

**A CRITIQUE OF THE MECHANISM FOR THE ENFORCEMENT
OF INTERNATIONAL COURT OF JUSTICE (ICJ) JUDGEMENT:
A CASE STUDY OF CAMEROON vs NIGERIA**

BY

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LLM/LAW/14351/2007-2008**

APRIL, 2014

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**Being a Thesis submitted to the Faculty of Law, Ahmadu Bello
University, Zaria, in partial fulfillment of the requirements for the
award of Master of Laws (LL.M) Degree.**

APRIL, 2014

DECLARATION

I declare that his thesis entitled: "A Critique of the Mechanism for the Enforcement of International Court of Justice (ICJ) Judgement: A Case Study of Cameroon vs Nigeria" was written by me and that it is a record of my own research. No part of this thesis is to my knowledge, previously presented for another degree in this or any other university.

All quotations are indicated with specific acknowledgement and the sources of information have been duly acknowledged by way of footnotes.

Yusuf, ALHASSAN

Date

CERTIFICATION

This thesis entitled: "A Critique of the Mechanism for the Enforcement of International Court of Justice (ICJ) Judgement: A Case Study of Cameroon vs Nigeria" by Yusuf Alhassan meets the regulations governing the award of the degree of Master of Laws – LL.M of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This Thesis is dedicated to God Almighty, the giver of wisdom, knowledge and the grace to accomplish anything in life.

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LIST OF STATUTES

1999 Constitution of the Federal Republic of Nigeria with amendment

Hague Convention for the Pacific Settlement of International Disputes

ICJ Statute

United Nations Charter of 1945

Vienna Convention of 1969

United Nations Convention on the Law of the Sea

LIST OF ABBREVIATIONS

EPZ	-	Export Processing Zone
ICC	-	International Criminal Court
ICJ	-	International Court of Justice
ICTR	-	International Criminal Tribunal for Rwanda
ICTY	-	International Criminal Tribunal for the former Yugoslavia
IMO	-	International Maritime Organization
ITLOS	-	International Tribunal for the Law of the Sea
NATO	-	North Atlantic Treaty Organization
PCIJ	-	Permanent Court of International Justice
SAN	-	Senior Advocate of Nigeria
SMC	-	Supreme Military Council
UK	-	United Kingdom
UN	-	United Nations
USA	-	United States of America
UNCLOS	-	United Nations Conventions on the Law of the Sea
UNESCO	-	United Nations Educational, Scientific and Cultural Organization
WHO	-	World Health Organization

LIST OF CASES

Attorney General of Canada Vs Attorney General of Ontario (1937) AC 326
AT 347-348

Burkina Vs Mali (1981) ICJ Rep. 652

J.H. Rayner Ltd. Vs Department of Trade and Industry (1990) 2 AC 418 at
476

Libya Vs Tunisia (1982) ICJ Rep. 17, 13

Magabhai Ishwarbhai Patel Vs Union of India (1970) 3 SCC 400

ABSTRACT

The border relations between Nigeria and Cameroon remains an issue that gives all concerned a task to ponder. It is however clear that the boundary inherited by Nigeria at independence, especially in the Cameroon remains ill-defined. The Northern sector of the boundary has witnessed less problems because of the presence of physical features that were used to delimit the boundary such as mountains, hills, lakes, rivers, etc. Ebeji and Tiel in this sector have sometimes confused the exact extent of the boundary. However, the administrative acumen of the traditional rulers in this sector, coupled with the historical and cultural links between the people of the border area have contributed immensely in averting large scale border clashes. The Southern sector, which is mainly over marshy terrain, is a lot more difficult to mark by physical features hence the frequent border clashes experienced along the area. The economic importance of the oil rich Bakassi Peninsula has not in any way mitigated the problem. Considering the fact that fishing, maritime transport and associated business thrive in this area, border clashes will continue to be experienced even after the judgment of the ICJ. This research was provoked as a result of the myopic and faulty judgment delivered by the International Court of Justice, the gross abuse of human rights of the inhabitants of Bakassi Peninsula who are majorly Efik speaking people of Cross River State of Nigeria; and the way and manner the settlers of the Peninsula were given ultimatum to vacate the place for Cameroonian occupation. The researcher employed the doctrinal methodology and the use of internet; and found that the Green Tree Agreement was not only faulty but a flagrant abuse of the peoples' rights. That irrespective of the non-ratification of the Green Tree Agreement by the National Assembly, thus domesticating its application municipally, it does not by any inch remove the obligation placed on Nigeria for total compliance to the ICJ judgment.

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CHAPTER ONE

1.1 General Introduction

The African territories which have attained independence and national sovereignty, cannot in a strict sense, be regarded as national states where all the coordinating states are controlled by a central government. They do not embrace a common past and a common culture; they are indeed, the arbitrary creations of the colonialist. The manner, in which European nations descended on Africa during the closing years of the nineteenth century in their scramble for territory, was bound to leave a heritage of artificially controlled borderlines, which now demarcate the emergent African states. It is against this backdrop, that the International Court of Justice (ICJ) Judgment on the Bakassi Peninsula is critically examined. It is intended to consider the international agreements of the era of the scramble for Africa as source of conflict among African states. Undoubtedly, several boundary disputes have broken out between African states and there appears to be no acceptable criteria to employ as a guide to the settlements of these "unhappy legacy of colonialism". Historical research may enable African leaders/statesmen to borrow a leaf from their pre-colonial ancestors whose attitude to the problems of 'international'

frontiers between one nationality and another was less emotional, less rigid and more pragmatic than that which many African leaders are adopting today.

The Bakassi Peninsula covers an area of about 1,000km of mangrove swamp and half submerged islands protruding into the Bight of Bonny (previously known as the Bight of Biafra). Since the 18th century, the Peninsula has been occupied by fishermen settlers most whose inhabitants are Efik-speaking people of Nigeria¹.

Since 1993, the Peninsula which apart from oil wealth, also boasts of heavy fish deposit, has been a subject of serious dispute between Nigeria and Cameroon with score of lives lost from military aggression that have been mostly instigated by Cameroon². The matter, however, took a legal turn on march 24 1994, when Cameroon instituted a suit against Nigeria at the International Court of Justice, at the Hague, seeking an injunction for the expulsion of Nigeria armed forces, which it alleged were occupying the territory and to restrain Nigeria from laying claims to the sovereignty over the Peninsula.

¹ Anene, J.C., (1970), *The International Boundaries of Nigeria. The framework of an Emergent African Nation* London Longman p. 10.

² Olumide, I., (2002) "Letter from the Attorney General of the Federation to the Ministry of External Affairs." Punch, P. 7.

Cameroon hinged its case on its claims that an Anglo-German Agreement signed in Obakin on April 12 1913, during the colonial period had shifted the boundary from its original position in Nigeria to Thalweg of the River Akpayafe, which puts the Bakassi Peninsula on the side of Cameroon. Cameroon relied on the 1975 "Maroun Declaration" between the then Head of state General Yakubu Gowon of Nigeria and Ahmadu Ahidjo of Cameroon in which Gowon gave out the territory to Cameroon³.

Nigeria's defence to this argument had punctured the two positions canvassed by Cameroon to the effect that both Britain and Germany - the two colonial masters, had no *locus standi* to cede territories and that the agreement was not ratified by any of the parliaments of the two nations. Besides, Nigeria also maintained that the alleged ceding of the Peninsula was not endorsed by the Supreme Military Council (SMC) which was the supreme law making body of the country, thus making it binding on Nigeria.

³ Olumide, I., (2002) Ibid at p. 7 Punch, P. 7

1.2 Aims and Objectives of the Research

The aim and objectives of this research work are as follows:

1. To analyse the judgement of the International Court of Justice, its jurisdiction and the enforcement of its decision in the Bakassi Peninsula's case.
2. To appraise the responsibilities of states under the ICJ statute.
3. To assess the level of compliance with the decisions of the ICJ in the Bakassi Peninsula's case and issues emanating from then Green Tree Agreement.
4. To point out some grey areas in the Green Tree Agreement and proffer solutions that would enhance future pronouncement of the ICJ in respect of enforcement of its decision.

1.3 Scope of the Research

The scope of this research is limited to the workings of the International Court of Justice as they relate to the dispensation of justice at the international level.

It deals with the functions of the ICJ and the types of judgments, rationale behind such judgments, enforcement of the decisions of the court

and the problem of procedure involved in the enforcement of its judgment as regards the Bakassi Peninsula's case.

1.4 Literature Review

This work examined the activities of the International Court of Justice (ICJ), in particular, the origin, development and role of the Court in the settlement of dispute.

Elias⁴ in his work United Nations Charter and the World Court stated the role of the Permanent Court of International Justice as an integral part of the United Nations Charter opined that the court plays indispensable role in the promotion of peace but failed to address issues bordering on maritime disputes.

Lawrence⁵ in the principles of international law, tried to accord legal status to companies in a gleeful way, and referred to uncivilized regions as objects and not subjects which in any way deviated from the import of this research but serves as a guide to the research.

⁴ Elias, Daddy Onyueama and Bola Ajiboa, have, at various times, served meritoriously on the Court's Bench.

⁵ Lawrence, T.J., (1923) *The Principles of International Law*, 7th ed., Percy H. Winfield (ed.) McGraw Hill, p. 69.

Rudin⁶, in *Germans in Cameroon*, traced the activities of the Germans and British traders and gave an insight into the dealings of the colonial masters, whose early activities highlight the beginning of colonial legacies.

Sir Robert⁷ made useful critique of the role of ICJ, but his contribution failed to address the African context, which this research aims at addressing.

Ladan⁸ in his book *Materials and Cases on Public International Law*, gave a veritable account of the historical development of the International Court of Justice, its workings, achievements and challenges in dispute settlement. His contributions are indispensable and in tune with contemporary issues in the Court.

Ladan in *ADR in Nigeria: Meaning, Rational Advantages and Enforcement*, in current themes in Nigerian Law made observations and suggestions that touched some of the grey areas in the workings of the International Court of Justice and of the breach of its decision by states parties to dispute.

⁶ Rudin, H.R., (1938) *Germans in Cameroons*, 1884-1914 London: Claredon Press, , p. 8.

⁷ Sir Robert Jennings, (1997), “*The Role of the International Court of Justice*”, 68 *British Yearbook of International Law*, p. 3.

⁸ Ladan M.T., (2009), *Materials and Cases on Public International Law*. A.B.U., Press, Zaria at p.137.

Another author, Kenneth in his book, the Extent of the Advisory Jurisdiction of the International Court of Justice gave an indepth and apt consideration on the processes of the court, analyse certain grey areas of its proceedings. Though his work proved useful to this research work, however, there are certain areas not covered by the book, especially that which has to do with the topic in issue.

Akanmode⁹ pointed out that the Peninsula which covers a marshy area of about 1,000square kilometers and located in Cross River State, is occupied by a population of Nigerians. He further points out that if a judgment delivered by the International Court of Justice (ICJ) on Thursday October 10th 2002, was anything to go by, the inhabitants of the Peninsula may well be on their way to changing their nationalities from Nigerians to Cameroonians. In addition, Akanmode¹⁰ emphasis was on the paradox of the Peninsula. He maintained that the Peninsula is a community that subsists in the midst of plenty – plenty of fish and oil deposits but ravaged by poverty. He further traced the dispute in the oil rich area between Nigeria and Cameroon from 1993 leading to loss of lives from military aggressions that have been mostly instigated by Cameroon. Although this

⁹ Akanmode, (2002) “Bakassi Peninsula Nigeria Vs Cameroon at last, the judgment” *Punch* , P. 4

¹⁰ Ibid.

work deals extensively on the ICJ judgment, it fails to trace the genesis of the dispute caused due to colonial imposed boundary in the area.

Kolapo¹¹ gave a critical analysis of the far-reaching political-economic implication on the Nigerian state. He points out that the ruling would have adverse effect on the Nigerian state as a whole. His primary emphasis was on the pride of Nigerians and the economic jeopardy on the Nigerian state amongst others. However, it fails like Vincent Akanmode's article, to point out how colonial imposed boundaries had affected inter-state relations in Africa particularly the Bakassi Peninsula between Nigeria and Cameroon.

Sanusi¹² pointed out that the judgment made no sense. His question was "How do you cede people with different culture, different language and background to another nation whose background differs completely?" He insisted that Bakassi people are Nigerians who cannot become Cameroonians overnight. He pointed out the need for the Nigerian government to appeal to the World Court for a review of the judgment. The article did not highlight the genesis of the boundary dispute between Nigeria and Cameroon. It did not also trace the boundary dispute to

¹¹ Yemi, K., (2002), "*Far-reaching political, Economic Implications of Bakassi peninsula*" Punch, p. 7

¹² Mobolaji, S. (2002) "Bakassi What next" *Weekend Vanguard*, p. 9

colonialism as he was only interested on the way out of the judgment that ceded the Peninsula to Cameroon.

From the above, it is obvious that not much work has been done on colonialism as a source of boundary dispute and conflict among African states. In fact, none of the texts reviewed touched directly on the World Court judgment on Bakassi Peninsula as being the result of European colonial imposed boundary in the area. Hence, the work tends to be more specific and gives a detailed analysis of how colonialism was the source of boundary dispute and conflict among African States; the Bakassi Peninsula not an exception.

The internet¹³ consulted gave very useful information that aided this research. Most of the facts retrieved there from are up-to-date and indispensable to this research.

1.5 Research Methodology

The methodology employed in this research is the doctrinal, that is, the use of library for research purpose. Materials consulted are text books, articles and journals.

¹³ www.org/Bakassi, 20/08/2011.

1.6 Justification of the Study

This research is of immense significance and contributes to knowledge because; the area in issue has raised criticism from concerned Nigerians and at the international level. It would therefore serve as a useful information to academicians, policy makers, students and subsequent researchers in the field.

1.7 Statement of the Problem

Nigerian-Cameroon border relations have in the recent past attracted a lot of attention from the government of the two countries. The main reason for the present sour state of the border relations has been the ill-defined boundary inherited by the two countries at independence.

The Bakassi Peninsula claimed by both countries had been a source of friction in Nigeria/Cameroon Border Relations. The long running border dispute with Cameroon particularly along the creeks manifested right from independence and became more acute and contentious over the years.

It is pertinent to note that the Efiks (Cross River State) have settled in the Bakassi Peninsula from primordial times where they engaged in their traditional fishing occupation. Today, despite the constant harassment by Cameroonian Law Enforcement and Security Agents, Nigerians constitute

90% of the population in the Bakassi Peninsula. Herein lies the problem, since the Nigerians in the Bakassi cannot be wished away by Cameroon, some form of agreements have to be reached in view of the competing claims.

Steps towards amicable settlement of the border issue began as far back as 1965, but the outbreak of the Nigerian Civil War militated against its completion. By 1970, the two countries were back to the negotiating table under the auspices of the reconstituted Nigeria-Cameroon Joint Boundary Commission.

These efforts culminated in the signing of the disputed Maroua Declaration of 1975 by the two countries. The inherent defects of that treaty coupled with its non ratification led to its rejection by Nigeria two months after its signing. Since then, the relationship between the two countries has been on the downward slide reaching its lowest ebb in 1993.

1.8 Organizational Layout

The research work is divided into six chapters as follows:

Chapter one discusses the general introduction and preliminary issues like aims and objectives, justification, scope of the study, methodology, statement of the problem and literature review.

Chapter two examines boundary disputes and conflicts among African states against the background of European Partition of Africa, Bakassi Peninsula as an issue of conflicts between Nigeria and Cameroon, the implication of ICJ judgement on the matter and consequential effect of the enforcement of the judgment.

Chapter three focuses on the history of the International Court of Justice(ICJ), membership, appointment of judges, funding and remunerations of judges, jurisdiction and powers of the court, measures on safeguarding impartiality and advisory opinion of the court.

Chapter four analyses the mechanism for enforcement of International Court of Justice judgement, pacific settlement of disputes, adjudication, proceedings of the International Court of Justice, preliminary objections, incidental proceedings, judgments of the International Court of Justice, trends and issues of enforcement.

Chapter five as the crux of the research makes a critique of the enforcement of the judgment in the case of Cameroon Vs Nigeria; the dispute, decision of International Court of Justice and its consequences, obligation to comply or not to comply with the decision, consequences of non-compliance with the decision of the Court and options of the decision.

Chapter six concluded the research by way of observations and recommendations to give this research an aura of objectivity.

CHAPTER TWO

Boundary Dispute and Conflict among African States

2.1 Introduction

Reflecting on the emergence of many new sovereign states in contemporary Africa, Davidson¹ posits that the contemporary African scene does not leave room for optimism and complacency. People, who had assumed that, in view of the arbitrariness of the boundaries, the preservation of the frontiers would arouse no patriotism, have been proved wrong. Anene² posits that Morocco and Algeria resorted to war in order to maintain the integrity of the boundaries which national honour appeared to demand. In many other African areas there is an uneasy string of irredentist claims kept alive by the clamour of groups whose traditional frontiers have apparently been outraged by the international boundaries.

It is perhaps necessary to observe that all political boundaries are artificial because they are demarcations by man. The accidents of history, the vagaries of geography and the exigencies of economics have all played a part in determining even European boundaries. This special circumstance

¹ Davidson, B. (1967) *Old Africa Rediscovered* London Longman, p. 114.

² Anene, J.C., (1970), *The International Boundaries of Nigeria*. The framework of an Emergent African Nation London Longman, p. 10.

was operational in Africa. East Mody³ observed, made her international boundaries doubly artificial in the sense that they are not, like European boundaries, the visible expression of age-long efforts of the indigenous peoples to achieve political adjustment between themselves and the physical conditions in which they live.

In the successive phases of the European partitioning of Africa, the lines demarcating spheres of interest were often haphazard and precipitately arranged. The European agents and diplomats were primarily interested in grabbing as much African territory as possible, and were not duly concerned about the consequences of disrupting ethnic groups and undermining the indigenous political order. These criticisms obviously represent only a much generalized picture of the attitude of the European agents involved in the drawing of African boundaries, Boggs⁴.

One major example of the manner in which these boundaries were made is provided by a former Commissioner and Consul-General (1914), which played an active part in drawing the boundary between Nigeria and

³ East, W.G. and A.E. Mody, (1956) *The changing world* London Allen and Unwin, , p. 15.

⁴ Boggs, S.W., (1940) *International Boundaries. A study of Boundary Functions* New York Oxford University Press, , p. 40-44.

what is today Western Cameroon. He had this to say in a speech to the Royal European society. Murdock, G.P.⁵

In those days we just took a blue pencil and a rule, and we put it down at old Calabar, and draw that blue line to Yola... I recollect thinking when I was sitting as an audience with the Emir (of Yola), surrounded by his tribe, that he did not know that I, with a blue pencil, had drawn a line through his territory.

2.2 Bakassi Peninsula: A Source of Conflict

Nigeria is bound to honour a number of pre-Independence agreements inherited from British by virtue of the Exchange of Notes of October 1 1960, between Nigeria and United Kingdom on treaty obligations. Rudin⁶, observed that the agreements relevant to the subject matter, which are binding on Nigeria and which should be read together showed that the international boundary was drawn through the Thalweg of the River Akpayafe which puts the Bakassi Peninsula on the Cameroon side of the boundary. Article 21 of the agreement between the United Kingdom and Germany signed at London in March 11, 1913. The Anglo-German protocol signed at Obakin on April 12, 1913 and the exchange of letters

⁵ Murdock, G.P. (1959) *Africa: It's People and Their Culture History* New York Cambridge University Press, , p. 145.

⁶ Rudin, H.R., (1938) *Germans in Cameroons, 1884-1914* London: Claredon Press, , p. 8.

between Britain and German governments on July 6, 1914 are pointers to the fact that the Peninsula belongs to Cameroon.

Information available from the Federal Directorate of Survey, cited in Olumide⁷, showed that the "Bakassi Peninsula" has never been included as part of Nigeria since the Southern Cameroon ceased to be part of Nigeria in 1961. Also, the Northern Region, Western Region and Eastern Region (Definition of Boundaries) proclamation of 1954 (L.N 126 of 1954) showed the Bakassi Peninsula as forming part of the then Southern Cameroon. Moreover, by a Diplomatic Note No. 570 of 27 1962, from the Ministry of External Affairs to the Embassy of Cameroon in Lagos to which was attached a map prepared by the Federal surveys, Nigeria recognized the Bakassi peninsula as forming part of the Cameroon. Also, Burkina Faso Vs Niger border dispute ended on 17th October, 2012. Other disputes are both pastoralist Sahelian land and a forestry zone appropriate for agriculture. Both countries have submitted boundary cases before the ICJ. In 2005, the ICJ resolved a dispute between Niger and Benin and in 1986 between Burkina Faso and Mali.

⁷ Olumide, I., (2002) "Letter from the Attorney General of the Federation to the Ministry of External Affairs." Punch, p. 7

The African Union Border Programme encourages African states to clearly define their borders by 2012⁸.

The implementation of agreements can drag on as has been the case with the ICJ's 2002 ruling over Bakassi on the border between Cameroon and Nigeria.

Burkina Faso and Niger have 18 months to implement any ICJ decision⁹.

2.3 Implication of ICJ Judgment on Bakassi Peninsula

On Thursday 10 October 2002, the International Court of justice, Hague delivered judgment on the disputed oil-rich Bakassi Peninsula and gave ownership to Cameroon over Nigeria. The Court's decision was based on the Anglo-German agreement of 11 March 1913. The Court's decision of (2002) was that the boundary follows the mouth of River Akpakorum, dividing the Mangrove Island near Ikang as far as straight line joining Bakassi peninsula point and king point.

In that judgment, the court requested Nigeria to expeditiously and without condition withdraw its administrative and military or police force from the area of Lake Chad falling within the Cameroon sovereignty and

⁸ www.144.com/2012/niger/court.bur.

⁹ www.144.com/2012/niger/court.bur.

from the Bakassi Peninsula. It also requested Cameroon to expeditiously and without condition withdraw any administrative or military or police force which may be present along the land boundary from Lake Chad to the Bakassi Peninsula territories, which pursuant to the judgment fall within the sovereignty of Nigeria. ICJ¹⁰.

What are the implications of the judgment for the Nigeria state? For one, there are fears that losing Bakassi Peninsula to Cameroon may mean the loss of the entrance to the Calabar port to Cameroon. This is because the entrance to the Calabar port lies in Calabar channel and going by the terms of the 1913 agreement between Britain and Germany which the World Court relied upon as the authority for Cameroon's claim to Bakassi, the channel belongs to Cameroon¹¹.

Secondly, the loss of Bakassi has also placed the multi-million Naira Export Processing Zone (EPZ) in serious danger. This is because the Calabar EPZ depends largely on this important segment. It would only mean that the port belongs to Cameroon out rightly or Nigeria will have to pay charge. There is also the danger of losing 100 million barrels of oil deposit and also four trillion cubic feet of gas deposits in the Peninsula.

¹⁰ ICJ, "The Bakassi Peninsula Judgment" Vanguard. (2002), p. 5.

¹¹ Yemi, K., (2002) "*Far-reaching political, Economic Implications of Bakassi Peninsula*" Punch p. 7.

This will be the result of the oil companies having to leave the area and relinquish the oil wells to the Cameroonians. The implication of this, is that the huge revenue got from "Bakassi oil" will be lost. A nation striving to improve the lot of its people by adequately utilizing their sources of revenue will surely feel the severe impact of this type of judgment on the entire economy.

The social implications of the ruling are that, Nigerians who have lived in Bakassi all their lives will have to face the sad reality of having to evacuate a region that is part and parcel of them immediately. Most people living in that area will mean detaching them from their source of income. Moreover, all infrastructural facilities including hospitals, schools, recreational centers, that originally put in place by Nigeria government for her citizens in the region stands the risk of being forfeited resulting in fruitless effort and loss of income.

Upon the official handing-over of the Bakassi Peninsula to Cameroon by the administration of President Olusegun Obasanjo in compliance with the ICJ ruling vide the office of Attorney General of the Federation headed by Michael Aandoaka (SAN), the then Attorney General and Minister of Justice. Nigerians living in this region became displaced due to the inability

of the government to put in place adequate accommodation to the affected citizens.

Another development that will not be forgotten so soon, was the loss of constituency of Senator Ita Giwa. The senator woke up one morning to realize that there was no more a constituency to represent at the National Assembly as a result of compliance by the government of Nigeria.

Another far-reaching implication of the judgment is the strategic or security implication for the Nigerian state. The victory of Cameroon will make the nation lose its eastern access to the Atlantic. This implies that without Cameroon's approval, Nigeria's naval ships cannot move freely to southern Africa. For security reasons, this cannot be healthy and certainly not in the best interest of the nation.

There had been contending arguments on what Nigeria should do concerning the area (Bakassi) that was in dispute. Some scholars are of the opinion that "the principle for good faith" in international relations demands that Nigeria should not disavow her world of honour as evidenced by the Note of 1962. This school of thought also favour the immediate

recommendation of the Nigeria-Cameroon Joint Boundary Commission dated August, 1970¹².

Another school of thought the likes of Prof. Wole Shoyinka, Femi Falana who are Human Right Activities opposed to the above view contended that “there is no morality in international relations”. It is against the national interest as Nigeria may become vulnerable should the Federal Government accept the ruling of the International Court of Justice (ICJ) granting the disputed Bakassi Peninsula to Cameroon. It is the contention of this school of thought that the area was strategic in the security of Nigeria¹³.

The former school of thought prevailed as Nigeria towed the path of honour by a peaceful hand-over of Bakassi Peninsula to Cameroon as demanded by the ICJ ruling. Nigeria and Cameroon should be commended for the matured manner they handled the Bakassi Peninsula issue instead of resulting to war as demonstrated by Morocco and Algeria. This according to Rouke¹⁴, is against the backdrop of the fact that international law is least effective when applied to “high-politics” issues such as national security relations between sovereign states. When vital interests are involved,

¹² www.un.org/events/tenstories

¹³ www.vanguardngr.com

¹⁴ Rouke J.J., (1997) *International Politics on the World Stage*. New York Dushkin/McGraw Hill, p. 110.

governments still regularly bend international law to justify their actions rather than alter their actions to conform to the law.

In addition, the delimitation of Maritime boundary be carried out in accordance with the 1958 Geneva Conventions on the Law of the Sea, and in accordance with the boundary marks and post defined in the Anglo-German Agreement respecting the (a) the settlement of frontiers between Nigeria and Cameroon from Yola to the sea; and (b) the regulation of Navigation on the Cross River.

2.4 ICJ Judgment and Abuse of Human Rights

It will be recalled that on 10th October 2002, the International Court of Justice (ICJ) delivered judgment in Land and Maritime Boundary, between Cameroon and Nigeria which covers about 2000 kilometres extending from Lake Chad to the sea.

The Green Tree Agreement was also signed by H.E. Paul Biya and President Olusegun on 12th June, 2006, in Long Island, Green Tree, New York, USA, reaffirming their willingness to peacefully implement the judgment of ICJ.

The Bakassi indigenes however have filed a suit against the Federal Government before a Federal High Court in Abuja, as they seek an order

CHAPTER THREE

An overview of the International Court of Justice

3.1 Introduction

The International Court of Justice is the main judicial organ of the UN. Its 15 judges are elected by the General Assembly and the Security Council, voting independently and concurrently. The court decides disputes between countries, based on the voluntary participation of the states concerned. If a state agrees to participate in a proceeding, it is obligated to comply with the court's decision. The court also gives advisory opinions to the United Nations and its specialized agencies.

3.2 Historical Evolution of the International Court of Justice

The International Court of Justice (ICJ) succeeded the former Permanent Court of International Justice (PCIJ) in 1946 under the Charter of the United Nations Organisation¹. The Court is one of the major organs of the United Nations. The court is the judicial organ of the United Nations². It shall function in accordance with the annexed statute of the

¹ Art. 7 of UN Charter.

² Art, 92 Ibid, Art., 1, ICJ Statute.

Permanent Court of International Justice and forms an integral part of the UN present Charter³.

Under Article 22 established at Hague, in Netherlands, the court has the power to sit and exercise its function wherever it considers desirable.

All members of the United Nations are ipso facto, parties to the Statute of International Court of Justice. A non-member state may become a party to the Statute on conditions to be determined in each case by the Security Council⁴. 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. Failure to perform the obligation incumbent upon it under a judgement rendered by the Court enables the other party to have recourse to the Security Council which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment⁵.

The International Court of Justice (ICJ) is the principal judicial organ of the UN and was established in 1946 on the basis of Article 92 of the UN Charter. The Security Council and General Assembly of the UN according to

³ Elias, T.O., (1989) *United Nations Charter and the World Court*, 1st edition, Index Printers Limited, Ibadan, Nigeria pp. 110-111.

⁴ Art. 93 of UN Charter.

⁵ Art. 94 Ibid.

a procedure elect the judges. The current understanding as to the distribution of the 15 seats on the International Court of Justice (in terms of nationality and power blocs) corresponds with the membership of the UN Security Council. This means, *inter-alia* that the International Court of Justice has on its benches a national each of the permanent members of the Security Council (USA, Russia, Britain, France and China). The International Court of Justice delivers a single judgement, but allows for judges to give their views. The judgement of the International Court of Justice is binding upon states party to the dispute⁶.

The jurisdiction of the International Court of Justice relate to the deciding of contentious case and to providing advisory opinion, neither of which power it can exercise of its own volition. The jurisdiction comprises all cases that the parties refer to it and all matters specially provided for in the UN Charter, in treaties and Conventions in force⁷. States can at any time declare that they accept the compulsory jurisdiction of the International Court of Justice in the legal disputes concerning:

- a) The interpretation of a treaty;
- b) Any question of international law;

⁶ Arts. 25, 33, 35 and 279 of UN Charter.

⁷ Art. 36(1) of the ICJ Statute.

- c) The exercise of any fact which, of established, would constitute a breach of an international obligation;
- d) The nature or extent of the reparation to be made for the breach of an international obligation – Article (2) of ICJ Statute.

In addition to its jurisdiction over cases brought by states, the International Court of Justice may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the UN to make such a request⁸. The Security Council and the General Assembly of the UN are authorized by the UN Charter⁹, to request advisory opinion of the court. The opinions of the court are binding upon the requesting body and the tendency is that they are also accepted and adhered to by states concerned. States do not have the capacity to request advisory opinion of the court, although they can express their particular views or comment on others¹⁰.

It was established by the Charter of the United Nations, signed on 26 June 1945 at San Francisco, in pursuance of one of the primary purpose of the UN: "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of

⁸ Art. 65(1) of the UN Charter.

⁹ Art. 96(5) Ibid.

¹⁰ Quoted in International Review of the Red Cross, January - February, 1997, No. 316 pp. 35-55.

international disputes or situation which might lead to a breach of the peace¹¹.

The court operates under a statute (which forms part of the Charter) and its own rules¹².

3.3 Membership of International Court of Justice

The present membership of the court is composed of 15 judges as contained in the International Court of Justice Statute, while the organisation of the court is also provided in the same Statute (ICJ) thus provides¹³; the court shall consist of fifteen members no two of whom may be nationals of the same state¹⁴. A person who for the purpose of membership in the court could be regarded as a national of more than one state shall be deemed to be a national of the court of the one in which he ordinarily exercises civil and political rights.

It may not include more than one judge of any nationality in the determination of membership. Elections are held every three years for one third of the seats, retiring judges may be re-elected again. Members of the court do not represent their government but are independent magistrate.

¹¹ Quoted in International Review of the Red Cross, January - February, 1997, No. 316 pp. 35-55.

¹² Art. 92 of the UN Charter

¹³ Art. 3 Ibid.

¹⁴ Ibid.

The judges are elected for a nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other. The judges must possess the qualification required in their respective countries for appointment to the highest judicial offices or be jurist of recognized competence in international law¹⁵. Also, the composition of the court has to reflect the main forms of civilization and the principal systems of the world.

Situation may arise where the court does not include a judge possessing the nationality of a state party to a case; that state may appoint person to sit as a judge ad hoc for the purpose of the case.

3.4 Power and Jurisdiction of the Court

The court has power to entertain a dispute brought by member states and non-member states where the non-member states have consented to the jurisdiction and powers of the court¹⁶.

Institution proceedings against the Czech and Slovak Republic, with regard to an Application filed by the Federal Republic of Yugoslavia on 16 March 1994, instituting proceedings against the member states of NATO and with regard to an Application filed by Eritrea 16 February 1991,

¹⁵ Art. 2 of UN Charter.

¹⁶ Art. 36 of ICJ Statute.

instituting proceedings against Ethiopia; and with regard to an Application filed by Rwanda against France on 18 April 2007, the Respondent consented to the court's jurisdiction. The consent led to those cases being entered into the General list with effect from the date of receipt of the consent as respectively certain Criminal proceedings (Republic of the Congo Vs France) and certain questions of Mutual Assistance in Criminal Matters (Djibouti Vs France)¹⁷.

The power of the court and its jurisdiction are the same, therefore, the powers have been succinctly discussed under jurisdiction of the international court of justice.

Jurisdiction of the International Court of Justice (ICJ) falls into two distinct parts that is:

- i) Its capacity to decide dispute between states
- ii) And its capacity to give advisory opinion when requested to do so by particular qualified entities.

The jurisdiction of the International Court of Justice is provided in ICJ Statute as follows¹⁸: "the jurisdiction of the court comprises all cases which

¹⁷ www.icj-cij.org/jurisdiction

¹⁸ Art. 36 of ICJ Statute.

parties refer to it and all matters specially provided for in the Charter of the United Nations or in Treaties and Conventions in force.

The court is also competent to entertain a dispute only if the states concerned have accepted its jurisdiction in one or more of the following ways:

- i) By the conclusion between them of a special agreement to submit the dispute to the court.
- ii) By virtue of a jurisdiction clause, i.e. typically, when the parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the court. Several hundred of treaties or conventions contain a clause to such effect.
- iii) Through the reciprocal effect of declaration made by them. Under the statute where each state has accepted the jurisdiction of the court as compulsory in the event of a dispute with another state having made a similar declaration. The declarations of 64 states are at present in force, a number of them having been made subject to the exclusion of certain categories of disputes. Thus far,

any doubt as to whether the court has jurisdiction or not, it is the court itself which decides.

The International Court of Justice is a court endowed with specific competence (settlement of disputes between states and delivery of advisory opinion of UN organs and specialized agencies) which has no subsidiary bodies.

The creation of a large number of regional courts and specialized tribunal since 1946 has, however, given rise to some confusion.

The International Court of Justice has no criminal jurisdiction and, in consequence, it cannot try individuals (such as war criminals). That task falls to national jurisdictions, to ad hoc criminal tribunal established by the UN such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and to the International Criminal Court (ICC).

The International Court of Justice must also be distinguished from the European Court of Justice (located in Luxembourg), which deals exclusively with case relating to European Union Affairs, and from the European Court of Human Right (Strasbourg, France) and the inter-American Court Rights (San Jos, Costa Rica), which examine alleged

violation of the human rights conventions by which they were established. These three courts may examine cases brought by private persons (against state and other respondent, something the International Court of Justice is precluded from doing).

The international court of justice also differs from specialized international tribunals such as the International Tribunal for the Law of the Sea (ITLOS). However, their point of similarity is in the administration of justice.

3.5 Advisory Opinion of the International Court of Justice

The advisory opinion and procedure of the court is open solely to international organizations. The only bodies at present authorized to request advisory opinion of the court are five organs of the United Nations and 16 specialized agencies of the United Nations member states.

Since states alone have capacity to appear before the court, public international organisation cannot be parties to any contentious proceedings nor to any case. A special procedure, the advisory procedure, is however, available to public international organisation alone. Only certain organs and agencies have the right to ask the court for an advisory opinion on a legal question.

So far, the four United Nations major organs were the only ones authorized by the General Assembly Resolutions to request advisory opinions of the court with respect to legal questions arising within the scope of their activities. Two of those organs have availed themselves of the opportunity to do so.

While the other sixteen specialized agencies, or entities assimilated are authorized by the General Assembly in pursuance of the agreements governing their relationship with the United Nations to ask the International Court of Justice (ICJ) for advisory opinions “on legal questions arising within the scope of their activities” only three agencies have availed themselves of this opportunity to ask the court for an advisory opinion (UNESCO, IMO and World Health Organisation (WHO)).

Since 1949 the court has given 24 advisory opinions, concerning *inter alia* admission to United Nations, territorial status of South-West Africa (Namibia) and Western Sahara judgments rendered by international administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights Rapporteurs and the legality of the threats or use of nuclear weapons.

It is of great importance, that the precise circumstance in which each agency may avail itself of the court's advisory jurisdiction is specified either in its constitutive act or statute.

3.6 International Court of Justice in Perspective

The International Court of Justice (ICJ) is the most important international court currently in existence. The International Court of Justice is the principal judicial organ of the United Nations and was established in 1946¹⁹. The International Court of Justice is organized in accordance with its statute²⁰ and has traditionally always had its seat at The Hague in the Netherlands. The Security Council and General Assembly of the United Nations, their appointment is usually a highly politicized existence.²¹

The International Court of Justice (ICJ) in accordance with one of the primary purposes of the UN, which is *"to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,"*²² play a significant role in achieving this goal.

¹⁹ Art. 92 of the UN Charter.

²⁰ Ladan, M.T. (2009) op. cit. at p. 132.

²¹ Ibid at p. 132.

²² Ibid

The Court operates under a statute which formed part of the UN Charter and its own Rules. It started work in 1946 when it replaced the Permanent Court of International Justice (PCIJ) which was established in 1920 under the auspices of the League of Nations.²³

The seat of the Court is the Peace Palace at The Hague (Netherlands). Of the six principal organs of the UN, it is the only one not located in New York. The other principal organs of the UN are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat.²⁴ The Court perform the twin roles of settling, in accordance with international law, legal disputes submitted to it by states and to giving advisory opinions on legal questions referred to it by duly authorized UN organs and specialized agencies.²⁵

The creation of the International Court of Justice represented the culmination of a long process in which methods for the pacific settlement of international disputes were gradually developed.

²³ Ladan M.T., op. cit at p.133.

²⁴ Ibid.

²⁵ Ibid

Besides negotiation, mediation and conciliation, the idea of entrusting such settlement to an impartial authority that would adjudicate on the basis of law goes back to antiquity. It is known as arbitration.²⁶

The modern history of arbitration is generally recognized as dating from the Jay Treaty of 1794 between the United States of America and Great Britain²⁷. This Treaty of Amity, Commerce and Navigation provided for the creation of mixed commissions composed of equal numbers of American and British Nationals, to settle several outstanding questions. The work of these mixed commissions led to the development of arbitration in the nineteenth century.²⁸

The Alabama Claims Arbitration in 1872 marked another decisive phase. The United States and Great Britain had submitted to arbitration claims by the former for alleged breaches of neutrality by the latter during the American Civil War. The tribunal, consisting of members appointed by the parties and by three other countries ordered Great Britain to pay compensation. That country's exemplary compliance with the award demonstrated the effectiveness of arbitration in the settlement of a major dispute.²⁹

²⁶ Ibid at p.137.

²⁷ Ladan M.T., (2009) op. cit at p.137.

²⁸ Ibid.

²⁹ Ibid.

CHAPTER FOUR

Mechanism for Enforcement of ICJ Judgments

4.1 Introduction

The International Court of Justice can assume jurisdiction only if the States involved have in some manner or other, consented to be made a party to proceedings before the Court (the principle of consent of the parties). This is a fundamental principle governing the settlement of international disputes, states being sovereign and free to choose the means of resolving their disputes.¹

States may manifest their consent in three different ways:

- a) **A Special Agreement:** Two or more states in a dispute on a specific issue can agree to submit it jointly to the court and to conclude a special agreement to that end.²
- b) **A Clause in a Treaty:** Several hundred treaties contain clauses (known as jurisdictional clauses) by which a state party undertakes in advance, to accept the jurisdiction of the court should a dispute on

¹ Journals.cambridge.org/production/a..

² www.globallawbooks.org/review/deta...

the interpretation or application of the treaty arise in future with another state party.³

- c) **A Unilateral Declaration:** The state parties to the Statute of the Court may opt to make a unilateral declaration recognizing the jurisdiction of the court as compulsory, in relation to any other state accepting the same obligation. This so-called "optional clause" system has led to the creation of a group of States who mutually have conferred jurisdiction on the court to decide disputes between them that may arise in future. Each state belonging to this group has in principle the right to bring any one or more other states belonging to the group before the court. The declarations may be limited in time and may contain reservations or exclude certain categories of disputes. They are deposited with the Secretary General of the UN. It should be noted that out of the five permanent member of the Security Council, only one (the United Kingdom) currently has such a declaration in force. France and the United States previously did so but withdrew them while China and Russia have never made such a declaration.⁴

³ www.bsos.und.edu/~schulte405.htm

⁴ Ibid.

A state which has accepted the jurisdiction of the Court may consider, when summoned to appear before it by another state, that such jurisdiction is not applicable because, in its view, there is no dispute with other state, or because the dispute is not a legal one, or because its consent to recognize the jurisdiction of the court does not apply to the dispute in issue.⁵ If one party objects to the court's jurisdiction over a dispute for its admissibility, the court decided the matter in a preliminary judgment.⁶

4.2 Pacific Settlement of Disputes Adjudication

Ever since the end of the 19th century, the world has been trying to find ways of eliminating resort to armed force by states and to provide alternative means for the settlement of international disputes.⁷ The present legal position under Article 2(3) of the United Nations Charter requires all member states to settle their disputes by peaceful means. This obligation seems to lack the content or machinery to be effective because the various means for peaceful settlement, under Article 33 of the Charter, are optional. States are free to choose among various possible means

⁵ Ladan, M.T., (2009) Materials and Cases on Public International Law, A.B.U., Press, Zaria, p. 136.

⁶ Ibid.

⁷ Hague Convention for the Pacific Settlement of International Disputes, 1907. Covenant of the League of Nations, 1919 and the general Treaty for the Renunciation of War 1928 (Sometimes called Pact of Paris or Briand-Kellogg Pact)

including negotiation, arbitration, conciliation, mediation or judicial settlement, etc, although it seems now well settle that the law does not require states to resort to any of these in any particular order.⁸

The principle that states shall settle their disputes peacefully was formulated in 1966 by the Special Committee on the principles of International law regarding Friendly Relations and Co-operation among States in the following terms:

Every state shall settle its international disputes with other states by peaceful means, in such manner that international peace, security, and justice are not endangered. States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement of other peaceful means of their choice. In seeking such settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute. The parties to a dispute shall have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

⁸ Europa Publications (The David Davies Memorial Institute of International Studies); International Disputes - The Legal Aspects, London (1972), p. 10.

These principles are codified in the 1970 General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States⁹ and reaffirmed by the Manila Declaration on the Peaceful Settlement of Disputes adopted by the General Assembly of the United Nations in 1982. They were further reaffirmed in the Declaration of the period 1990-1999 as the United Nations Decade of International Law.¹⁰ These clearly reinforce the overriding obligation of states to seek the settlement of their disputes by peaceful means. This obligation is all the more important in view of the renunciation of force contained in the United Nation Charter.¹¹

This regime of peaceful settlement can be said to consist of two main elements: Procedures which the disputing states are required to use of their own choice; and Recourse to the political organs of the United Nations or other Regional machinery.

Article 33(1) of the United Nation Charter by stating that the parties to a dispute "shall first of all seek a solution by negotiation, etc", implies that recourse to a political organ such as General Assembly or the Security

⁹ UN DOC, ALAC 125/SR, 114 (1970).

¹⁰ John, L.B. In Janis, W.M (ed.) (1992); International Courts for the Twenty First Century Kluwer Academic Publishers, pp. 3-8.

¹¹ Art. 2(4), See also 1987 UN Declaration o the Enhancement of the Effectiveness of the principle of refraining from the Threat or Use of Force in International Relations, GA Resol. 42/22,G.A.O.R., 42nd Supp. 49, (1987) p. 287.

Council of the United Nations, is a reserve rather than a primary means of settlement and that there is some obligation to try other means before referring to the Security Council or General Assembly, etc.

However, this provision has neither been interpreted as requiring a party to exhaust the various means mentioned in Article 33(1) nor as requiring use of such means in particular order. Thus, some states refer disputes to the United Nations after only the most perfunctory use of the diplomatic channel; others hardly explore negotiation, conciliation or mediation before going for judicial settlement. In the Nigeria-Cameroon case, for example, Cameroon referred the dispute to the Organisation of Africa Union and United Nation even before filing an action before the International Court, and as Nigeria alleges, in complete disregard of the option for bilateral and multilateral negotiations.

On their part, the political organs of the United Nations seem to place greater emphasis on a peace enforcement role rather than on the peaceful settlement of disputes. The Security Council's role is primarily oriented towards peace-keeping and its powers of investigation under Article 34 of the Charter are also directed to that role. Even though the UN is empowered to make recommendations on dealing with a dispute, in

practice it is mostly involved in fact-finding or investigations for the purpose of ascertaining the nature of a dispute or peace-observation. Sometimes, the UN organs seek to promote conciliation by encouraging the parties to negotiate or making available to them, the good offices of UN putting at their disposal the services of a mediator, and usually in conjunction with a peace-observation mission. These steps are exactly what the United Nations has tried in the Nigeria-Cameroon dispute, with little or no prospect of resolving the issues in dispute¹².

As far as recourse to international adjudication is concerned, by bringing an application before the International Court of Justice, a state seeks to try option of judicial settlement within the United Nations system. The court is one of the principal organs of the United Nations and its statute is an integral part of the Charter. The difference with the political organs is that the Court does not have jurisdiction to adjudicate between states by virtue of the Charter or its Statute. Jurisdiction is only founded on mutual consent of the parties to submit a dispute to it. This may be based on a general treaty of conciliation, arbitration or judicial settlement to which both states are parties or in a bilateral treaty. The general practice today

¹² Art. 2(4) of UN Charter.

however, is the use of reciprocal declarations accepting compulsory jurisdiction under the optional clause, or in a "special agreement" conferring jurisdiction on the court ad hoc for a particular case. The latter is usually a compromise.

In the case of Cameroon Vs Nigeria, Cameroon filed a declaration accepting compulsory jurisdiction on 2 March, 1994 and then filed its first application to the Court on 29 March, founding the court's jurisdiction on Nigeria's declaration of 1965. Not only has this been regarded as an act of bad faith, but Nigeria contends that the reciprocity which is the basis of compulsory jurisdiction has not been held by Cameroon. This was one of the grounds of Nigeria's preliminary objection before the court. But nearly five years after the filing of the case, the parties exchanged pleadings and full hearing on the merits was not heard until the year 2001. This leads us to examine the relative merits of invoking the Court's compulsory jurisdiction in handling a dispute like the Nigeria-Cameroon case. Apart from the inordinate delays and expenses associated with adjudication, the very legalistic basis of the Court's mandate can hardly enable it to work towards achieving mutual satisfaction in the outcome of proceedings. This is because as a court of law, the Court tends to work within the classical

legal process – there is a tendency for judgments to take the form of an either/or black or white affair. In a number of cases therefore, the case may be determined but the dispute is not settled.

The case is one in which any residual dissatisfaction can generate conflict aftermath; if any of the parties encourages the people living in the areas affected to treat the judgment of the court as unjust. In particular the nature of relations between the two states dictates that judicial settlement should be a first choice. As the report of the Study Group on the Legal aspects of International Disputes observed:¹³

The legal relations between states are more complex than those between individuals and (hence) judicial settlement cannot be expected at any rate in the near future to play so large a role in the international community as in national systems. In (our) view, the great object in present circumstance is to further to the utmost the use of impartial, whether they be inquiry, mediation, conciliation, arbitration... by placing so much emphasis on acceptance of compulsory jurisdiction, lawyers and states may to some extent have overlooked the possibility of more immediate progress through the lesser and more flexible procedures of inquiry, mediation and conciliation.

We shall now consider these other options for dealing with the Nigeria-Cameroon dispute. In this connection, the range appears very wide

¹³ Study Group of the David Davies Memorial Institute of International Studies. Op. cit. at pp. 41-42.

and it is theoretically correct to say that they all form part of a continuum beginning from non-binding processes like fact-finding or inquiry to binding their party procedures such as arbitration or judicial settlement.

As far as inquiry or fact-finding is concerned, it may be used either as a separate procedure or as part of some other process, such as mediation or conciliation. On its own, inquiry has the special feature that enables the parties to elucidate the facts while still keeping the dispute on the diplomatic plane and the terms of settlement entirely in their own hands. Used on a bilateral basis, the process can be very helpful in narrowing the issues in dispute. It may also be extended to conciliation.

Conciliation as a separate procedure involves a conciliator who recommends but does not decide the terms of settlement. It has the practical advantage of flexibility and is particularly appropriate in dispute, like the Nigeria-Cameroon case, where the underlying elements are political rather than strictly legal. It enables states to retain sovereign control throughout, and it caters for government sensitivity and prestige in that a third party's solution is easier to accept than an opponent's.¹⁴

¹⁴ Report of the Study Group op. cit. p. 45.

Arbitration has been very important in dealing with private international disputes especially in the commercial field. It has had some influence in public inter-state disputes where the parties choose the procedures of the Bureau of the Permanent Court of Arbitration established under the Hague Conventions on the Pacific Settlement of Disputes. In other cases, there may be in existence, a bilateral agreement which contemplates recourse to arbitration or other peaceful procedures. But it is important to note that, the arbitration process shares solemn of the trappings and shortcomings of judicial settlement. Like judicial settlement, arbitration focuses more on legal rights than on compromise or reconciliation of the parties, on the basis of a third-party determination.

Negotiation appears to be the simplest and commonest method of peaceful settlement of disputes in the sense that only the parties are involved. Whereas all the other means of settlement bring into the procedure other states or individuals who are not parties to the dispute, negotiation involves direct dialogue between the parties.

Negotiation comes into play almost automatically, through a two-way communication system, between the parties, on the occurrence of a dispute. The main question concerning negotiation is its relation to other

means of settlement.¹⁵ Negotiation remains the primary and cordial means of transforming legal disputes or settling conflicts of interests. It may complement or be supplemented by some other means. Indeed, mediation, conciliation and inquiry presuppose that the outcome will be a negotiated settlement. It is in this broad sense that negotiated settlement is used. And it is within this context that we now examine the characteristics of the Nigeria-Cameroon dispute which led to a negotiated, rather than a judicially determined, solution.

4.3 Proceedings of the International Court of Justice

Proceedings are initiated by one of two ways:

- a. Through notification of a special agreement; a special agreement is bilateral in character, it is concluded by States wishing to submit a dispute jointly to the court and it comprises a single text. Either of the States concerned may institute proceedings by notifying that agreement to the Registry.¹⁶
- b. By means of an application, which is unilateral in character, is filed by a State against another state on the basis of a jurisdictional clause of a treaty or of declaration under the optional clause.

¹⁵ Report of the Study Group op. cit. at p. 35.

¹⁶ www.icj-cij.org/court/index.php%3fp...

The documents, accompanied by a letter from the Minister of Foreign Affairs of the State concerned, or its ambassador in the Hague, must indicate the precise subject with a dispute and the names of the parties to it.¹⁷

An application must be more detailed than a special agreement; in addition to the above-mentioned elements, the applicant state must indicate on what basis it claims the court has jurisdiction. It must also specify the precise nature of the claim together with a succinct statement of the facts and grounds on which the claim is based.¹⁸

The registrar immediately transmits the special agreement or the application to the other party and to the judges, as well as to the UN Secretary-General and to all States entitled to appear before the Court. He enters the case in the Court's General List and informs the press.¹⁹

The procedure followed by the International Court of Justice in contentious cases is defined in its statute and in the rules of court adopted by it under the State. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which agents and counsels address the court. The

¹⁷ www.icj-cij.org/court/index.php%3fp...

¹⁸ Ibid.

¹⁹ Ibid.

official languages of the court are English and French and everything written or said in one language is translated into the other.

After the oral proceedings, the Court deliberate in camera and then delivers its judgment at a public sitting. The Court discharges its duties as a full court but at the request of the parties, it may establish a special chamber. The Court also sought, however, to combine simplicity, absence of formalism in the rules laid down with flexibility in the manner of their procedural application.

The proceedings are instituted by the parties to the case or by one of the parties and such proceedings could either be instituted through the notification of a special agreement or by means of an applicant.

Hence, special agreement is of a bilateral nature and can be lodged with the court by either of the parties while an application is of a unilateral nature and is submitted by an applicant state against a respondent state. The special agreement or application is normally signed by the agent.

The two types of procedure that are used in all countries which the statute also provides are in two stages, viz, a written stage and an oral stage. The court has applied this general principle flexibly and enables parties to apply either of the two.

The statute requires the combination of a written stage followed by an oral stage as highly desirable, to enable the court reach its decision on a fully informed basis. Such also provides to the parties and the court with the safeguards required for a smooth administration of international justice.

Written Procedures

The first or written stage of the proceedings involves the submission to the court of pleadings containing also a detailed statement of the points of fact and of law on which each party relies and an answer to any previous pleading of the other state. Perhaps, the reason why cases tend to be fully pleaded is because there is a need to satisfy the court as a whole and reach of its members individually, or in other words, to satisfy his judges coming from different legal background²⁰.

Oral Proceedings

Once all the pleadings have been filed the case is ready for hearing. There is usually an interval of a few months before the oral proceedings begin. The date for their opinion is decided by the ICJ and the court does its best to meet the convenience of the amount of time²¹.

²⁰ Art. 43 of ICJ Statute.

²¹ Ibid.

Unlike arbitral tribunals, the sittings of the I.C.J are open to the public unless the parties ask for the proceedings to be in camera or the court so decided of its own motion.

4.4 Preliminary Objections

Preliminary objections are raised to contest the competence of the Court to deliver a judgment on the merits of the case (substance of the dispute). A state may for example argue:

That the court lacks jurisdiction: the respondents state may contend that the treaty or declaration upon which the applicant state has founded its application is null and void or no longer in force; that the dispute antedates the time to which the treaty or declaration applies, or that a reservation attached to the treaty or the declaration excludes the dispute in question.²²

That the application is inadmissible: the respondent state may content that essential provisions of the Statute or of the Rules have not been complied with; that the dispute does not exist, or is not of a legal nature; that local remedies have not been exhausted; or that the applicant state lacks capacity to bring the proceedings.²³

²² Art. 36(1).

²³ Ibid.

The filing of a preliminary objection by either of the parties suspends the proceedings on the merits and give rise to a separate phase of the case, which also includes a written and an oral stage.²⁴

The court delivers a judgment which is read out at a public sitting. It may either uphold the objection (the case then comes to an end), reject it (in this event, the proceedings on the merits will resume at the point at which they were suspended), or declare that the objection must be decided upon during the proceedings on the merits of the case.²⁵

4.5 Incidental Proceedings

There are five other possible incidental proceedings:

- a) **Non-Appearance:** Failure by one party to appear before the court does not prevent proceedings in case from taking their course. The other party may then request the Court to adjudge in its favour. Before doing so, the court must satisfy itself that it has jurisdiction in the case and that the claim of the applicant state is well founded:²⁶
- b) **Intervention:** A third state may request permission to intervene during the proceedings if it considers that it has an interest of a legal nature in the case. It is for the court to decide upon the request. If

²⁴ Art. 36 of ICJ Statute.

²⁵ Ibid.

²⁶ Art. 62 of ICJ Statute.

the dispute relates to the interpretation of a treaty to which States in addition to those concerned in the case are parties, those states have the right to intervene in the proceedings²⁷:

- c) **Counter-Claim:** A counter-claim may be submitted by the respondents State in its counter-memorial. It must have a direct link with the subject matter of the claim of the adverse party and must fall within the jurisdiction of the court. The object of a counter-claim is normally to widen the original subject of the dispute (e.g., a state being accused by another state of violating a treaty may maintain that the other state acted similarly).²⁸
- d) **Joinder of Proceedings:** Should the Court find that parties to separate proceedings are submitting the same arguments and submissions against a common opponent in relation to the same issue; the Court may order a joinder of the proceedings. It follows that those parties will be allowed to appoint only a single judge ad hoc, and will submit joint pleadings and oral arguments. Only a single judgment will be delivered²⁹.

²⁷ Art. 62(1) of ICJ Statute.

²⁸ Ibid.

²⁹ Ibid.

e) The Advisory procedure is available to certain public international organizations (namely organs and specialized agencies of the UN) and enables them to request an advisory opinion from the court on a legal question.

4.6 Judgments of the International Court of Justice

After an oral proceeding, the Court now deliberates in camera and then delivers its judgment in a public sitting. The judgment of the international Court of Justice is final and there is no appeal to it. In case of non-compliance to the judgment by one of the state involved, the other party may have recourse to the Security Council of the United Nation for enforcement.³⁰

However, since 1946, the court has delivered 78 judgments on disputes concerning *inter alia* land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of state, diplomatic relations, hostage taking, guardianship, rights of passage and economic right.³¹

There are basically three ways in which a case may be brought to conclusion viz:

³⁰ Arts. 36, 37. of ICJ Statute

³¹ Art. 36, 37. Ibid.

1. By a Settlement between the parties: This occur at any stage of the proceedings; the parties may inform the court that they have arrived at an agreement, in which the court or its President will then make an order for the removal of the case from the Court's list, force instance, the Aerial incident of 3 July 1988 (Islamic Republic of Iran Vs United States of America)³².

2. Discontinuance: the situation arises when an applicant state may at any time inform the court that it is not going on with the proceedings, or when the two parties declare that they have agreed to withdraw the case, the court will proceed to make an order for the removal of the case from the court's list (for instance, Denunciation of the treaty of 2 November, 1865, between China and Belgium, Maritime delimitation between Guinea Bissau and Senegal)³³.

When the Court is not sitting, the President will make the order for the discontinuance, although, the discontinuance may relate to only a part of the dispute which was not resolved in a previous case and remains outstanding. Two cases before the Permanent Court of International

³² www.icj-cij.org/docket/%3fp1%3d3%26...
www.law.unimelb.edu.au/index.cfm%3f...

³³ www.worldcourts.com/icj/eng/decision...

Justice ended in an express or tacit withdrawal in consequence of the World War II.³⁴

3. Judgment: The court delivers a judgment that terminates the proceedings by upholding a preliminary objection or other interlocutory point or by a decision on the merit.

When parties have completed the statement of their case the Court proceed to make known its judgment in the manner best suited to inspire general confidence in the proper administration of international justice.³⁵

The idea whereby the court is composed of jurists coming from different backgrounds means the court's deliberation must be organized in such a way as to afford them all an equal opportunity to participate in the Court's decision.

The judgment is issued as a bilingual document with the English and French version on opposite pages. The judgments are simple as the nature of things allowed. In accordance with international legal practice, the court endeavours to avoid employing words or phrases that are too much connected with any legal system.³⁶

³⁴ Art. 61(1)(2)(3) of ICJ Statute.

³⁵ Art. 60 Ibid.

³⁶ Arts. 111, 39(1)(2)(3). Of ICJ Statute

In order to achieve as large as body, the decision-making process must reflect a joint effort. The Court has also reserved its right to depart from the provisions of the resolution where necessary in a given case and should also be noted that it is not the custom of the Court to reveal exactly how the resolution is applied; for instance, where the court may shorten certain stages where necessary.³⁷

The first important point is that the rule applicable to the deliberations is secret. This principle is generally accepted in judicial systems and is also applied in all international arbitrations which ensures that the court's deliberations are unhampered and effective.³⁸

4.7 Trends and Issues of Enforcement

A judgment of the Court is binding and final and without appeal. This principle applies to all the Court's judgments, whether delivered by a full bench of the Court or by a chamber, whether delivered by the International Court of Justice when hearing a case brought directly to it on appeal from another tribunal and whether or not it makes any award of costs or damages.

³⁷ Art. 35. Of ICJ Statute.

³⁸ Art. 38. Ibid.

The International Court of Justice has always taken the view that it would be incompatible with the spirit and letter of the statute and the judicial propriety to deliver a judgment the validity of which would be subject to the subsequent approval of the parties or which would have non practical consequences as legal rights and obligations are concerned.³⁹

The signing of the Charter by a member state of the United Nations means such member state has undertaken to comply with any decision of the International Court of Justice in a case to which it is a party. Other states also entitled to appear before the International Court of Justice undertakes the same obligation.⁴⁰

However, the Security Council can be called upon by a party to determine measures to be taken to enforce a judgment if the other party fails to perform its obligation as provided in the UN Charter thus "if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

³⁹ Arts. 59, 60. of ICJ Statute

⁴⁰ Arts. 34(1), 36(1) Ibid.

If a party to a dispute does not carry out the decision of the International Court of Justice, the other party may refer the matter to the Security Council.

As to the scope of application of the Charter provision, a problem may arise with regard to the fact of enforcement as provided in Article 94(2) of United Nation Charter. The judgment is binding but enforceable in international law because of the following problems encountered viz:⁴¹

The Security Council of the UN seems ready to increasingly flex its muscles, it is noteworthy that the Security Council; "may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment; also since some Security Council members have a right to veto any proposal designed to enforce an International Court of Justice decision from being enforced.

The judgment is binding as argument by the express undertaking of the parties same appears to be unenforceable in international law; the judgment of the International Court of Justice is advisory at best; the effectiveness of the judgment of the International Court of Justice has fumed a vexed issue in international law. Harris⁴² submits thus:

⁴¹ Art. 59 of ICJ Statute

⁴² Harris D.J. op. cit.

... where as the judgments and orders of the Permanent Court of International Justice in contentions litigation were all complied with, the record of the International Court of Justice Since the World War has been less satisfactory. The judgments in the Corfu Channel case, the fisheries jurisdiction case, the US Diplomatic and Consular Staff in Tehran case, and the Nicaragua case, were not respected. The judgment held in the right of passage case, was soon neglected by the Indian invasion of God.

The quintessential Senior Advocate of Nigeria, Chief Afe Babalola, SAN observed in the Punch Newspaper thus: *"the world court's decision is only advisory, it is not binding and cannot be enforced. The world court has no enforcement powers. It is not like a Nigerian municipal court whose decisions can be enforced by agencies of the state."*

But one fact that cannot be jettisoned is the simple position that once a party consult and subject to jurisdiction, the decision of ICJ thereof is binding on it. Therefore, Nigeria irrespective of the apparatus of her domestic law ought to comply by reason of the international obligation placed on her as a member state.

CHAPTER FIVE

Enforcement of International Court of Justice Judgment in the Case of Nigeria Vs Cameroon

5.1 Introduction

The International Court of Justice delivered its judgement on 10 October 2002, finding (based principally on the Anglo-German Agreements) that sovereignty over Bakassi did indeed rest with Cameroon.¹ It instructed Nigeria to transfer possession of the Peninsula, but did not require the inhabitants to move or to change their nationality. Cameroon was thus given a substantial Nigerian population and was required to protect their rights, infrastructure and welfare².

The verdict caused consternation in Nigeria. Nigeria's Attorney-General and Minister of Justice who had been a leading member of Nigeria's legal team described the decision as "50% International Law and 50% International Politics"³, blatantly biased and unfair, a total disaster and a complete fraud.

¹ www.english.com/enb/voa

² <http://nigeriaworld.com/articles/2002/doc/273.html>

³ Ibid.

The International Court of Justice judgement was backed up by the United Nations; whose Charter potentially allowed sanctions or even the use of force to enforce the court's ruling.

On 13 June 2006, President Olusegun Obasanjo of Nigeria and President Paul Biya of Cameroon resolved the dispute in talks led by UN Secretary General Kofi Annan in New York City. Obasanjo agreed to withdraw troops within 60 days and to leave the territory completely in Cameroon control.

Nigeria and Cameroon have disputed the possession of Bakassi for some years, leading to considerable tension between the two countries. In 1981, the two countries came to the brink of war over Bakassi and another area around Lake Chad at the other end of the two countries' common border⁴. More armed clashes broke out in the early 1990⁵. In response, Cameroon took the matter to the International Court of Justice on 29 March, 1994⁶.

The case was extremely complex, requiring the court to review diplomatic exchanges dating back over 100 years. Nigeria relied largely on Anglo-German correspondence dating from 1885 as well as treaties

⁴ www.org/Bakassi, 20/08/2011

⁵ Ibid.

⁶ Ibid.

between the colonial powers and the indigenous rulers in the area, particularly the 1884 Treaty of Protection⁷. Cameroon pointed to the Anglo-German treaty of 1913, which defined spheres of control in the region, as well as two agreements signed in the 1970s between Cameroon and Nigeria⁸. These were the Yaoundé II Declaration of 4 April 1971 and the Maroua Declaration of 1 June 1975⁹, which were devised to outline maritime boundaries between the two countries following their independence. The line was drawn through the Cross River estuary to the West of the Peninsula, thereby, implying Cameroonian ownership over Bakassi. However, Nigeria never ratified the agreement while Cameroon regarded it as of being in force¹⁰.

5.2 Cameroon vs Nigeria: Facts of the Case

The October 10 decision of the International Court of Justice is the culmination of eight years of a legal tussle that began as far back as 1947 when Cameroon sought the court's intervention in a dispute between it and Nigeria over the Bakassi Peninsula (and later parts of the Lake Chad area). Cameroon predicated its sovereignty claims over the Bakassi Peninsula on,

⁷ www.org/Bakassi, 20/08/2011

⁸ Ibid

⁹ Ibid.

¹⁰ Ibid

inter alia, a 1913 Anglo-German agreement under which Great Britain purportedly ceded the Bakassi Peninsula to the Germans. It is noteworthy in this respect, that:¹¹ On 10 September 1884, Great Britain and the Kings and Chiefs of Old Calabar concluded a Treaty of protection (the "1884 Treaty"), under which Great Britain undertook to extend its protection to these kings and chiefs who, in turn, agreed, *inter alia*, to refrain from entering into any agreements or treaties with foreign nations or Powers without the prior approval, of the British Governments. In specific terms the 1884 Treaty provides as follows:

Article 1, her majesty the Queen of Great Britain and Ireland, & Scotland, in compliance with the request of the kings, Chiefs, and people of old Calabar, hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, her gracious favour and protection.

Article 2, the kings and chiefs of Old Calabar agree and promise 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

At the end of the ninetieth and the beginning of the twentieth centuries, various agreements were concluded by Germany, France and

¹¹www.org/Bakassi, 20/08/2011.

Great Britain to delimit the boundaries of their respective colonial and protracted territories.

In the specific case of the boundary between Great Britain and Germany, this was first defined by the Agreement between Great Britain and Germany respecting boundaries in Africa, signed at Berlin on 15 November 1893, and supplemented by a further agreement of 19 March 1906 respecting the Boundary between British and German Territories from Yola to Lake Chad (the "Anglo-German Agreements of 1906"). The southern part of the boundary was subsequently redefined by two agreements concluded between Great Britain and Germany in March and April 1913, under which Great Britain, apparently on the strength of the 1884 Treaty of Protection with the kings and chiefs of Old Calabar, purportedly ceded areas that encapsulate the Bakassi Peninsula to Germany.

At the end of World War I, all the territories belonging to Germany in the region, extending from Lake Chad to the sea, were apportioned between France and Great Britain by the Treaty of Versailles and then placed under British or French mandate by agreement with the League of Nations (the predecessor of the United Nations).

Following World War II, the British and French mandates over the Cameroons were replaced by United Nations Trusteeship Agreements, the trusteeship agreements for the British.

At independence, Cameroon inherited the territories that were under French sovereignty in the colonial era, on the premise that the initial British cession of the Bakassi Peninsula to the Germans and thereafter renounced in favour of the French was valid, these inherited territories included the Bakassi Peninsula.

Nigeria contested Cameroon's claims and, *inter alia*, questioned the competence of the British to cede the Bakassi Peninsula to the Germans, arguing that since the territories that were the subject of the 1884 Treaty of Protection were protectorates and not colonies, Great Britain was incompetent to effect the purported cession to Germany. In particular, Nigeria submitted that the title to sovereignty over Bakassi on which it relied was originally vested in the kings and chiefs of Old Calabar. It argued that in the pre-colonial era the City States of the Calabar region constituted an acephalous federation consisting of independent entities with international legal protection signed between Great Britain and the Kings and Chiefs of the old Calabar, the latter retained their separate

international status and rights, including their power to enter into relationships with other international persons, although under the Treaty that power could only be exercised with the knowledge and approval of the British Government.

The main issues presented in Cameroon's application to the International Court of Justice relate to sovereignty over the Bakassi Peninsula and Darka and its region in the area of Lake Chad. The former has been the main source of controversy over the years in Nigeria-Cameroon relation, while the latter is founded on alleged Nigeria violations of Cameroonian territory in the region in 1994. In the ultimate event, Cameroon has put the entire boundary alignment from Lake Chad to the sea in dispute thereby challenging the whole of their land and maritime boundaries.

There is irrefutable evidence that cross-border activities involving smuggling, border trade and routine socio-economic intercourses, are on a considerable scale and they are the direct result of the artificiality of the colonially determined boundaries in all of Africa.¹² The efforts of the successor nation-states to eliminate such activities are nullified by the

¹² Asiwaju, A.I. (1990), *Artificial Boundaries*, New York, Civilities International, p. 89.1

factor of cultural interlinks, historical association or geographical contiguity. A legal ruling by the international court is likely to be similarly vitiated by the realities on the ground.

There is for example documented evidence of large scale attendance by Cameroonians at Ganye, Gemby and Mubi General Hospital as well as the dispensaries at Kokoli and Jada.¹³

In the Benue State-Central Cameroon sector, it has been reported that a number of Nigerian villages in Turan and Ikyuravya districts of Kwande Local Government Area "now seem lost to Cameroon because of Cameroon's better facilities at this border."¹⁴ Furthermore, it has been noted that since the people in the border region either belong to the same ethnic grouping or operate, by and large, the same or identical social institutions, cross border interaction, even in the most difficult terrain, is unstoppable. Ceremonies such as birth, marriage, age set, burial rites or other celebrations bring the borderland inhabitants together regularly without regard to the international boundaries separating them.

It seems remarkable that despite the illogicalities and injustice of the colonial partition, there has been no significant policy innovation to

¹³ Barkindo, B.M (1993): "The Neglected Border Areas of Gongola State: Plea for Accelerated Development" in Asiwaju, A.I. (ed) Development of Border Regions, Lagos National Boundary Commission p. 89.

¹⁴ Benue State Memorandum (1993) in Asiwaju, A.I. (ed) Ibid. 231 at 234.

attenuate the negative function of the boundaries. This has perpetuated a tradition of negative function of the borders themselves in most borderland communities. The boundary maintenance policies of central governments are inherently opposed to the border-free interests of the local communities astride the boundaries. Thus, the major feature of border regimes all over Africa is the conflict between official or state centered botany policy, aimed at strengthening national frontiers and the existing economic and cultural interpretation which dictates cross-border collaboration.¹⁵

What all this implies is that the insular, nationalistic perception of the boundary as a barrier for demarcating and protecting the nation-state and its nationals is incompatible with the trans-national orientation of borderland communities. There is no gainsaying that a court declaration decreeing the demarcation lines will not resolve these conflicts. On the other hand, a negotiated settlement will offer the parties a chance to delicately balance theirs and the interests of borderland communities in order to accommodate the overlapping of myriads of problems across the

¹⁵ Asiwaju (ed) (1984), *Partitioned Africans; Ethnic relations Across Africa's International Boundaries 1884-1984*, Lagos: University of Lagos Press, , Passim.

border as well as the existence of trans-boundary resources and environmental hazards.

This nationalistic perspective underlies the conflict-generation propensities that have been seen of territorial or boundary disputes in Africa. From the Libya/Tunisia maritime dispute¹⁶ which went to the International Court of Justice in 1977 to the Nigeria/Cameroon land and maritime dispute, there have been more than ten cases originating from Africa.¹⁷ A number of wars over boundaries and irredentist territorial claims have been fought as in the Polasario-Morocco dispute over Western Sahara; the Ghana-Togo and the Ethiopia-Somalia conflicts. Existing policy has, therefore, been dominated by a focus on conflicts arising from dispute boundary alignments between nation-states. The 1964 Resolution of the Organisation of African Unity on the Intangibility of Frontiers addressed the issue from conflict avoidance perspective. But the Cairo Resolution has not and cannot eliminate conflicts over boundaries without the underlying issue of partial injustice to borderland communities, within the existing nation-state structure, being redressed. Again it is argued that a judgment of the International Court of Justice cannot meet the needs and interest of

¹⁶ (1982) ICJ Rep. 17, 13.

¹⁷ One of the most recent is the FRONTIER DISPUTE (Burkina/Mali) (*1986) ICJ Rep. 650; (1987), p. 7.

borderland inhabitants in so far as it can only address the strict legal rights of the two states that are parties to the case.

Perhaps nothing demonstrates this point more than South west Cameroon's attempts to intervene in the Cameroon-Nigeria case. It has been reported that the people of the South West province, who were in the South Cameroon region under British administration that reportedly voted in this 1961 plebiscite to join the Republic of Cameroon, now seek to assert ownership of the Bakassi peninsula independent on both Nigeria and Cameroon. They also seek independence or self-governing status on the basis that the United Nations-administered plebiscite denied them expression of the right of self-determination. It limited their choice to joining Nigeria or Cameroon. There was no third choice of outright independence or self determination.

This scenario demonstrates that there is a variety of other interest which an effective resolution of the Nigeria-Cameroon dispute must take into account.

Apart from the interest and needs of borderland communities identified above, there are the interest of third states, notably Equatorial Guinea and other countries in the Gulf of Guinea. Given the location of the

Island of Bioko and the fact that Malabo is only about 70 nautical miles from Calabar, any delimitation of maritime boundaries between Nigeria and any other state in the Gulf of Guinea must necessarily involve consideration of the rights and interests of the other countries.¹⁸

This was the logical premise of Nigeria's eight preliminary objection at the International Court of Justice, namely that "maritime delimitation necessarily involves the rights of third states"¹⁹.

In the main case, Nigeria asserts and Cameroon denies the existence of a legal obligation to undertake negotiations with a view to reaching agreement on delimitation. Cameroon's position is that sufficient bilateral action has been attempted to no avail by reason of Nigeria's intransigence. Hence, Cameroon considers further negotiation to be pointless.

It is however, useful for the limited purpose of this chapter, to point out that the general law in the matter of delimitation of maritime boundaries as formulated in the NORTH SEA CONTINENTAL SHELF CASES²⁰ and reaffirmed in a long list of decisions up to the EAST TIMOR CASE²¹ is that "delimitation must be the object of agreement between the

¹⁸ Equatorial Guinea has formally applied to be joined in the Case.

¹⁹ Ibid.

²⁰ Federal Republic of Germany/Demark, Federal Republic of Germany/Netherlands (1969) ICJ Rep. 3.

²¹ Portugal/Australia (1995) Rep. 90.

states concerned and that such agreement must be arrived at in accordance with equitable principles”.

In the context of Articles 74 and 83 of the 1982 UN Convention on the Law of the Sea dealing with the Continental Shelf and Exclusive Economic Zone, recourse to judicial settlement is treated as a last resort. This is further supported by the regime of general international law on pacific settlement of dispute, which we highlighted earlier. The consistent first mention of means of negotiation settlement demonstrates that international law has a preference for the latter and the peculiar facts and features of the Nigeria-Cameroon case also lend themselves more to a negotiated than a judicial determination. We shall now consider the main elements of a negotiated settlement and how they can be applied to the case at hand.

5.3 Decision of International Court of Justice and its Consequences

On the validity of Great Britain’s cession of the Bakassi Peninsula to Germany through the 1913 Anglo-German Agreement, the court held that “Great Britain had a clear understanding of the area ruled at different times by the kings and chiefs of old Calabar, and of their standing”. This area,

according to the court, was “one of a multitude in a region where the local rulers were not regarded as states”. Accordingly, the court proclaims, “from the outset Britain regarded itself as administering the territories comprised in the 1884 Treaty, and not just protecting them” to which case the court transformed a regime engendered by a treaty that, by its very provisions, established a protectorate into a colony or a so-called “colonial protectorate”.

How could the court take such a position even in the face of the fact that in 1885 the British Foreign Office unequivocally stated that a protectorate involves not the direct assumption of territorial sovereignty but is “the recognition of the right of the aborigines, or other actual assumption of territorial rights that are necessary to maintain the paramount authority and discharge the duties of the protecting power.”²² How could the court take such a position in the face of the fact that, in similar circumstances, a British court held, as far as back as 1910, that a “protectorate is under His Majesty’s dominion in the sense of power and jurisdiction, but is not under his dominion in the sense of territorial dominion”.²³

²² Malcolm Shaw (1986) *Title to Territory in Africa International Legal Issues*, p. 283, fn. 155 (1986).

²³ R v. Crewe (1910) 2 KB 603-4.

Indeed, as Judge Awn Al-khasawneh points out, “British colonial policy during the relevant period was marketed by a consistent insistence on distinguishing between colonies and protectorates. Upholding such a distinction was a major aim of British diplomacy in the Berlin Conference, where it triumphed over imperialist intent upon achieving nothing less than the threshold of effective occupation.”²⁴

Additionally, the latest edition of Oppenheim’s International Law²⁵ makes it clear that a protectorate state, while retaining to some extent its separate identity as a state, is subject to a kind of guardianship by mother state. The circumstances in which this occurs and the consequences which result vary from case to case, and depend upon the particular provisions of the arrangement between the two states concerned”. Admitting that a protectorate is “a conception which lacks exact legal precision, as its real meaning depends very much upon the special case”, the author unambiguously states that “the position within the international community of a state under protection is defined by the treaty of protection which enumerates the reciprocal rights and duties of the protecting and the protected states”. While “each case must therefore be treated according to

²⁴ Cameroon v Nigeria: Equatorial Guinea Intervening (Separate Opinion of Judge Awn Al-Khasaawneh, Para 7(d)).

²⁵ Sir Robert Jennings & Sir Arthur Watts (eds) Oppenheim’s International law, 9th ed., Vol. 1 (1992) 267-269 (Emphasis added)

its own merit”, the author further points out, “it is characteristic of a protectorate that the protected state always has, and retains, for some purposes, a position of its own as an international person and a subject of international law”.

To make matters worse, while the court treats treaties of protection entered into between Great Britain and certain North African entities as having been entered into with “entities which retained thereunder previously existing sovereignty under international law”, it dismisses similar treaties with entities in Sub-Saharan Africa as having been entered into “not with states, but rather with important indigenous rulers exercising local rules over identifiable areas of territory”.

The court’s position regrettably evokes memories of the condescending manner in which the colonialist perceived and treated their victims, for instance, John Westlake, the well known Professor of International Law in the University of Cambridge, writing in 1894, derided the “uncivilized natives” and asserted that “in Africa... an importance has sometimes been attached to treaties with uncivilized tribes and a development has sometimes been given to them, which are more

calculated to excite laughter than argument”²⁶ writing in the same vein, T.J. Lawrence²⁷ unhesitatingly treated uncivilized regions as objects, and not subjects, of international law, even though he gleefully accorded international legal status to chartered companies although he described the international legal state of such companies as being of “a very imperfect and subordinate kind”, entities of districts inhabited by “the barbarous or semi-barbarous” did not even merit such status!

Thus, it is not “heresy” to assert... that international law properly so-called is a 20th century development. Anything prior to that was only a masquerade putting on the garb of international law”.²⁸

Given this reality, the present researcher cautioned that while “one could be tempted to focus on the profound transformation that (international law) has undergone over the years and , basking in the euphoria that it has purged itself of its colonial vestiges be complacent about its past role... exposing the ignominious role of international law in the colonial project is an imperative exercise that brings with it the liberating realization that to speak of colonialism and its crippling effect in

²⁶ John Westlake (1994), *Chapters on the Principles of International Law* p. 149.

²⁷ Lawrence, T.J., *The Principles of International Law*, 7th ed., Percy H. Winfield (ed.), 1923 p. 69. The first edition of the book appeared in 1895.

²⁸ Lawrence, T.J., op. cit at 117.

the past tense is to wallow in idle fantasy; thus underscoring the imperative of vigilance”²⁹

The urgency of such critical legal scholarship and/or interrogation of the colonial enterprise is the more evident when one recalls the fact that, as Professor Wole Soyinka points out, “at the Berlin Conference the colonial powers... met to divide up their interests into states, lumping various people and tribes together in some places, or slicing them apart in others like demented tailor who paid no attention to the fabric, color or pattern of the kit he was patching together”³⁰

What are the consequences of the arbitrary partition of Africa? The balkanization of Africa by the colonial powers split persons belonging to the same ethnic group (and hitherto configured in various empires of kingdoms) into different colonial spheres of influence and in, most cases, later constituted the territorial basis for the grant of political independence to present-day African states. Several examples of the arbitrary manner in which ethnic groups were split or amalgamated with other ethnic groups abound; the Somali severed, at various times, into British Somaliland, French Somaliland, Italian Somaliland, the Northern frontier Distract of

²⁹ Lawrence, T.J., op. cit p 87-8.

³⁰ The Sacramento Bee, Sunday, May 15, 1994, Forum 1.

Kenya and the Ogaden (Ogaadeen) region of Ethiopia; the Maasai, bifurcated by the Kenya-Tanzania border; the Bakongo across the Gabon-Congo, Congo-Democratic Republic of Congo (DRC), formerly Zaire, and DRC-Anglo boundaries; the Lunda separated by the DRC-Anglo and DRC-Zambia boundaries; the Yoruba split into Nigeria, Benin (formerly Dahomey) and Togo; the Gourma, truncated into Burkina Faso (formerly Upper Volta), Togo and Benin; the Tibu, mutilated by the Libya Chad and Chad Niger boundaries, as well as the Ewe, dissented into British Togoland, French, Togoland and Ghana (formerly Gold Coast).³¹

In the case concerning the territorial Dispute (Libyan/Arab Jamahiriya/Chad)³² Judge Bola Ajibola decries this state of affairs and observes that “since 1885 when it was partitioned, Africa has been ruefully nursing the wounds inflicted on it by its colonial past. Remnants of this unenviable colonial heritage intermittently erupt into despondent social, political and even economic upheavals”. Aspects of this heritage, he further observes, “continue, like apportions, to rear their heads, and haunt the entire continent in various jarring and sterile manifestations”. Questioning

³¹ Asiwaju, A.I. “*The Conceptual Framework*”, in A.I. Asiwaju (ed.) *Partitioned Africans: Ethnic Relations across Africa’s International Boundaries, 1884-1984*, (1985), p. 2 For an elaborate List, see Asiwaju “*Partitioned Culture Areas: A Checklist*”, in Asiwaju (ed.) at 256-8.

³² I.C.J. Reports, 6, 52-4 (1994) Separate Opinion of Judge Ajibola.

how one can “forget unhealed wounds”, he states that “One aspect of this unfortunate legacy is to be seen in the incessant boundary disputes between African states”.

Furthermore, in some cases, as exemplified by the plight of nomadic Somalis, the fragmentation cut off entire clans from their traditional sources of water and pasture for their herds. In one instance, the Mareehean clan was sliced into three different parts: one part under the British in the Northern frontier District of Kenya, another under the Italians in the South, and a third in the South-West Ethiopia. The tragedy is that while those nomads in Italian Somaliland had access to water resources from the Shabeelle River, they lost valuable grazing land on the Ethiopian side. In similar fashion, their kinsmen in the Ethiopian side retained the pastures but were cut off the indispensable water resources in the coast.³³

In the Western Sahara case, Mauritania describes a similar scenario: on account of the artificial frontiers created by the European powers, the same families and their properties could be found on either side of arbitrarily bisected frontiers; the same was true of wells, lands, burial grounds, watering places and palm oases.³⁴

³³ Said T., “*The Somalia Dilemma; Nation in Search of State*”, in Asiawaju, at 176.

³⁴ Advisory Opinion on the Status of Western Sahara, 1975 I.C.X.J/. 59-60.

In spite of this reality, the court exhibits its insensitivity by choosing to re-enact the nightmares of the regime engendered by the Berlin conference.

It is, however, refreshing that Judge Al-Khasawneh's separate opinion tasks the colonial question³⁵ Judge Al-Khasawneh predicates his vote with the majority solely on the fact that, in his view, "in the period leading to its independence... and since then till the early 1990s, Nigeria, by its actions and omissions and through statements emanating from its officials and legal experts, left no room for doubt that it had acknowledged Cameroonian sovereignty in the Bakassi Peninsula.

Chiding his colleagues for "unnecessarily" and "unfortunately" belaboring the validity of the 1913 Anglo-German Treaty, His lordship could not fathom out why they chose to immerse themselves in the distinction among colonies, protectorates and the so called "colonial protectorates", given that it is "steeped in confusion both under international law and under the laws of the colonial power themselves"³⁶.

Characterizing the courts approach as one "clearly rooted in Eurocentric conception of international law based on notions of orderliness,

³⁵ www.jstor.org/stable/761406.

³⁶ unterm.un.org/DGAACS/unterm.nsf/8fa...

as evidenced by the fact that there were at the time in Europe protected principalities without anyone seriously entertaining the idea that they had lost their sovereignty to the protecting power and could be disposed of at its will”, he further demonstrated that “the existence of a category of protectorates, the so-called colonial protectorates’ where the protecting power was free to dispose of the protected territory, judicial precedent supports and is, in all probability, no more than a fiction existing in the minds of some commentators who try to find ex post facto legitimization for unfathomable and illegal facts by the invention of sub-categories where normally applicable rules do not operate”³⁷. Even assuming, for the sake of argument, that the Berlin Conference did sanction such behaviour as evidenced by the state practice emanating from it, His Lordship pointedly asks: “could this practice be invoked in an African dispute when no African state... participated in the formation of such practice?”

Finally, His lordship expresses the view that the kings and chiefs of old Calabar “had the capacity to enter into treaty relations and, unless we start from the false premise that one party to a treaty can unilaterally determine the international status of the other we can also deduce, that

³⁷ untrm.un.org/DGAACS/unterm.nsf/8fa...

the treaty has international legal standing". Accordingly, he faults the court's distinction between the status of treaties of protection between Great Britain and some entities in North Africa juxtaposed similar treaties in respect of sub-Saharan Africa. According to him, "in the case of Qatar and Bahrain these sheikhdoms were not independent states when Britain entered into treaty relations of protection with them, but Ottoman dominions ruled under the suzerainty of the Ottoman Empire by local chiefs. The same is true of Tunisia. Consequently, his Lordship concludes, "it would be ironic for the court to decide that those who were under Ottoman suzerainty were in fact sovereign because to suit practical considerations of British policy that were under no one's sovereignty or suzerainty when Great Britain entered into treaties of protection. Not only would this make colonial law and not international law the determining factor, it would also raise doubts regarding the broad consistency of the court's decisions".

In a similar vein, Judge Koroma, in his dissenting opinion³⁸, observes that, "the conclusion reached by the court with respect to the 1884 treaty between Great Britain and the Kings and Chiefs of Old Calabar regarding

³⁸ Cameroon v. Nigeria: Equatorial Guinea Intervening (Dissenting Opinion of Judge Koroma)

the Bakassi Peninsula is tantamount to a recognition of political reality rather than to an application of political treaty and the relevant legal principles... It is not the function of the court to recognize or consecrate political reality but rather to apply the law in ruling on disputes before it³⁹.

Judge Koroma characterized the approach employed by the majority as “fundamentally flawed”, in consequence of which its findings on the validity of the 1884 treaty “amounts to a serious detraction from the legal issues at hand” and “is not only illegal but unjust”⁴⁰.

Summing up his position, Judge Koroma aptly remarks that: “by denying the legal validity of the 1884 treaty whilst at the same time declaring valid the Anglo-German agreement of 1913, the court decided to recognize a political reality over the express provisions of the 1884 treaty. The justification for this choice does not appear legal to me. It would not be justified for the court, given its mission, if it were to be regarded as having consecrated an act which is evidently anti-legal. I regret this situation”⁴¹.

In the circumstance, it is worth recalling the remarks of Sir Jennings, a Former President of the International Court of Justice, in an address to

³⁹ Cameroon v. Nigeria: Equatorial Guinea Intervening (Dissenting Opinion of Judge Koroma)

⁴⁰ Ibid.

⁴¹ Ibid

the United Nations General Assembly in 1991, in which he made it clear that the mission of the court is to declare and apply the law, and that it would range outside the task at its peril and at the peril of international law.⁴²

It is elementary knowledge, and the court acknowledges as much, that the Bakassi Peninsula is inhabited predominately by Nigerians of Efik and Efut ancestry. Given this reality, when the court directed Nigeria to “expeditiously and without condition withdraw its administration and its military and police forces” from the Bakassi Peninsula, what becomes of these thousands of Nigerians who, on account of the court’s decision, are now aliens on Cameroon territory?

In its judgment, the court “takes note” of the commitment undertaken by the Republic of Cameroon at the hearings to the effect that “faithful to its traditional policy of hospitality and tolerances”, it will continue to afford protection to Nigerians living in the Bakassi Peninsula”. In practical terms, and against the backdrop of the frosty relationship that has characterized Nigeria’s relationship with Cameroon over the Bakassi Peninsula, what does that mean? Does Cameroon, insofar as Nigeria is

⁴² Robert J. (1997) “*The Role of the International Court of Justice*”, 68 *British Yearbook of International Law* p. 3.

concerned, expect to be taken seriously when it professes its traditional policy of hospitality and tolerance?

In specific terms, the decision of the court has enormous consequences for Nigeria, such as the following:

The decision has transformed thousands of Nigerians into aliens on their ancestral land. These Nigerians could, against their wishes, be deported or relocated to Nigeria by Cameroonian authorities. The deportation of these Nigerian could occasion internal displacement and/or a refugee crisis of monumental proportions. These Nigerians could be subjected to immigration restrictions such as the requirements of residence permits and visas. The decision could adversely affect the property rights of these Nigerians, especially in respect of immovable property, as the control and management of land (including structures thereon) would, by reason of the decision, be vested in Cameroonian authorities. The decision entails the loss of land and maritime territory to Cameroonian. Given the stupendous natural endowment of the affected areas, the decision entails loss of substantial oil and gas reserves and revenue. The decision could adversely affect Nigeria's contractual obligations under existing arrangements with oil and gas companies. The decision constricts the

operational province of the Nigerian Eastern Naval Command which is based in Calabar. The decision curtails Nigeria's access to the Atlantic Ocean and Southern Africa. The decision could impede access to Nigerian oil and gas sites where this entails passage through Cameroon territory. The decision could imperil fishing and associated activities that constitute the livewire of the affected people. The decision engenders a general state of insecurity and uncertainties among the affected people. The decision entails imminent loss of Bakassi Local Government Area since it is inconceivable that Cameroon would allow Nigeria to maintain an administrative unit such as a local government area on its territory. The decision would most certainly affect representation in the Cross River State House of Assembly and the sizes of cross River State's constituencies in respect of the House of Representatives and the Senate.

Given the magnitude of these consequences, is Nigeria under an obligation to comply with the decision of the court? What are the consequences, if any, of Nigeria's non compliance with the decision of the court?

5.4 Compliance with the Court's Decision

In This Day Law of Tuesday, October 22, 2002⁴³, and News watch of October 28, 2002⁴⁴ Chief Richard Akinjide, a Senior Advocate of Nigeria, a former Attorney General of the Federation and Minister of Justice and a member of Nigeria's legal team, expressed outrage at the decision of the international Court of Justice describing it as "50 percent international politics", "blatantly biased and unfair", "a total disaster and a complete fraud". Further describing the decision as "a big joke" and one in which he had never in his entire legal career "seen bias so blatantly displayed", Chief Akinjide advised the Nigerian government to treat the decision "with the greatest contempt it deserves".

Chief Akinjide's vituperative assertion to the effect that the Nigerian government should treat the decision of the court "with the greatest concept it deserves", coming as it is from a very senior member of the Bar, merits comments, it is worthy of note, in this respect that under Article 50 of the Statute of the International Court of Justice⁴⁵, the decision of the court has "binding force between the parties". Article 60 of the ICJ statute provides that the judgment of the court "is final and without appeal," while

⁴³ This Day Law, October 22, 2002, at 37.

⁴⁴ Newswatch, October 28, 2002.

⁴⁵ June 26, 1945, 59 Stat. 1055, T.S. 993, 3 Bevans 1179.

Article 94(1) of the Charter of the United Nations⁴⁶ is to the effect that “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”. Accordingly, Nigeria is undauntedly under an obligation to comply with the decision of the court even if we believe as Chief Akinjide does, that the decision is predicated on faulty premises. The key question, which will be addressed shortly, is the manner in which the compliance should be affected. In the meantime, what are the consequences if any, of Nigeria non-compliance with the decision of the court?

5.5 Consequences of Non-Compliance with the Decision of the Court

Non-compliance could incur the wrath of the UN Security Council. Under Article 94(2) of the UN Charter, if any party to a case “fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment”. Under the Charter⁴⁷ of the UN, “the members of the United Nations agree to accept and carry

⁴⁶ 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force Oct. 24, 1945.

⁴⁷ Art. 325 of UN Charter.

out the decisions of the Security Council". Under Chapter VII of the Charter, the Security Council can impose sanctions and, where necessary, authorise enforcement action against a state whose actions or omissions threaten or lead to breaches of international peace and security. Cameroon can readily count on the support and influence of France which is a permanent member of the Council.

Non-compliance could call into question Nigeria's democratic credentials. Although some commentators have relished drawing attention to US non-compliance with some decisions of the court, it does not follow that the US action is exemplary. In any event, Nigeria does not have the political, economic, military and diplomatic clout that the USA has especially in the UN Security Council where it can, and often does, through the instrumentality of its veto power, thwart the emergence of any resolution that could jeopardize its vital interests and those of its allies such as Israel.

Non-compliance could call into question Nigeria's commitment to the rule of law which is a vital lubricant that oils the engine of democracy and, concomitantly, spurs it to superlative performance.

Non-compliance could undermine the Nigerian government's ability to enforce court decisions. Within the municipal domain, as the capacity of a physician who is unable to heal himself/herself would be called into question, as would be the plight of one who is unable to remove the plank in his/her eyes but professes ability to see the speck in someone else's eyes.

If Nigeria fails to comply, it risked being shut out should it seek to invoke the jurisdiction of the court in subsequent cases, as no court would readily grant audience to a contemnor.⁴⁸

Non-compliance could make Nigeria a pariah state reminiscent of its plight during the heinous days of military dictatorship.

Non-compliance could undermine Nigeria's candidature for a permanent member seat on an expanded/reformed UN Security Council. Non-compliance could jeopardize the chances of Nigerian candidates for judgeship of the court.⁴⁹

Non-compliance could lead to a resurgence of armed conflict between Nigeria and Cameroon. This would invariably lead to the diversion of scarce resources from vital socio-economic and developmental activities,

⁴⁸ The International Criminal Court is similar to the International Criminal Tribunal for the former Yugoslavia where Justice Adolphus Karibi-Whjye of Nigeria once served as a judge.

⁴⁹ To Elias, Daddy Onyueama and Bola Ajiboa, have at various times, served meritoriously on the Court's Bench.

as the defence budget burgeons while the budget in respect of critical sectors of the economy that deal with the bread and butter concerns of the overwhelming majority of Nigerians shrinks.

A full scale war between Nigeria and Cameroon would have destabilizing consequences for the entire African continent and, within the framework of the United Nations Charter, constitute a breach of International peace and security.

A full scale war could further truncate Nigeria's nascent democracy as military adventurers, given the preponderance of military rule in Nigeria, and questions the competence of a civilian government even though headed by a retired general, to successfully prosecute the war as at the time the court handed down her decision.

Non-compliance could undermine Nigeria's peace credentials and its commitment to the pacific settlement of disputes, consequent upon which could undermine Nigeria's standing where it seeks to persuade other countries to have recourse to pacific settlement of disputes (whether through the instrumentality of the court or other pacific modes of dispute settlement).

Non-compliance could adversely affect the image of Nigeria as giant of Africa because it believes, for instance, that the decision consecrated a political reality in apparent neglect of concrete legal issues could set a dangerous precedent, one implication being that it would convey the erroneous impression that a litigant who contests the decision of a court, for whatever reasons, is at liberty to take the law into his/her hands.

In the circumstances, the Nigerian government should be careful not to be stampeded into taking a decision that panders towards short-term political expediency. However, as pointed out earlier, the manner of Nigeria's compliance raises a different question, as explored below.

5.6 Options of the Decision

The judgment obliges Nigeria to "expeditiously and without condition withdraw its administration and its military and police forces" from the areas adjudged to be under the sovereignty of Cameroon. Nonetheless, Nigeria can, within the broad framework of its commitment to compliance with the decision of the court, explore the following options.

Nigeria can invoke the review provisions of the enabling law. Under Article 61 of the Statute of the Interventional Court of Justice, (a) an application for revision of a judgment may be made only when it is based

upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when the judgment was given, unknown to the court and also to the party claiming revision, always provided that such ignorance was not due to negligence, (b) the proceedings for revision shall be opened by a judgment of the court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground, (c) the court may require previous compliance with the terms of the judgment before it admits proceedings in revision; (d) the application for revision must be made at latest within six months of the discovery of the new fact; and (e) no application for re-admission may be made after the lapse of ten years from the date of the judgment.

Consistent with Article 6 of the Statute of the court, Nigeria can, in cases of doubt or ambiguity, request an interpretation of the judgments if it relates to this specific issue of delimitation. Nigeria can, using diplomatic channels and particularly within the framework of the African Union, seek a political solution that could engender schemes such as joint administration etc.

Nigeria can press for a UN-supervised plebiscite or referendum with a view to the affected areas; as Judge Dillard pointed out in the Western Saharan Case, "it is for the people to determine the destiny of a territory and not a territory to determine the destiny of the people."⁵⁰

The Hague, 10 October 2002, The ICJ, Principal Judicial Organ of the UN has given judgement in the case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon Vs Nigeria: Equatorial Guinea Intervening). In its judgement, which is final, without appeal and binding for the parties, the Court determines that from North to South, between Cameroon and Nigeria in the Lake Chad area, the Court decides that the boundary is delimited by the Thomson-Marchland declaration of 1929-1930, as incorporated in the Henderson-Fleuriu Exchange of notes of 1931 (between Great Britain and France).

The Court examines point by point 17 sectors of the land boundary and specifies for each one how the above mentioned instruments are to be interpreted⁵¹. The Court decides that the boundary is delimited by the Anglo-Germany Agreement of March 1913⁵², and that sovereignty over the Bakassi Peninsula lies with Cameroon. As regards the maritime boundary,

⁵⁰ Advisory Opinion on the Status of Western Sahara, 1975 ICJ 12, 122 (separate opinion of Judge Dillard)

⁵¹ Paras. 91, 96, 102, 114, 119, 124, 129, 134, 139, 146, 152, 155, 160, 168, 179, 184 and 189 of the Judgment.

⁵² Arts. XVIII-XX.

the court having established that it has jurisdiction to address this aspect of the case – which Nigeria had disputed – fixes the course of the boundary between the two states’ maritime area. In its judgment the Court requests Nigeria expeditiously and without condition to withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroon sovereignty and from the Bakassi Peninsula⁵³. It also request Cameroon expeditiously and without condition to withdraw any administration or police forces which may be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories which pursuant to the judgment fall within the sovereignty of Nigeria⁵⁴. The court takes note of Cameroon’s undertaking given it the hearings, to continue to afford protection to Nigerians living in the Bakassi Peninsula and in the Lake Chad area.

Finally, the Court rejects Cameroon’s submission regarding the state responsibility of Nigeria⁵⁵. It likewise rejects Nigeria’s counter claims⁵⁶.

⁵³ www.icj-cij.org/docket/index.php 10:55am, 1/12/2011.

⁵⁴ Ibid.

⁵⁵ www.icj-cij.org/dockef/index.php 10:57, 1/12/2011.

⁵⁶ Ibid.

5.7 A Critique of the Green Tree Agreement

This research has taken a keen interest on the issue of the Bakassi Peninsula and the contention by the National Assembly that the former president, President Olusegun Obasanjo, contrary to section 12 of the 1999 Constitution, failed to involve it in the ratification process of the Green tree Agreement, a treaty between Nigeria and Cameroon. This Agreement intended to implement the judgement of the International Court of Justice (ICJ) delivered on 10 October, 2002 that, amongst other things, awarded the ownership of Bakassi Peninsula to Cameroon.⁵⁷

The National Assembly appears to rely heavily on section 12 of the 1999 Constitution in arguing that the Green Tree Agreement should have been referred to it for ratification, and the failure to do so would make the Agreement unconstitutional, null and void. I am afraid this position would appear to be a misconception of the legal effect of section 12, especially as regards the distinction between treaty-making and implementation, and the dual nature of Nigeria's obligation – its obligation under international law and national law.

⁵⁷ Land Maritime Boundary between Cameroon and Nigeria, ICJ Report, (2002), 303.

5.7.1 Discourse on Section 12 of the 1999 Constitution as Amended

Section 12 does not give the National Assembly any legal role in the ratification of treaties (or treaty-making), but rather involves it in the implementation (or domestication) of treaties. There is a distinction between ratification of treaty, on the one hand, and its implementation (or domestication) on the other hand. Ratification is the process by which a state (in this case Nigeria) establishes in the international plane its consent to be bound by a treaty⁵⁸. While the implementation (or domestication) is the process by which a treaty validity entered into by a state is enacted (or domesticated) as legislation so it can have effect within the domestic plane. Section 12 applies to the implementation (or domestication) of treaties and states that: *"No treaty between the federation and any other country shall have the force of laws except to the extent to which any such treaty has been enacted into law by the National Assembly"*. The side explanatory note of section 12, along with item 31 of the Exclusive legislative List, makes it clear that the National Assembly's legislative role is limited to the implementation of treaties.

⁵⁸ Article of the Vienna Convention on the Law of Treaties, 1969.

In Nigeria, a treaty may be ratified by the president without the National assembly because it still operates the inherited system from the UK whereby the executive is able to ratify a treaty without the Parliament. Stating the UK position, the House of Lords in *J.H. Rayner Ltd. Vs Department of Trade & Industry* said, "*The government (i.e., the executive) may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. Parliament may alter the laws of the United Kingdom*".⁵⁹ The Privy Council also, in the earlier case of *Attorney General for Canada Vs Attorney General for Ontario*⁶⁰ commenting on the UK practice, as carried out in the then British empire, had the following to say:

It will be essential to keep in mind the distinction between (1) formation, and (2) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign states. Within the British Empire there is a well-established rule that the making of a treaty is an Executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action... parliament, no doubt, has a constitutional control over the Executive; but it cannot be disputed that the creation of the obligations undertaken in treaties and the assent to their form and quality are the function of the executive alone. Once they are created while they bind the state as against the

⁵⁹ (1990) 2 AC 418 AT 476.

⁶⁰ (1937) AC 326 AT 347-348.

other contracting parties, parliament may refuse to perform them and so leave the state in default.

Nwabueze pointed out that section 12(1) of the Constitution [identical to section 12(1) of the 1999 Constitution] reflects the inherited common law position that treaty-making is a purely executive act that requires subsequent implementation within the country by way of legislation enacted by the legislature. He explains that treaty-making and its implementation are two separate functions, the former for the executive and the latter for the legislature.⁶¹

It must be pointed out that a possible exception under the UK practice, which arguably may be applied to Nigeria, is when the treaty involves a cession of British territory. In this case, it has been posited that such a treaty requires the approval of the parliament given by statute. Professor Arnold McNair states that, "*as a matter of strict law*" such treaties do not require legislation, though "as a matter of constitutional convention a series of modern precedents makes it extremely unlikely that in future any cession will take place without statutory authority"⁶². Although, on the surface it would appear that the Green Agreement can be categorized as a

⁶¹ Federalism in Nigeria under the Presidential Constitution, Sweet and Maxwell, London (1983), pp. 255-256.

⁶² McNair, (1928) "*When the British Treaties involves Legislation?*" in vol. 9 British Year Book of International Law, p. 59 at p. 63.

treaty of cession, in reality is it actually a treaty of cession? A treaty of cession is when a state by way of treaty cedes a territory that belongs to it to another state. This would not appear to be the case in the Green Tree Agreement, since the relevant territory, Bakassi Peninsula did not at the time of making of the treaty belong to Nigeria, as per the ICJ judgement of 10 October 2002. Therefore, in reality Nigeria had nothing under the Agreement to cede. The Agreement was actually one to confirm the boundary delineation in respect of Bakassi Peninsula as between Nigeria and Cameroon as per the judgment of the ICJ. An opposite case in this is the Indian case of *Magabhai Ishwarbhai Patel Vs Union of India*⁶³. In this case, a border dispute between India and Pakistan was referred to international arbitration. The award of the arbitration held that certain villages which were thought to fall under Indian Territory actually belonged to Pakistan. When the central government of India sorts to give effect to the award, a suit was filled contesting the power of the central government to cede the territory of India to a foreign power. The majority decision of the Supreme Court of India held that this did not amount to cession of the

⁶³ (1970) 3 SCC 400.

territory of India. The learned Chief Justice of India at that time, M. Hidayatullah who read the majority decision of the court said:

The precedent of this court are clear only on one point namely, that no cession of India territory can take place without a constitutional amendment... must a boundary dispute and its settlement by an arbitral tribunal be put on the same footing?... A settlement of a boundary dispute cannot, therefore, be held to be a cession of territory. It contemplates a line of demarcation on the surface of the earth. It only seeks to reproduce a line, as statutable boundary and it is so fixed. The case is one in which each contending state is uncertain of its own rights and therefore, consents to the appointment of arbitral machinery. Such a case is plainly distinguishable from a case of cession of territory known to be home territory.

This case would appear to support the point that the Green Tree Agreement is not a treaty of cession since in Article 1 (quoted above) it merely states that Nigeria recognizes both the sovereignty of Cameroon over Bakassi and the land and Maritime boundary delineation as between Nigeria and Cameroon by the ICJ decision.

As a matter of courtesy, just like in the UK, the president may notify the National Assembly of its intention to ratify a treaty, but there is no legal obligation to do so, neither can such notification can be regarded as a request for the National Assembly to ratify the treaty. Under the Nigerian

Constitution, as it presently stands, and the inherited UK practice, the National Assembly has no constitutional competence to ratify any treaty between Nigeria and another country. Its role under section 12, as has been mentioned, is limited to implementing domestically a treaty already validly entered by the President.

5.7.2 The Nature of Nigeria's Obligation on the Implementation of the Green Tree Agreement – International and Domestic

Although the National Assembly may decline to implement the Green Tree Agreement under section 12 of the Constitution thereby depriving it of any force of law domestically, this does not in any way, void the international obligation of Nigeria, firstly, under the ICJ judgement of October 2002 and secondly, under the Green Tree Agreement. The ICJ judgement imposes an international obligation on Nigeria, which as a member of the United Nations, a party to the United Nations Charter and the Statute of the ICJ; it is required to comply with. Under Article 94(1) of the UN Charter: "each member of United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." In cases where a party to the case fails to perform its obligations under the judgement of the ICJ party (in this case Cameroon)

may have recourse to the Security Council to enforce the judgement of the ICJ, it is not advisable for Nigeria to expose itself to the possibility of this happening, especially since three permanent members of the Security Council – the United States of America, United Kingdom and France – were amongst the witness states to the Green Tree Agreement. Nigeria, certainly at this stage cannot afford any international opprobrium!

Further, under the Vienna Convention on the Law of Treaties, a party to a treaty (in this Case the Green Tree Agreement), “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”. In essence, the fact that the National Assembly has failed to domesticate the Green Tree Agreement will not void Nigeria’s international obligation under this treaty. In addition, it is pertinent to mention here Article 46 of the Vienna Convention on the Law of Treaties which states that a party to a treaty “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 invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.” The proviso to this article would not avail for Nigeria because, as mentioned earlier the consent of President Olusegun

Obasanjo to the Green Tree Agreement without the ratification of the National Assembly is a valid consent under the internal laws of Nigeria, as it presently stands. Nothing in the constitution detracts from this position, reaffirming their willingness to peacefully implement the judgement of the International Court of Justice, commending the Secretary General of the United Nations for his efforts made in this respect in organizing the Tripartite Summits and establishing the Cameroon-Nigeria Mixed Commission.

Considering that the question of the withdrawal from and transfer of authority over the Bakassi Peninsula, should be treated in a forward looking spirit of goodwill in order to open new prospects for cooperation between the two countries after decades of difficult bilateral relations.

Determined to encourage the consolidation of confidence and peace between their two countries for the well-being of their people and for stability in the sub-region, have decided to conclude the agreement.

That Nigeria recognizes the sovereignty of Cameroon over the Bakassi Peninsula in accordance with the judgement of the International

Court of Justice of 10 October 2002, in the matter of land and maritime boundary between Cameroon and Nigeria⁶⁴.

That Nigeria agrees to withdraw all its armed forces from the Bakassi Peninsula within sixty days of the date of the signing of this agreement. 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 days⁶⁵.

That Cameroon, after the transfer of authority to it by Nigeria shall guarantees to Nigerian nationals living in the Bakassi Peninsula the exercise of fundamental human rights and freedoms⁶⁶.

Following the Green Tree Agreement, Bakassi indigenes appeal ruling on Green Tree Agreement⁶⁷. However, presiding judge, Justice Gabriel Kolawole dismissed the suit for want of jurisdiction, noting that the plaintiffs failed to file an affidavit in support of their suit⁶⁸.

⁶⁴ Arts 1 of the Green Tree Agreement.

⁶⁵ Art. 2 of the Green Tree Agreement.

⁶⁶ Art. 3 of the Green Tree Agreement.

⁶⁷ <http://www.osundefender.org/%3fp%3D49050>, 01/12/12. 10:40am

⁶⁸ <http://www.channelstv.com/home> 01/12/12 10:43am.

“The Green Tree Agreement is flawed”, according to the chairman, House Committee on Treaties Hon. Ekundayo Yacoob Bushira – Alebiosu⁶⁹, that it is still an agreement hanging on a tree.

One of the pains of poor democracy today, apart from the institutionalized corruption, is the loss of a part of Nigeria, the Bakassi Peninsula to Cameroon. Would this have happened under a military dispensation?

It is criminal and wrong for any nation to consign its citizens or any group of citizens that would want to belong to a nation away without giving them a right to choose. Under the United Nations Protocol, there is provision for self-determination and in that provision; it says that anybody that is living under the sun has the right to determine how he should be governed.

⁶⁹ [www.thisdaylive.com>home>news](http://www.thisdaylive.com/home/news) 01/12/12, 10:54am.

CHAPTER SIX

Summary and Conclusion

6.1 Summary

The ICJ gave the decision as though the territory is occupied by wild animals without any rights under municipal or international law, and treated the colonial declaration and communication as conferring absolute proprietary rights and obligations to the territory to persons or entities outside the people who for centuries lived and existed therein and of which the territory is their homeland.

The treaty, signed years before Nigeria came into existence as a sovereign entity was a "Treaty of Protection" conferring limited "Protectionist" rights on Britain and cannot by any shade of imagination translate to sovereignty or absolute power of transfer of title, sufficient to extinguish the rights of the kings and chiefs to the traditional over lordship of the territory and/or give Britain an absolute right to alienate their rights and interests unilaterally without the free prior consent and authority of the chiefs and kings.

The inhabitants of Bakassi Peninsula are under the direct authority of the Obong of Calabar and are forever subjects to the Royal Office and

paraphernalia of the Obong's stool, which is also their cultural and spiritual guardian and guidance; the inhabitants cannot in any way be extricated from their ancestral and cultural roots which are tied inextricably to their kiths and kin in Cross River state, Nigeria.

The inhabitants of Bakassi Peninsula cannot have their land in one country and be citizens of another country; as alien nationality cannot be imposed on them because their right to a nationality is guaranteed under the Universal Declaration of Human Rights.

By the failure of ICJ to conform to this basic principle of justice, renders it nugatory if the threat of the National Assembly is anything to go by because under the international law Nigeria is under no obligation to obey the ICJ judgement and cannot be bound by the Green Tree Agreement to take the territory belonging to the inhabitants to the Republic of Cameroon without their free, prior and informed consent, hence the need for the country to seek for avenue to untie what they have intractably and unlawfully knotted by any window of opportunity.

Indigenes of Bakassi in Cross River State, sometimes ago, went before the Abuja Division of the Court of Appeal to challenge the dismissal of the suit they filed with a view to voiding the controversial Green Tree Agreement, GTA; Nigeria entered into with Cameroon in 2006.

They took their plight to the appellate court after Justice Gabriel Kolawole relied on technicalities and dismissed their legal action.

In a ruling he delivered sometimes ago, Kolawole maintained that the plaintiffs failed to attach an affidavit to support the reliefs they sought against the Federal Government, noting that after a careful perusal of the processes before the court; he discovered that Bakassi indigenes only adduced a verifying affidavit.

The presiding judge placed reliance on the decided case-law in *Agbakoba Vs SSS*, to insist that the inability of the plaintiffs to file the requisite affidavit in line with the rules of the court rendered their suit incompetent.

The judge said: "A verifying affidavit cannot be substituted for the primary affidavit upon which every other application rests. Verifying affidavit is only meant to support the main affidavit. Therefore, in the

absence of the requisite affidavit, this suit is ex-facie incompetent and is doomed to be struck out.”

Besides, Kolawole said the court lacked the jurisdiction to delve into the substantive matters that were raised in the suit, saying the issues were “political and highly volatile.”

He said the court was ill-equipped to dabble into such issues as were raised by the Bakassi indigenes, insisting that the Nigerian constitution did not imbue the high court with powers to intervene or adjudicate on “political arrangements” such as the Green Tree Agreement brokered by former President Olusegun Obasanjo in 2006.

Meanwhile, in a swift reaction to the ruling, counsel to Bakassi indigenes, Mr. Festus A. Ogwuche, contended that the judge failed to take full cognizance of the weightiness of the issues raised before him vis-à-vis the constitutionality or otherwise of the GTA.

According to him, “we are heading straight to the court of appeal. The judge did not hear us on the issue of jurisdiction but went ahead to raise and resolve it without hearing the parties. The Bakassi people will exhaust every known domestic remedy in enforcement of their rights as a pre-requisite to their approaching the International Court of Justice, ICJ, as

recognizable parties in international law. It may take time but we will get there.”

It would be recalled that the plaintiffs had in their motion ex-parte, sought an order of mandamus that would compel the Federal Government to by any means available to it, repossess, occupy and take full legal and administrative control of the Bakassi Peninsula.

The motion was filed pursuant to section 1 of the African Charter on Human and Peoples’ Rights (Enforcement and Ratification Act Cap 10, Laws of the Federation of Nigeria, 1990, as well as Order 34 Rules 1(a), 3(1) and (2) of the Federal High Court Civil Procedure Rules, 2007.

The suit was endorsed by nine executives of Free Bakassi Association, Prince Imoh Ukpa Imoh, Mr Godwin Ukpong, Mr Chritian A. Umoh, Mr Anthony Achibong Ukong, Mr Kingsley Edu, Mr Etim Ekpeyong Ndong, Mr Offiong Anying Ekpeyong, Bassey Okon Osua and Bassey Ikoedem Antiga.

They equally sought leave for an order of mandamus, compelling the Federal Government, President Goodluck Jonathan and the Attorney General of the Federation, who were all joined as respondents in the suit, to “unilaterally resile from, withdraw, rescind, repudiate and/or revoke Nigeria’s obligations under the Green Tree Agreement entered into

between Nigeria and Cameroun in Green Tree, New York, USA on the 12th day of June, 2006, for its being invalid and in breach of Articles 1, 2, 20, 21, 22 and 24 of the African Charter on Human and Peoples Rights, Article 1 of the International Covenant on Economic, Social and Cultural Rights, Article 1(2) of the UN Charter, and the UN Declaration on the Rights of indigenous peoples, and being inconsistent with sections 1-3, 2(1) and (6), 13, 14(1) and (2)(b), 17(1), (2)(b), (c) and (d), sections 19(a) and 9d0, 21(a) of the constitution of the Federal Republic of Nigeria (as amended)."

The applicants, argued that the ICJ gave its judgment on the protracted dispute over ownership of the oil rich Bakassi Peninsula, based "on archaic and anachronistic colonial declarations, and communications between colonial officers. "Specifically, the applicants had argued that the ICJ, "in reaching its decision, relied on:

- (a) Henderson-Flerichau Exchange of Notes of 1931,
- (b) The Anglo-German Agreement of 11th March and 12th April, 1913
and
- (c) The British Order-in-Council of 2 August, 1946.

“The ICJ gave the decision as though the territory is occupied by wild animals without any rights under municipal or international law, and treated the colonial declaration and communication as conferring absolute proprietary rights and obligations to the territory to persons or entities outside the people who for centuries lived and existed therein and of which the territory is their homeland.

“The treaty, signed years before Nigeria came into existence as a sovereign entity was a “Treaty of protection” conferring limited “protectionist” rights on Britain and cannot by any shade of imagination translate to sovereignty or absolute power of transfer of title, sufficient to extinguish the rights of the kings and chiefs to the traditional overlordship of the territory and/or give Britain an absolute right to alienate their rights and interests unilaterally without the free prior consent and authority of the chiefs and kings.

“The respondents are hereby given notice to produce the said treaty of 10th September 1884 which the applicants put in their possession upon the proceedings in the ICJ.”

More so, the applicants said they were neither consulted nor was their consent sought before former President Obasanjo endorsed the Green

Tree Agreement, saying they were totally kept out of the picture of things prior, during and even after the execution of the Agreement.

“The applicants only got notice of the Agreement via media reports and grapevine, and upon contact with their representatives in the state and National Assemblies, were told that nobody was either consulted nor was aware of such agreement.

“Before the applicants could realize what is happening, they were told that for them to remain as Nigerians, they are required to vacate their ancestral home and move into settlements to be built, constructed and maintained by the respondents, or else, if they opt to remain in their fatherland, they should be prepared to remain as Cameroonians.

“The applicants are scattered in different parts of the country, as in Delta State, Bayelsa, Rivers State, Akwa Ibom, etc, living under the basest form of human degradation embodying all the pains and sufferings that could be experienced by man, existing in makeshift pre-civilization abodes having only trees as cover against rain and shine, and other vagaries of the weather, which are most times inclement.

“The members of the applicant community are dying in their numbers everyday from afflictions of disease, poverty, malnutrition, squalor, etc,

and there is no end to their suffering, humiliation, degradation of their human essence and homelessness.

“The Cameroonians changed the names of their communities and altered every existing tradition structure or monument which they could not destroy to suit their whims and purposes and destroyed and obliterated the very essence of their origins.

“The applicants do not have direct access to the ICJ, as by virtue of the statute of the ICJ, only states are recognizable parties before it, and have employed all existing measures to prevail upon the respondents to go back to the ICJ and undo the havoc they have caused in their lives, all to no avail.

“The applicants’ dehumanization is worse than animals, more humiliating than slavery, and degrading to the basest form of inhumanity, and is unpalatable and unacceptable in a 21st century world.

“The applicants are under the direct traditional authority and suzerainty of the Obong of Calabar and are forever subjects to the Royal Office and paraphernalia of the Obong’s stool, which is also their cultural and spiritual guardian and guidance; the applicants cannot in any way be

extricated from their historical cultural roots which are tied inextricably to their kiths and kin in Cross Rivers State, Nigeria.

“Furthermore the applicants cannot have their land in one country and be citizens of another country, and the respondents cannot impose their nationality on them as their right to a nationality is guaranteed under the Universal Declaration of Human Rights.

“By the failure of the ICJ judgment to conform to this basic principle of justice, renders it null and void, and thus, the ceding of the applicants homeland to Cameroon is anchored on nothing and is bound for the ground.

“Under international law, the 1st -3rd respondents do not have any obligation to obey the ICJ judgment, and is not bound by the Green Tree Agreement to take the territory belonging to the applicants to the Republic of Cameroon without their free, prior and informed consent, hence the need for the 1st -3rd applicants to quickly return to the Hague to untie what they have intractably and unlawfully knotted,” they added.

6.2 Findings

Going by the terms of the 2005 Green Tree Agreement, Nigeria’s cession of its erstwhile territory would be perfected, except she raises fresh

issues for a review of the case under the prevailing constitution of the Federal Republic of Nigeria, 1999 as amended. Bakassi Peninsula remains and is still a part of Nigeria.

Section 12(1) of the 1999 Constitution states that “no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.” Thus by implication, the divisive “Green Tree Agreement” can still be revoked by Nigeria under the constitution which is the grundnorm.

In a message to Vanguard Chairman, senate committee on information, Media and Public Affairs, Senator Enyinnaya Abaribe, PDP, Abia South said, “if National Assembly has not ratified the Green Tree Agreement, it is not yet legal”¹.

Unlike judgments, the court’s advisory opinions have no binding effect. The requesting UN organ or specialized agency remains free to give effect to the opinion, or not to do so.

In a few specific cases, it is stipulated that an advisory opinion shall have binding force (e.g. those concerning the General Convention on the

¹ www.vanguardngr.com/Bakassi

privileges and Immunities of the United Nations and the host agreement between the UN and the United States).

At the same time, the authority of the Court attaches to its advisory opinions and to the findings contained in those opinions. The fact that the Court's advisory opinions are taken into account by international organisations and states in practice contributes to the development of international law.

The court has experienced periods of intense activity and relative inactivity. Since 1985, the number of cases brought before the court has increased, with more than a dozen cases on its docket annually (even sharply rising to 25 cases in 1999). This figure may sound modest, but it has to be born in mind that, since the number of potential litigants is infinitely fewer than in national courts (only some 210 states and international organizations have access to the court), the number of cases is necessarily a fraction of national litigation.

History shows that judicial recourse is sought more frequently in times of detent than of high international tension: there is therefore reason to suppose that this growing recourse to the court will continue, especially

as states may be acquiring a "law habit" the more they submit their disputes to the court, the more inclined they maybe to do so in the future.

At the same time, the universal character of the court has become more marked, with cases now coming from all parts of the world.

More than half the contentious cases concern territorial and border disputes. A significant number relate a maritime disputes and questions regarding the law of the sea. A further group of cases is connected with questions of state jurisdiction and diplomatic and consular law. Some important cases have dealt with allegation of the unlawful use of force. The court has occasionally been asked to rule on claims of a commercial nature or relating to private interests which one state espouses against another.

For entire states have sought to preserve or increase their political influence and economic power: they have fought for land, energy resources, access to the sea, control over cities. It is not surprising that the disputes considered by the Court most frequently relate to territorial and maritime issues.

The decolonization of Africa in particular, has given rise to a large number of cases before the court, since the new states attach great importance to the stability of their boundaries.

The court has not only contributed to the development of a body of legal principles governing the acquisition and delimitation of territory; it has also resolved in the process, a large number of disputers between states.

For example, the Court decided in 1962 that the temple of Preah Vihear, a Khmer place of pilgrimage and worship which had been under control of Thailand since 1954, was actually on Cambodian territory and that, consequently, Thailand must withdraw its police and military forces and return any objects removed from the ruins. Thailand complied with the court's judgment.

In 1986, in the case concerning the Frontier Dispute between Burkina Faso and Mali, the frontier line determined by a special Chamber formed by the court was fully accepted by the parties.

In 1992, another Chamber formed by the Court ended a land, Island and maritime Frontier Dispute of 90 years' standing between El Salvador and Honduras. In 1969, underlying tensions lined to the dispute were so strong that a football match between the two countries in the World Cup led to a short but bloody "football war".

More recently, the Court resolved a territorial Dispute between Libya and Chad concerning the so-called Aouzou Strip, an area of 125,000 square

kilometers situated in the Sahara desert over which the two states had been in recurrent armed conflict for years. In 1994, court ruled in favour of Chad and a few months later, all Libyan troops occupying the territory withdrew under the supervision of observers dispatched by the UN Security Council.

In December 1999, the court also settled a sensitive frontier dispute between Botswana and Namibia over a 3.5km² island located in the Chobe River. It ruled that Kasikili/Sedudu Island belonged to Botswana and Namibia announced that it would abide by the decision.

The Court's jurisprudence inspired the drafters of the 1985 convention on the Territorial Sea and the Contiguous Zone and the 1982 UN Convention on the Law of the sea. The rules on innocent passage and on the obligations of coastal states which the court had found to exist were incorporated in these treaties.

The court has also contributed to the development of the concept of the Continental Shelf and laid down the method by which its limits are determined.

In two cases brought in 1969 by Germany and Denmark and Germany and the Netherlands, respectively, concerning the North Sea

Continental Shelf, the Court held that the Continental Shelf constituted “a natural prolongation of (a state’s) and territory into and under the sea” and that its delimitation was to be effected “by agreement in accordance with equitable principles and taking account of all the relevant circumstances”. In subsequent decisions, the court set out some of these equitable principles.

The Court has moreover, on several occasions, delimited continental shelves. For example, in the following cases: Tunisia/Libya and Libya/Malta (Continental Shelf, 1982 and 1985; Canada/United States (Delimitation of the Maritime Boundary in the Gulf of Maine Area, 1984); and Denmark Vs Norway (Maritime Delimitation in the Area between Greenland and Jan Mayen, 1993).

These are cases relating to the exercise by a State of its power over foreign nationals in its own territory or over its own nationals in the territory of a foreign state. They generally entail issues of nationality, rights of asylum or immunity.

One of the known examples is the dispute between Colombia and Peru in the 1950s concerning Victor Raul Haya de la Torre, a Peruvian politician who took refuge in the Colombian embassy in Lima after being

accused of having plotted a military coup d'état against his government. In its judgment of November 1950, the Court decided that it is not for Colombia, as the state granting asylum, to qualify the offence (political or common crime) committed by the refugee. Accordingly, the court found that the asylum had been irregularly granted and it ruled that Peru was not obliged to provide a safe conduct for Mr. Haya de la Torre to leave the country.

However, in another judgment, delivered eight months later in a follow-up case, the court concluded that Colombia was under no obligation to surrender the refugee to Peru, the dispute was finally settled by means of negotiations and Mr. Haya de la Torre left Peru in 1953, having spent five years in the Colombia embassy.

In 1979 the United State brought before the court a case concerning the seizure of its embassy and the detention of its Diplomatic and Consular Staff in Tehran after the regime of the Shah of Iran had been overthrown and the Ayatollah Khomeini had become that country's leader.

In its judgment of May 1968, the court ruled that Iran was obliged to release the hostages, to return the United States embassy premises and to make reparation. The Court never fixed the amount of that reparation

because the parties subsequently concluded the 1981 Algiers Accords, under which the American hostages were finally released.

In the 1950's, Liechtenstein brought a claim against Guatemala on behalf of Friedrich Nottebohm, a former German national who had obtained Liechtenstein nationality in 1939.

In its judgment of April 1955, however, the court held that the claim was inadmissible because the nationality of Mr. Nottrebohm was not based on any genuine prior link with Liechtenstein, the object of his naturalization having been to acquire the status of a neutral national in time of war.

Ten years later, Belgium brought a claim against Spain in connection with the adjudication in bankruptcy of the Barcelona Traction Light and Power Company limited, by certain organs of Spain in 1948. The Barcelona Traction was a Canadian company whose share capital belonged largely to Belgian Government sought reparation for the loss suffered by its national, but in judgment delivered in 1970, the Court found that it lacked legal standing to do so.

In 1987 the United States brought before a special Chamber former by the Court a claim against Italy for certain actions of the Italian authorities in relation to the requisition and bankruptcy of Elettronica Sicula

S.P.A. (ELSI), an Italian producer of electronic components wholly owned by two American companies, including Raytheon. In 1989 the Chamber found that Italy had not violated the treaty of Friendship, Commerce and navigation with the United States, signed in Rome in 1948.

More recently, in 1998, Guinea filed a claim against the Democratic Republic of the Congo on the grounds that the latter had divested a Guinean national of his property.

In 1986, in a case brought by Nicaragua (then led by the Sandinista government) against the United States over American support for the Nicaragua Contras (Military and Paramilitary Activities in and against Nicaragua), the Court found that the United States by supporting these forces and laying mines outside that country's ports-acts that the court held the United States could not justify in the basis of collective self-defense – had violated its international legal obligations not to intervene in the affairs of another state, not to use force against another state, not to infringe the sovereignty of another state and not to interrupt peaceful maritime commerce. Accordingly, the court decided that the United State had to make reparation. Nicaragua however, discontinued the case before the amount of the reparation had been determined.

In April 1999, in the height of the Kosovo crisis, Yugoslavia requested the court to indicated provisional measures in order to stop the bombing of Yugoslavia territory by ten NATO member states. The court however, found that it lacked jurisdiction to order such measures.

6.3 Recommendations

In the view of this research, it is too late in the day for the National Assembly to take its present stance on the Green Tree Agreement. Nigeria needs to comply with its international Obligation! The better position should be how to ensure that the surrender of Bakassi is done in the long run will cause untold hardship, especially for those located in the border towns of Nigeria and Cameroon. There is clearly a need to resettle the Bakassi indigenes to a decent and suitable new location comparable to their former location. This is a responsibility the National Assembly and the Executive, both at the Federal and relevant State and Local Government level, would need to give serious attention! Also, the Court is not able to prevent states from using force. As the principal judicial organs of the UN, it is, however, an important cog in the international peace-promoting and peacemaking mechanism.

On several occasions the court had defused violations situations, contributed to the normalization of relations between states and reactivated negotiation processes which had been at a standstill.

Today the court is no longer seen solely as the last resort in the process of the settlement of disputes. States may have recourse to the court while simultaneously employing other methods of dispute resolution, appreciating that such action may complement the work of the Security Council and the general Assembly as well as bilateral negotiations.

In this combined process of dispute resolution, judicial recourse has helped the parties to a dispute to clarify their positions. Parties are promoted to scale down their sometimes overstated political pretensions and transform them into factual and legal claims. The result is that, in some cases, political negotiations have resumed and succeeded before the court rendered judgment. In other cases, the court's decision has provided the parties with legal conclusions which they may use as basis for further negotiations and settlement of the dispute.

At a time when the media offer the spectacle of war "live". The court may sometimes seem notable by its absence from the theatre of operations.

One reason is that the court has no power to take up cases on its own initiative. Its statute does not empower it to investigate and adjudicate of its own accord the acts of sovereign state, or to deal with their international affairs. The court is not a watchdog for the rule of law in the world. It does not have a prosecutor who may bring indictments.

The court can consider a dispute only at the request and with the consent of the states involved.

Yes, only once, in 1986, Nicaragua requested the Security Council to enforce the judgment that the court had given in its favour in its case against the United State (Military and Paramilitary Actions to and against Nicaragua).

The resolution submitted by Nicaragua to the Council was not adopted because of the United States veto, but in 1991, after elections which led to a change of government in Nicaragua, negotiations between the parties led to an agreement and the case was removed from the list.

The implementation of provisional measures ordered by the Court – measures designed to freeze the situation pending a final decision-mainly depends on the will of states. The record of compliance with provisional measures (some 32 since 1946) is uneven. In a number of cases, states

have rejected or ignored orders of provisional measures. In the proceedings concerning application of the convention on the prevention and punishment of the Crime of Genocide, instituted in 1993 by Bosnia and Herzegovina against Yugoslavia, the court indicated provisional measures on two occasions within a five-month period while war was still raging. In its first order, the court called on the parties to cease immediately any acts of genocide and to ensure that no action was taken which might aggravate or extend the dispute. In its second order, the court formally noted that, despite its earlier decision and resolutions of the UN Security Council, "great suffering and loss of life (had) been sustained by the population of Bosnia and Herzegovina in circumstances which shook the conscience of mankind and flagrantly conflicted with moral law". It held that "the perilous situation demanded, not the indication of (new) provisional measures... but immediate and effective implementation of those" indicated previously.

On the other hand, in 1985, in the case concerning the Frontier Dispute between Burkina Faso and Mali, both parties complied with the court's order that enjoined them strictly to observe a ceasefire.

The advisory opinion can clarify the ways in which these organizations may lawfully function or strengthen their authority in respect of refractory member state. Further, that for those indigenes that would prefer to remain in the Bakassi area, there is a need to ensure that Cameroon complies with its obligation under the Green Tree Agreement, which states in article 3 as follows:

1. *(1) Cameroon, after the transfer of authority to it by Nigeria, guarantees to Nigerian nationals living in Bakassi Peninsula the exercise of the fundamental rights and freedom enshrined in international human rights law and in other relevant provisions of international law.*
2. *In particular, Cameroon shall:*
 - a. *Not force Nigerian nationals living in Bakassi Peninsula to leave the zone or to change their nationality;*
 - b. *To 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.

This research therefore recommends that a body of some sort be set up by the federal government, made up of the representatives of Nigerian nationals in Bakassi, representatives of government at the federal, State and Local government levels; representatives of the security agencies and independent experts, in areas such as human rights, international law and taxation. This body would have the responsibility for constantly monitoring and ensuring Cameroon's compliance with its obligations under the Green Tree Agreement in respect of Nigerian nationals remaining in Bakassi.

Also, there is a need to incorporate into the constitution, clear provisions on what organ of government has competence in treaty-making, instead of having this governed by unwritten inherited common law rules of the UK. In addition, there is a need in the opinion of this research, for a clear role in the constitution for the National legislature in treaty-making similar to what obtains in the USA, from where we borrowed the presidential system of government.

Finally, it is strongly recommended that Article 34 ICJ statute be amended in such a manner that individuals be accorded opportunity to approach ICJ directly in order to ventilate their grievance unfettered.

BIBLIOGRAPHY

Anene, J.C., *The International Boundaries of Nigeria: The Framework of an Emergent Nation*, Longman, London (1970).

Boggs, S.N., *International Boundaries: A Study of Boundary Functions*, Oxford University Press, New York (1940).

Davidson, B., *Old Africa Rediscovered*, Longman, London (1967).

East, W.G., and Mudy, A.E., *The Changing World*, Allen and Union, London (1956).

Elias, T.O. *United Nations Charter and the World Court 1st ed.* Index Printers Limited, Ibadan, Nigeria (1989).

Kenneth J.K. *The Extent of the Advisory Jurisdiction of the International Court of Justice*. A.W. Sijthoff, Leyden (1971).

Ladan, M.T. *Materials and Cases on Public International Law*, A.B.U Press Zaria (2007).

Lawrence, T.J., *The Principle of International Law, 7th Ed.*, Percy, H.W., McGraw Hill (1923).

Mrdock, G.P., *Africa: Its people and their Culture History*, Cambridge University Press (1959).

Rouke, J.J., *International Politics on the World Stage*, McGraw Hill, New York (1997).

Rudin, H.R., *German in Cameroon*, Clarendon Press, London (1938).

Shabtai R. *The Law and Practice of the International Court*. A.W. Sijthoff, Leyden (1965).

Shabtai R. *The International Court of Justice: An Essay in Political and Legal Theory*. A.W. Sijthoff Uitgeversmaatschappij N.V Leyden (1965).

ARTICLES

Bmobolaji, S., Bakassi: What Next? Weekend vanguard (2002).

Olumide, I., Letter from the Attorney General of the Federation to the Ministry of External Affairs in Punch, Thursday 19th (2002).

Yemi, K., Far-Reaching Political Economic Implication of Bakassi Peninsula in Punch, Tuesday, 2nd (2002).

ICRC Review Series, January – February, 1997, No. 316.

WEBSITES

[Journal.cambridge.org/production/a..](http://journal.cambridge.org/production/a..)

<http://nigeriaworld.com/articles/2002/doc./273html>

unterm.un.org/DGAACS/unterm.nsf/8fa...

www.144.com/2012/niger/court.bar

www.un.org/events/tenstories

www.vanguardngr.com

www.telling.com/index.php%3foption.

www.globallawbooks.com/review/data...

www.bsos.umd.edu/./schulte405.htm

www.icj-cij.org/court/index.php%3fp

www.law.unimelb.edu.au/index.cfm%3f

www.worldcourts.com/icj/eng/decision...

www.english.com/enb/voa

www.org/Bakassi

www.jstor.org/stable/761406

www.osundefender.org/%3fp%3D49050

www.channelstv.com/home

www.thisdaylive.com>home?news