compromise on independence and quality of its composition.

The work of the Court is arduous and often calls for Solomonic wisdom to do justice to the cases and parties before it. The case of Cameroon and Nigeria illustrates how complex, highly technical and contentious the issues that the ICJ is usually called upon to adjudicate in exercise of its judicial function can be. The duty of deciding based on the law and facts of a particular case is no mean task. But, beyond tabulated legalism, one would like to examine the ICJ decision on the Bakassi issue from the human angle. What is the impact of the judgment on the Bakassi inhabitants as a people? Is the judgment devoid of any consideration for humanity?

To answer the question of what the human value of this judgment is, one needs to specifically consider the people that will be mostly affected by this judgment – the Bakassi inhabitants or natives. Bakassi Peninsula is made up of 10 major islands with a population of about 300,000 people. The predominant groups are:

Judge AL-KHASAWNEH and Judge *ad hoc* MBAYE append separate opinions to the Judgment of the Court; Judge *ad hoc* AJIBOLA appends a dissenting opinion to the Judgment of the Court. (*Initialled*) G.G. (*Initialled*) Ph.C. Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this tenth day of October, two thousand and two, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Cameroon, the Government of the Federal Republic of Nigeria, and the Government of the Republic of Equatorial Guinea, respectively.

⁷⁷ *In Favour: President Guillaume; Vice –President Shi; Judges Ranjeva, Herczegh, Fleischhauer, Higgins, Parra- Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby; judge ad hoc Mbaye; Against: Judges Oda, Koroma; Judge ad hoc Ajibola. Note in general, Judge Ajibola (judge ad hoc for Nigeria) and Judge Koroma respectively wrote dissenting opinion on the Court's Decision in the case of Cameroon and Nigeria.*

Efik with Ibibios, Ijaws, Igbos, Orons, Yorubas Urhobis, and other inhabitants. Although, the population is large the area is said to lack basic infrastructure and facing serious environmental degradation owing to oil production activities.⁷⁸

Considerations of humanity may depend on the subjective appreciation of the Judge, but, more objectively, they may be related to human values already protected by positive legal principles, which taken together, reveal certain criteria of public policy and invite the use of analogy.⁷⁹ Such criteria have obvious connections with general principles of law and with equity, but they need no particular justification. At the world court, Nigeria particularly emphasized that its title on the basis of historical consolidation, together with acquiescence, in the period since the independence of Nigeria, “constitutes an independent and self-sufficient title to Bakassi.”⁸⁰

Nigeria showed before the Court, in considerable details, often with supporting evidence of many activities in Bakassi that it regarded the area as proof both of settled Nigerian administration and of acts in exercise of sovereign authority. Among these acts are the establishment of schools, the provision of health facilities for many of the settlements and some tax collection. It also contended that the case law of the World Court, and of certain arbitral awards, makes it clear that such acts were indeed acts *à titre de souverain*, and as such relevant to the question of territorial title.⁸¹ Evidence before the court showed that the people of Bakassi had been living there for at least 4 decades and were not only predominately Nigerians but consider themselves as Nigerians and some of them claim the area is indigenous to them. Unlike in 1961 when the United Nations conducted plebiscites in Northern and Southern Cameroon to seek their views before taken a decision affecting them, no such action was taken before the ICJ reached its famous decision that the Bakassi people now form part of Cameroon. Arguably, without due consultation, the people of Bakassi had been arbitrarily denied their right to a nationality.⁸²

⁷⁸ No recent census has been done in the area and this figure is based on estimation from the 1991 Nigerian Population Census.

⁷⁹ See Ian Brownlie, *Principles of Public International Law* op.cit., p. 27

⁸⁰ Paragraph 218 of the ICJ Judgment.

⁸¹ See *Minquiers and Ecrehos*, Judgment, I.C.J. Reports 1953; *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975; *Rann of Kutch*, Arbitral Award, 50 ILR 1; *Beagle Channel Arbitration*, 52 ILR 93.

⁸² See Art. 15 of the Universal Declaration of Human Rights: 1948

According to the International Covenant on Civil and Political Rights (ICCPR) “All peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The protection of individuals and groups rights particularly the right to self-determination is considered an important aspect of human rights. The United Nations Charter recognized the right to self-determination.⁸³ ICJ being a principal organ of the UN ought to have had regard to this legal principle to ensure that the well being of the inhabitants of Bakassi was respected.

Cameroon’s oral pledge to extend their traditional hospitality to them, which undertaken was subsequently accepted by the Court in its judgment is not sufficient. The decision of the court tends to focus on the territory not the people of Bakassi inhabiting the territory with a collective right to self-determination. As Ian Brownlie rightly observed “... territory inhabited by peoples not organized as a State cannot be regarded as *terra nullius* susceptible to appropriation by individual States in case of abandonment by the existing sovereign”⁸⁴.

Right to self-determination as a concept stands apart from the normal discourse of rights and directly affects political power and organization within and among States⁸⁵. It has a deep historical significance starting with decolonization and continuing to the contemporary focus on democratization and prominence of ethno-separatist movements.⁸⁶ The entire dispute between Nigeria and Cameroon over Bakassi brought to the fore once more the colonization and unfair Berlin partitioning of Africa. The circumstance of the case alone would have moved the court to consider the principle of self-determination, and at the least, conduct plebiscites and factor the result into the court’s decision.

Although, the application of the principle of *uti possidetis* may have constrained the court in recognizing the collective rights of Bakassi people to self determination, but one still expected the court to make concrete recommendation binding Cameroon with,

⁸³ See Article 1(2) and Article 55 “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.

⁸⁴ Ian Brownlie, *Principle of Public International Law*, *op. cit.*, p. 602

⁸⁵ Henry J. Steiner and Philip Alston, *International Human Rights in Context* 2nd Edn. (Oxford University Press) 2000 p. 1248.

⁸⁶ *Ibid.*

respect to the right of Bakassi people who were Nigerian nationals until the decision of ICJ. Merely accepting Cameroon's weak undertaking "that Cameroon faithful to its traditional policy of hospitality and tolerance, it will continue to afford protection to Nigerians living in the Bakassi Peninsula and in the Lake Chad Area" reflects lack of consideration of humanity in the ICJ Judgment.⁸⁷

It will not be too far before agitation for self determination will be intensified by the people, which will further worsen the security and stability of the region. The Court's failure to deal concretely in a just and fair manner *with* the rights and welfare of the people of Bakassi has rendered its decision devoid of any consideration for humanity and one that will precipitate agitations for self- determination with its attendant consequences at domestic, regional and international levels.

5. *Vox Populi* on Bakassi

The reaction and responses by Nigerians concerning the decision of World Court that gave judgment in favor of Cameroon over the Bakassi Peninsula have been unprecedented. It does seem, from reactions, that no major occurrence has jostled Nigerians out of their laxity in the recent past like the October 10, 2002 verdict of the International Court of Justice (ICJ) at the Hague, Netherlands over the Bakassi Peninsula. Most Nigerians going by their reactions, least expected the ICJ verdict as outcome of the Cameroon instituted action after eight years of defense with the best team of local and foreign international experts at our disposal. Despite the fact that Nigeria was given a little leverage in the judgment in the Lake Chad zone, the loss of Bakassi peninsula is enormous and has been subject of a wide-spectrum of criticism, consequent on the effect of denying hundred's of Nigerian's inhabiting that area of their Nigerian citizenship.

In an official statement, the Federal Government had rejected it, declaring, "On no account will Nigeria abandon her people and their interest. For Nigeria, it is not a matter of oil or natural resources on land or in coastal water. It is a matter of the welfare and well-being of her people on their land."⁸⁸ There has been host of calls that the government should go to war and win probably by might what it failed to win in the legal tussle on Bakassi at the World Court. The preponderant views of Nigerians

⁸⁷ Only one Judge of ICJ- Judge Parra- Aranguren, refused to endorse that part of the judgment.

⁸⁸ *THISDAY*, Thursday October 24, 2002, p. 2.

are that the government should act in contempt of the Judgment and take all necessary actions to secure its borders around the disputed peninsula.

The responses and reactions of some Nigerians prompted Assisi Asobie an activist scholar to write:

... Some Nigerians including some of those who represented our country on the case, at the Hague, do not reflect a thorough understanding of the issues involved in the case. In particular, the political context of the dispute is not fully appreciated by many Nigerians⁸⁹

It is the view of this paper that the legal contention is also beyond the comprehension of many Nigerians. Most commentators appear to be simply driven by the spirit of patriotism and the feeling of the 'Giant of Africa'. Thus, to conceive of even legal defeat at the World Court to a small neighbouring country Cameroon is a huge assault on its ego as a leader of the African continent.⁹⁰ We will briefly discuss these responses under three broad categories: The Government- administrators, policy and lawmakers; the Nigerian People; and the Bakassi People- the direct victims of the World Court's decision.

Government Views

President Olusegun Obasanjo commenting on the world Court decision stated that Nigeria and Cameroon are exploring political and diplomatic means of resolving the Bakassi crisis. He however said that *government's* official position on the issue would be made known after the country's team of lawyers had critically examined the ruling and submitted their views to the government.⁹¹ About a week later on, an official statement issued and attributed to the Federal Government rejected the judgment and reaffirmed its commitment to protect the interest of its citizens and inhabitants of the disputed territories. Nigeria rejected the verdict of the International Court of Justice on the disputed

⁸⁹ See *Vanguard* Newspaper, Friday, June 6, 2003, p.18.

⁹⁰ Ethnicity plays a major role in our internal politics but when it comes to external relations many Nigerians would quickly adjust to stand as one Even, former Biafra predominantly Igbos) of Nigeria who felt that previous government actions in conceding territorial sovereignty to Cameroon then was informed by malice to ensure that the Igbos lose the *Biafra* war had no option than to join the public opinion poll to support Nigeria to remain resolute in its claim over Bakassi.

⁹¹ *Vanguard*, Friday, October 18, 2002 vol. 17 No. 51004

Bakassi Peninsula because the Court failed to take a lot of fundamental issues into consideration in arriving at its decision especially the order relating to Nigerian communities in which their ancestral homes were adjudged to be in Cameroonian territory but which are expected to maintain cultural, trade and religious affiliations with their kith and kin in Nigeria⁹².

According to the Federal Government, the ICJ's verdict was rejected on many grounds among which are the variance between treaty of protection and treaty of possession. Where however, a treaty of protection provides for jurisdictional powers, the protecting power can lay claim to possessing a title. But as it concerns Bakassi, the British treaty with the inhabitant's for protection of the Efik people living there did not provide for British jurisdiction to transfer their land and people under the Anglo- German Agreement of 1913, which the Court mainly relied on to find for Cameroon.⁹³ The Federal government does not accept that a protectorate treaty made without jurisdiction should take precedence over a community's title rights and ownership existing from time immemorial. Britain could not have given to Germany what it did not and never had, in consonance with the principle of "*nemo dat quod non habet*".⁹⁴ Further, the government enjoined her nationals in Bakassi not to move from where they are living now, as the judgment will have no effect on Nigeria and its oil and gas reserves.⁹⁵ Senator Udoma Udo Udoma, a Legislator said, "the ICJ Judgment amounted to international conspiracy against Nigeria which the country is very bitter about and suggested that both countries needed to enter into further negotiations in the matter in the interest of Peace."⁹⁶ The then Commissioner for Justice and Attorney General of Lagos State, Professor Yemi Osinbajo (SAN), said that a diplomatic approach remained the best option to resolve the matter since Nigeria and Cameroon had been living in peace as good neighbours, and has so much in common; emphasizing that much

⁹² *Vanguard*, Friday, Oct. 25, 2002.

⁹³ Former Speaker of Imo State House of Assembly Chief Noel Chukwukadibia faulted the ICJ judgment on the ground that the Judges had concentrated on the 1913 treaty instead of the Berlin Conferences of 1884 and 885- *Punch*, Wednesday, October 30, 2002 P.10.

⁹⁴ See *Thisday op. cit.* October 24, 2002.

⁹⁵ *The Comet*, Friday Oct. 11th 2002.

⁹⁶ Senator Udoma was then the Chairman of the Senate Committee on Appropriation and also from South – South zone of Nigeria which is close to Bakassi.

depended on Cameroon which had been awarded judgment to toe a reconciliatory line. He therefore, urged Nigerians to disregard calls to dishonour the ICJ decision. This stand was taken based on the fact that Nigeria had submitted to the jurisdiction of the World Court and that it was not right for them to question the propriety of its decision even though ICJ had no “defined” enforcement mechanism.⁹⁷

A call from the Cross River Government, asked the Federal Government to relieve the Attorney General of the Federation and Minister for Justice Mr. Kanu Agabi of his appointment on account of his opinion that Nigeria should concede Bakassi to Cameroon since Nigeria stood to gain enormous offshore oil reserve. The Cross River government felt betrayed and hurt that such a statement should come from their own “son-of-the-soil Minister”.⁹⁸ Commenting on the decision the former speaker of Akwa Ibom State House of Assembly Mr. Bassey Essien has described the ICJ ruling on Bakassi as a fresh attempt by the colonial masters to repartition *the* African continent stating that to lose Bakassi will mean closing the Eastern Naval command in Calabar and denying Nigeria access to the high sea.⁹⁹ In the same vein, Mrs. Nella Andem-Ewa, the Attorney-General for Justice (as she then was) for Cross River state suggested that the Bakassi case should be a wake-up call on the need for Nigeria to review its foreign policies, continental and trans- continental alliances, redefine its national interest and ascertain it’s position and influence within the comity of nations.¹⁰⁰ She expressed shocked that the ICJ would disregard the impact of its decision on the people of Bakassi in particular and condemned the failure or omission to conduct a plebiscite in Bakassi which according to her is not only discriminatory but offends against the purposes and principles of the UN and the Charter of the African Union with regard to self determination. She enjoined Bakassian Nigerians and the entire black race to join forces and appeal to the conscience of the world to afford the indigenous population of Bakassi the opportunity to exercise their inalienable right as

⁹⁷ *Thisday*, Vol. 8 no. 2734, Thursday, October 17, 2002.

⁹⁸ *Vanguard*, Wednesday, October 23, 2002. The then Justice Minister and Attorney –General of the federation, Mr. Kanu Agabi (SAN) that “Nigeria stands to gain enormous offshore oil reserve as a result of the judgment if the peninsula should be handed to Cameroon, which he posits does not have oil in commercial quantity”, *Vanguard*, Wednesday, October 23, 2002, pp.1-2.

⁹⁹ *Punch*, Tuesday November 5, 2002, p. 6.

¹⁰⁰ Emphasis mine.

provided in the UN Charter and have a plebiscite to determine their nationality. In another reaction, the National Human Rights Commission said the Federal Government could negotiate with Cameroon over Bakassi peninsula but the nationality of the people there is not negotiable.¹⁰¹ The House of Representatives in response to the judgment constituted a special committee to study the implications of the verdict. Equally, they were charged with the task of advising the House on the options open to Nigeria in its bid to reclaim its territory.¹⁰²

People's Views

Chief Emeka Odimegwu Ojukwu, ex- Biafran leader, faulted the verdict of the World Court on Bakassi, saying "it would compound the dispute between Nigeria and Cameroon over the ownership of the oil-rich territory". He however, maintained that he did not encourage rejection of the verdict.¹⁰³ He blamed the former Nigerian leader, General Yakubu Gowon, for ceding the territory to Cameroon advocating that the leaders who over stepped the bounds of powers given to them should be made to account or pay for their action. He reiterated the fact that Gowon at the time he ceded Bakassi had no control over it, as it belonged to Biafra.¹⁰⁴ N. U. A. Nwagbara in his writing attributed the Bakassi issue and problem to the arrogance, nonchalant and unpatriotic spirit of Nigerian rulers who underrated Cameroon and forgot that law is an ass and no respecter of persons. He alleged that since the verdict, there has been both negative and positive reactions. He also stated that Nigerians did first things last as they preferred a fire brigade approach to issues rather than strategic planning.¹⁰⁵

Dan Anarene wrote that the unfortunate World Court verdict which ceded Bakassi to Cameroon was without regard to the principle of impartiality, justice, equity and fair play. The composition of the court was lopsided and not properly calculated to reflect fairness on the part of some of the judges. He stressed that the inclusion of judges from Colonial Masters countries was not good enough and might have influenced the ICJ decision especially that of France from where the lead judge came¹⁰⁶. Chidi

¹⁰¹ *Vanguard*, Thursday October 3, 2002, p.6.

¹⁰² *Punch*, Friday, November 1, 2002 p. 3.

¹⁰³ *Punch*, Wednesday, October 6, 2002, pp. 1-2.

¹⁰⁴ *Punch*, Wednesday, October 16, 2002

¹⁰⁵ *Vanguard*, Monday, November, 4, 2002. *Emphasis mine.*?

¹⁰⁶ *Daily Champion*, Friday, November, 29, 2002.

Odikalu, a scholar activist writing on the Bakassi issue opined that Nigeria could have withdrawn from the proceedings after the court dismissed its preliminary objections in June 1998 or after the court declined to entertain the Nigerian request for interpretation of the preliminary objection decision in March 1999. Professor Amechi Uchegbu- professor of International Law, was of the opinion that Nigeria must respect the verdict or else the UN will come down hard on Nigeria for daring to challenge the decision of the court. In his words “the Bakassians became aliens in a foreign country Cameroon, the very moment the decision was pronounced from a legal point of view.”¹⁰⁷

Another legal luminary, Itse Sagay a professor of Law, commenting on the ICJ’s judgment said, “We cannot apply for the revision of the judgment as some laymen have suggested because we cannot meet the conditions for revision.” He opined that the next port of call was not the court, but the Security Council, since by the UN Charter, each member-State of the UN undertook to comply with the decision of the ICJ in any case to which it is a party. The enforcement of the judgment is bestowed on the Security Council. The wordings for this authority is such that it gives the security council power to exercise some discretion and judge the rationality, fairness, correctness and justice of the judgment before taking a decision on enforcement.¹⁰⁸ According to Sagay, the judgment is not the end of the case but rather opens a new chapter for fresh initiatives. He advised the Federal Government of Nigeria to start seeking the pleasure even if only one member of the Security Council, though beside France, so that the Bakassians will not be abandoned to a hellish and slavish existence.¹⁰⁹ Otunba Shobowale-Benson, a one-time Federal Minister of Information under the First Republic considered the Bakassi case concluded with the failure to get a “yes” vote at the 1961 referendum, which subsequently made the ownership of Bakassi a mute point. Immediately after, a no-less authority in the person of Dr Taslim Elias (the then Federal Attorney General)¹¹⁰ advised the Federal Government to let go of any plans to repossess Bakassi. He however, advised that Nigeria should accept the ICJ’s decision, but however use diplomacy and

¹⁰⁷ Uchegbu is the head of department of Jurisprudence and International Law at the University of Lagos. See *Thisday*, Tuesday, October 22, 2002, p.38.

¹⁰⁸ *Guardian*, Tuesday, November 12, 2002, p.12.

¹⁰⁹ *Ibid.*

¹¹⁰ Taslim Elias became a Judge of the ICJ in 1975 and later rose to become the first African President of the Court *until* his death in 1991.

dialogue to ensure that those Nigerians living there were left alone to pursue their normal lives, peaceably, anything to the contrary will further demean the image of Nigeria in the international political scene.¹¹¹

Okoi Ofem, a Nigerian citizen, in his opinion considered the ICJ verdict in all intents and purposes outrageous, bilaterally unjust and patently unsupportable and also that the loss was as a result of successive military involvement in Nigeria politics and pre-occupation of the leaders to amass wealth at the expense of the citizens.¹¹²

The Bakassian View

Within the heat and confusion generated by the loss of the oil-rich peninsula, the Bakassians at a press conference held in Abuja called on the United Nations to conduct a referendum to enable them decide where they want to belong between Nigeria and Cameroon. Further, according to their spokespersons, Senator Florence Ita-Giwa and Mr. Ene Okon of the *House of Representatives* (as they were then) “the people of the Bakassi are not bound by the decision”.¹¹³ Florence Ita Giwa, a Senator¹¹⁴ stated that the Bakassians are desperate to remain in Nigeria and they are ready to go any length to remain in Nigeria. If that fails, rather than go to Cameroon *they* will declare a Republic of Bakassi.¹¹⁵ Similarly, the Caretaker Committee Chair of Bakassi Local Government Area Mr. Enyang Inyang lamented that, “It is pathetic. It is unjust; it is impossible and cannot happen.”¹¹⁶ The responses and reactions we have articulated above capture the voices of Nigerians, informed and not so informed, moderate, reactionary and proactive. The interesting dimension is that there is a very thin line between government officials (including law makers and policy implementers) and official reactions from that of the general public. The views were as diverse as the people itself. The preponderant view was that Nigeria should not cede Bakassi to Cameroon but work out even if by extra-judicial means settlement that will tilt in its favour.¹¹⁷ Some of the views

¹¹¹ *Guardian*, Friday, November 15, 2002, p.45.

¹¹² *Thisday*, Tuesday, October 29, 2002, p.11.

¹¹³ *Vanguard*, Thursday, October 31, 2002, p. 7.

¹¹⁴ A Senator of the Federal Republic of Nigeria as she was then and also representing Bakassi, which was affected by the ICJ's ruling.

¹¹⁵ *Punch*, Saturday, November 2, 2002

¹¹⁶ *Thisday*, October 22, 2002, Vol. 8, No. 2739, p. 41

¹¹⁷ *Guardian*, Wednesday, October 16, 2002. Tunji Otegbaye, advocated for a peaceful resolution to the Bakassi episode stating that going to war is not a

apportioned blame to Britain and the rest of the West, as well as to Nigerian Leaders. Some of the views went as far as impugning the character and composition of the ICJ, imputing bias. Some suggested that Nigeria should to war if that became the only way to retain the disputed territories. The Federal Government of Nigeria, particularly previous military regimes got the most bashing for mis-action and inaction¹¹⁸ despite the strategic location of Bakassi and its economic importance.¹¹⁹ Thus, Mike Ikhariale, a NADECO member in his comment was of the view that despite the 1913 treaty, the 1971 and 1975 Yaounde and Maroua agreements between the prodigious Rtd.General Yakubu Gowon and intimidating Ahmadu Ahidjo; the case was actually lost seven years earlier when General Abacha (then military Head of State), spitefully disbanded the strong defence team carefully put together by the then Attorney General, Olu Onogoruwa, due to petty malice and *an* inexorable phobia against NADECO.¹²⁰

The least voice heard is that of the Bakassians whose nationality is in question.¹²¹ This undoubtedly points to the fact

healthy solution; the product of which will be instability loss of lives and property and unending hostility. He strongly advocated a corridor of peace *as opposed* to a corridor of war in this issue

¹¹⁸ General Yakubu Gowon got more than *his* fair share of blame because he was the *then* military head of state that signed both *the* Yaounde II and Maroua Declaration reaffirming that *the* sovereignty of the Bakassi Peninsula resides with the Cameroonians. Ignatius Orisewezie, a journalist feels that the judgment places Nigeria *in* a horn of dilemma and Nigeria cannot afford to reject it. According to him, the truth is that the Executive Agreement between Nigeria and Cameroon acknowledges sovereignty of Cameroon over Bakassi and this nullified any earlier claims of Nigeria and even without any reliance on the 1913 Anglo-German agreement. See *The Post Express*, Friday, October 18, 2002, p.11

¹¹⁹ In a press statement, Akwa Ibom and Cross River States indigenes resident in Osun State, condemned the ICJ's judgment as an attempt to re-write History and take them away from their father land, though *they* blamed *this* development on the neglect of the area by successive Federal *Government* administrations which made it appear as a no-man's land. According to their spokesmen, Chief Albert Effiong and Michael Effiong "We are not moving an inch, neither shall we cede our hand to Cameroon", *Thisday*, Friday, October 18, 2002, p.5.

¹²⁰ *Thisday*, Tuesday, October 22, 2002, p.10. NADECO stands for National Democratic Coalition.

¹²¹ Despite the tremendous media review and vibrant press in Nigeria. This writer is yet to come across any *newspaper* or magazine coverage based on actual visit to Bakassi and interaction with the people. The views of the

that they are a marginalized people. As opined by the international campaign for ‘Self- Determination’ of Bakassians:

The Bakassi Peninsula is on the verge of extinction as it is seriously threatened by marine erosion, oil production, lack of communication facilities, transportation and constant fire out break... the entire islands although surrounded by water, lacks portable and consumable water for its inhabitants because of the salinity nature of the water.¹²²

Assisi Asobie’s view reinforces the view that Bakassi and its people were marginalized. According to him, “At first, especially during the colonial days, the peninsula was regarded as ‘worthless zone of contention...a strip of dismal swamp peopled by a few miserable folks”. Later, however, valuable natural resources were discovered in the territory. From then on, the struggle over the territory intensified, manifesting from time to time in violent clashes between Nigeria and Cameroon.¹²³ Prior to the discovery of oil, Bakassi territory and its people were peripheral and marginal in official thinking and calculations both in the British Nigeria, French Cameroon and post- Independence Nigeria State. The question therefore would be whether the interest of modern State Nigeria is propelled by economics¹²⁴ rather than the welfare of the people considered Nigerians? Is the rejection of the ICJ *Judgment* by the government of Nigeria in good faith and consistent with previous governmental actions and commitments amounting to admission that sovereignty of the Peninsula belongs to Cameroon?¹²⁵ Some of these questions raised above may be

people are yet to be captured. It is only the privileged Nigerians *who are* their spokespersons .

¹²² Comrade Edem Edem *Op. cit.*, for Akpabuyo Bakassi Green Movement (ABGREMO) the Coordinator of the International Campaign for *Self – Determination of Bakassi People*- 22 April 2003.

¹²³ “ Conflict Between Nigeria and Bakassi: Political Context and Contending Principles”, *VANGUARD*, Friday, June 6, 2003, p.19

¹²⁴ According to information, the Bakassi area is said to have about 330 million barrels recoverable reserves of crude oil, which accounts for about three percent of Nigeria’s reserve capacity of 30 billion barrels. If taken based on the present crude oil price of \$27 per barrel it means that the exploration of the above recoverable reserves will certainly earn Nigeria about a whopping \$20 billion. *DAILY TIMES*, Wednesday, October 30, 2002, p. 29

¹²⁵ In February 1961, before the UN plebiscites Nigerian government had issued an important policy statement committing itself to the principle of *uti possidetis juris*, which anticipated the plebiscites in Northern and Southern Cameroon. The Nigerian government had then declared that existing boundaries as drawn, however “artificially” by the European colonial powers should be respected and must remain the recognized boundaries until such a

outside the purview of this paper but the next part may throw some light, especially on the government's obligations, relations with the comity of nations and how to balance that vis 'a vis the expectations of the Nigerian people.

6. After the ICJ Judgment: Any Option for Nigeria?

The Judgment of the World Court is not self-executing and this brings to *the* fore the distinction between adjudication and enforcement.¹²⁶ However, it is final and without appeal.¹²⁷ In the event of dispute as to the meaning or scope of the judgment, the court shall construe it upon the request of any party. By Article 94 of the UN Charter, the Security Council is to decide on measures to be taken to give effect to the court's judgment.¹²⁸ In relation to the enforcement of the Court's judgment it has been observed:

What is remarkable is that states once having voluntarily accepted the jurisdiction of an international court almost invariably honour its decisions. That was true for PCIJ, and, until recently, was also true for the ICJ. All decisions of the European Court of Justice have been implemented and the enforcement record of the court of Human rights at Strasbourg is also exemplary.¹²⁹

On the other hand it has been noted that "Although, States have complied with the Court's judgments in many of the cases, recalcitrant States have, on occasions, refused to comply. The ICJ's first decision in a contentious case was against Albania for mining the Corfu channel and damaging the British Warships.

time as the people concerned would decide, of their own free will, to merge as one unit- West Africa, 22/10/60, p.1190 quoted by Asisi Asobie, *Ibid*.

¹²⁶ There is no automatic enforcement machinery, and some decisions of the court have not been complied with. See Judge Mohammed Shahabuddeen, of ICJ, "The World Court: Image, Mission and Mandate" Published by the Nigerian Institute of Advanced Legal Studies, Lagos 1994.

¹²⁷ See Article 60 of the ICJ statutes. Note also that by Article 59 the decision of the Court has no binding force except between the parties and in respect of that particular case.

¹²⁸ Each member of the United Nations *undertakes* to comply with the decision of the International Court of Justice in any case to which it is a party- 94(1). If any party fails to perform the obligations incumbent upon the judgment the other party may have recourse to the Security Council, which may, if it deems it necessary, make recommendation or decide upon measures to be taken to give effect to the judgment.

¹²⁹ Benjamin B. Ferencz, *Enforcing International Law: A Way to World Peace* (London/New York/Rome: Oceana Publications, Inc. 1983), p. 482.

Although the ICJ ruled in 1949 that Albania should pay monetary damages, Albania has yet to do so. In 1980, Iran refused to comply with the Court's judgment to release US hostages. And the US continued to support the Nicaraguan Contras in spite of the Court's 1986 decision saying that the USA's support violated international law'.¹³⁰ The UN Security Council, hampered in part by its veto-wielding members, has yet to take measures to enforce an ICJ judgment. The result according to the above view is that states are turning to other approaches for formal dispute resolution. For example, even when a court is *the* preferred approach; states are relying more on regional and specialized courts. Possibly, the most important alternative is the increasing use of international arbitration.¹³¹

In the Cameroon and Nigerian dispute, the World Court rejected *Nigeria's* preliminary objection that it should not assume jurisdiction in the matter because the parties *had* not exhausted the use of existing bilateral machinery.¹³² Nigeria at that time wanted the court to allow it to explore non-litigatory and other peaceful means to resolve the conflict with Cameroon. Since, a judgment has been entered in favour of Cameroon concerning the land and maritime boundary dispute by the court is there any other option open to Nigeria bearing in mind the fact that the decision of the court is final? There is an option for Nigeria albeit a limited one concerning the enforcement of Court's decision. The Court in its judgment delimited the land and maritime boundary of both countries and it is expected that Nigeria and Cameroon should engage in actual boundary demarcation and that in itself presents an opportunity for dialogue on some of the unfinished business of the court especially concerning the nationality of Nigerians living in Bakassi. Not *surprisingly*, a Commission known as the Nigeria and Cameroon Mixed Commission has been formed. The body was established to follow up on the judgment of the ICJ and specifically to: ensure demarcation of the boundary between the two countries in line with ICJ judgment; to identify affected populations, assessing their situations and *provide* modalities for the protection of their rights; and to increase confidence between

¹³⁰ Barry Carter and Philip Trimble, *International Law*, 3rd Edition (New York: Aspen Law and Business, 1999), pp. 306-307.

¹³¹ *Ibid.* p.307.

¹³² See ICJ Reports 1998 pp. 300- 304 or ICJ judgment on Cameroon and Nigeria pp.29- 33. The Court observed that negotiation between the parties was deadlocked as at the time Cameroon filed the action.

Nigeria and Cameroon.¹³³ The establishment of this body is a step in *the* right direction and with careful diplomacy the parties may resolve the issue of *the* nationality of *the* Bakassi people. However, Nigeria should bear in mind that they have lost the case of sovereignty and cannot through extra- legal means and without benevolence of Cameroon, (which is remote) get back what it lost at the world court. The suggestions that there are fresh options for Nigeria should be viewed critically.¹³⁴ Nigeria should not waste resources in exploring fresh options, except to conduct, with *the* Cameroon or UN's approval, plebiscites to determine Nigerians who still want to retain Nigerian nationality, identify and re- settle them within Nigeria's geographical space.

The United Nations Charter has empowered the Security Council to decide on measure to enforce its decision.¹³⁵ Thus, it is not enough to rely on the fact that *the* Security Council are yet to enforce certain judgments of ICJ. It all depends on politics, interest and the actors? Already evidence exists that Cameroon was not alone in their claim of territorial title to Bakassi¹³⁶ and those external influences even if non- state actors may use their respective government to get the Security Council to impose sanction on Nigeria if it fails to comply with the ICJ's decision.

The extent to which Cameroon is able to muster external support will determine the pressure that will be mounted on Nigeria to respect and ensure effective implementation of the

¹³³ See *Guardian*, Wednesday, June 11, 2003. The Commission recently rose from its fourth session in Abuja. The head of the country's delegation Mr. Bola Ajibola also served as the I.C.J. *ad hoc* Judge appointed by Nigeria during the hearing of the case at Hague.

¹³⁴ I read with dismay the suggestion by so- called experts that the decision of ICJ is not binding, *but rather advice since there are* no penalties for defaulters hence the call to petition the Security Council to review the verdict. See *Vanguard*, Monday, October 14, 2002, pp. 1-2. Contrary to the views expressed the decision of the court by Article 60 the decision of the Court is final and can only be revised in accordance with Article 61 based on *the* discovery of new facts and that is also subject to time limitation. The Security Council *does not* have the power to review or revise the Judgment of the court.

¹³⁵ See Articles 94, 25 and 41 of the UN Charter.

¹³⁶ Asisi Asobie noted that "...the government of Cameroon was under domestic and foreign political and economic pressure to secure effective control over the disputed territory... a number of multinational oil companies then undertook explorations in the disputed area on behalf of the Republic of Cameroon, and these yielded positive results, thereby reinforcing the desire of the Cameroonian government to consolidate its claim to territory". See *Vanguard*, Wednesday, June 25, 2003, p. 39.

Court's decision. Nigeria had a weaker case concerning the dispute between it and Cameroon. Therefore, it is highly inconceivable that Cameroon will concede already gained ground following the World Court's decision.

7. Conclusion

The state of Nigeria has both positive and negative attitudes toward certain rules of international law... The major factors responsible for her attitudes toward international law, despite the cultural, religions, social and linguistic differences of her people, include her past experiences under colonization, her desire for rapid development, and her sociological approach to International law. The Nigerian State although pragmatic and selective in its approach, is basically interested in the strengthening of the rules of international law and has been more like a radical reformist than a negative rejectionist.¹³⁷

Undoubtedly, Nigeria has worked to strengthen the principles of international law, helped to build sub-regional, regional and continental alliances.¹³⁸ Thus, Nigeria has been described as a regional power or a regional patron whose political leaders are desirous to develop a distinct and influential voice of itself and Africa.¹³⁹ In furtherance of its objective to strengthen *international* law and principles, Nigeria government made a declaration and submitted to the compulsory jurisdiction of the International Court of Justice under Article 36 (2) of the Statute.¹⁴⁰ Cameroon made a similar declaration to accept ICJ compulsory jurisdiction,¹⁴¹ thus both countries by these separate independent actions conferred compulsory jurisdiction on the Court to determine all legal disputes concerning the interpretation

¹³⁷ Christian Okeke "International Law in the Nigerian Legal System" A Paper Presented at the United Kingdom Conference of the African Society of International and Comparative Law held at University of Nottingham England, June 29, 1996. The paper discussed Nigeria attitude toward international law and the rules of international law. See pp 25-26.

¹³⁸ It pioneered the establishment of ECOWAS, ECOMOG and a major player in African Union and several regional initiatives in particular the NEPAD.

¹³⁹ Dr. H. Assisi Asobie, "Nigeria as a Regional Power" A Paper Presented at a Conference on "Consolidating Democracy; Nigeria in Comparative Perspective", Sintra, Portugal, 21- 25 September, 1999.

¹⁴⁰ The Declaration was made on August 14, 1965, while the instrument was deposited with the Secretary General of the UN on September 3, 1965.

¹⁴¹ On March 3, 1994 and thereafter they instituted the action against Nigeria on the March 29, 1994.

of treaty, any question of international law, the existence of an international obligation, or the nature or extent of reparation for such a breach.¹⁴² The World Court decided the case in *the* exercise of its jurisdiction in contentious matters.¹⁴³ The judgment of the court followed laid down procedure and can hardly be impeached except for failure to consider humanity¹⁴⁴, which the court is not bound to do and in any case may be constrained based on *uti possitendis* principle.¹⁴⁵ What remains to be done is enforcement of the ICJ judgment that gave sovereignty of the disputed territories to Cameroon. Since, enforcement of international law will help to enthrone peace amongst nations, we submit that Nigeria should comply totally with the judgment and be open to take advantage of any concession made by Cameroon- the adjudged winner.

Nigeria has to show a high degree of conformity to bilateral and multilateral treaties it has signed and ratified. It has option of not being a contracting party and at that stage it is best for it to examine closely the implications of its being or not being a state party to an instrument of international law, its domestic effects on its national laws and other interests. Once it passes that stage and goes on to ratify, it cannot turn around to argue that it is not binding on it. The problem today is that those charged with the conduct of our external relations in Nigeria often act before they think and *at* times do not possess the capacity to do systematic analyses that will be in the best interest of the country. Cameroon, with regard to its land and Maritime boundary dispute was more calculative and consistent and systematic in their approach. It ratified the Vienna Convention on Law of Treaties only in 1991 and accepted the ICJ compulsory jurisdiction in 1994, no doubt, pre-emptory to its bringing Nigeria before the International Court of Justice. This should be a lesson for Nigeria to take seriously instruments they ratify and in all ramifications

¹⁴² See in general Article 36 and in particular 36(2). Note as at July 1998, only 72 States had made declarations under Article 36(2) of the Statutes of the Court accepting compulsory jurisdiction. 12 out of such declaration have expired or terminated and only 60 of such declarations are in force. See Barry Carter and Philip Trimble, *International Law, Op. cit.*, p. 305.

¹⁴³ The ICJ has jurisdiction in two types of cases: contentious and cases seeking advisory opinion. Note only the UN can seek for Advisory Opinion from the Court.

¹⁴⁴ Specifically in respect of *the* people of Bakassi

¹⁴⁵ The OAU Charter (AU) reaffirmed the principle of the inviolability of the frontiers of member states as attained at the time of independence.

examine its legal, economic, political and other consequences. International law confers benefit and burden, and in law one is *stopped* from approbating and reprobating at the same time. In relation to the case between Cameroon and Nigeria we must take the burden of our official action and inaction including *the* inglorious vestige of colonization, which we have previously indicated to be bound by. If Nigeria considers itself a major actor in African and World affairs and *wants* to be viewed as a major actor at the international level and in the evolving global community it *needs* to respect established norms and standards. It should not wait for the international system to compel it to observe, enforce and respect the ICJ judgment.

Postscript

The Greentree Agreement between Cameroon and Nigeria was signed on June 12, 2006 in Greentree, New York, USA by both Nigeria and Cameroon. For the Republic of Cameroon: Paul Biya, for the Federal Republic of Nigeria: Olusegun Obasanjo. In observation to witness the conclusion of that agreement were: For the United Nations: Kofi Ata Annan; for the Federal Republic of Germany, H.E. Gunter Pleuger; for the United States of America: H.E. Fokie Sanders; for the French Republic: H.E. Michel Duclos; for the United Kingdom of Great Britain and N. Ireland - H.E. Koren Pierce.¹⁴⁶ By the Greentree agreement, Nigeria recognized the sovereignty of Cameroon over the Bakassi Peninsula in accordance with the judgment of the International Court of Justice of 10 October 2002 in the matter of Land and Maritime Boundary between Cameroon and Nigeria. Cameroon and Nigeria recognize the land and maritime boundary between the two countries as delineated by the Court and commit themselves to continuing the process of implementation.¹⁴⁷ Nigeria agrees to withdraw all its armed forces from the Bakassi Peninsula within sixty days of the date of the signing of this Agreement.¹⁴⁸

Article 3 of the Greentree agreement should be of particular importance to Bakassi people as it clearly states that

¹⁴⁶ Available at http://www.dibussi.com2006/06_bakassi_peninsu.html, last accessed October 12 2009. Also, http://www.dibussi.com/eye_on_africa, last accessed October 12, 2009.

¹⁴⁷ *Ibid.* See article 1 of the Greentree Agreement, June 2006.

¹⁴⁸ See article 2 of the Greentree Agreement, June 2006. Note: If exceptional circumstances so require, the secretary-general of the United Nations may extend the period, as necessary, for a further period not exceeding a total of thirty days. This withdrawal shall be conducted in accordance with the modalities envisaged in annex 1 to this agreement.

Cameroon, after the transfer of authority to it by Nigeria, guarantees to Nigerian nationals living in the Bakassi Peninsula the exercise of the fundamental rights and freedoms enshrined in international human rights law and in other relevant provisions of international law.¹⁴⁹ In particular, Cameroon shall: (a) not force Nigerian nationals living in the Bakassi Peninsula to leave the Zone or to change their nationality; (b) respect their culture, language and beliefs; (c) respect their right to continue their agricultural and fishing activities; (d) protect their property and their customary land rights; (e) not levy in any discriminatory manner any taxes and other dues on Nigerian nationals living in the zone; and (f) take every necessary measure to protect Nigerian nationals living in the zone from any harassment or harm.¹⁵⁰

On August 14, 2008, the Federal Government of Nigeria, following the Greentree accord, formally handed over Bakassi to the Cameroonian Government amidst agitations by the inhabitants of the area, under the aegis of Bakassi Self Determination Front.¹⁵¹ The indigenes however, enjoy the sympathy of other Nigerians who are of the opinion that the indigenes had the right to choose where they belong, whether to Cameroon or Nigeria. The status of the inhabitants of the Bakassi peninsula perhaps will remain a sore point in the ICJ judgment for a long time to come and only time will tell whether the Nigerian Government will decide to appeal the judgment. Meanwhile, the Cameroon-Nigeria Mixed Commission was established for the purpose of implementing the ICJ ruling. The United Nations is supporting Cameroon and Nigeria in implementing the ICJ ruling through the Cameroon-Nigeria Mixed Commission and the Follow-up Committee on the Greentree Agreement related to the Bakassi peninsula, both chaired by the United Nations. The demarcation is ongoing and it will certainly take some years for that complex work to be completed.

¹⁴⁹ Art. 3 (1).

¹⁵⁰ Art. 3 (2) sub paragraphs a- f.

¹⁵¹ It is on record that on 22 November 2007, the Nigerian Senate rejected the Greentree Agreement ceding the area to Cameroon, on the ground that it was contrary to Section 12(1) of the 1999 Constitution. Despite that the handover took place in August of 2008. See <http://en.wikipedia.org/wiki/Bakassi>, last accessed June 10, 2010.