

Full Length Research Paper

ICJ Judgment On Bakassi Peninsula And Lake Chad: Litmus Test For Peace And Integration In Africa

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The International Court of Justice (ICJ) ruled against Nigeria on the disputed Bakassi (Backassey) Peninsula and parts of Lake Chad territory with Cameroun on 10 October 2002, and Nigerian government has complied to a large extent. Ordinarily, the case has been foreclosed from further discussion. But, like any other human judgment, it has created its own problem bordering on security and integration of West African sub region and Africa. The paper argues that this has necessitated the opening of two “windows” for revisiting the case, i.e., conducting a referendum, and consideration of additional 5 colonial/post-colonial treaties earlier ignored. The fear here is that France may block re-opening the case in the Security Council by relying on the doctrine of “peace at all cost”. Notwithstanding, the study argues that there is merit in re-opening the case. The study adopts the “doctrine of collective security and peaceful settlement” framework, and applies secondary data collection method. The method was complemented by interviews of the affected indigenous communities and stakeholders; and finds that ICJ is not the appropriate forum to resolve such a political issue. It then recommends a diplomatic-negotiation paradigm to prevent an imminent Nigeria and Cameroun war¹

Key words: Bakassi Peninsula, Lake Chad, Treaty, Sovereignty, Peace, and Integration.

INTRODUCTION

The Bakassi (Backassey) Peninsula (BP) that is 1,000 kilometres long is rich in oil mineral, and a strategic military base. It is situated between Nigeria and Cameroun (Kamarun). Cameroun was a German colony until formally removed from Germany and made a League of Nations mandate territory at the end of World War I and administered jointly by Britain and France. Britain administered Western and Southern Cameroun from Nigeria since these parts shared a boundary with Eastern Nigeria. Incidentally, Bakassi Peninsula is situated at the southern end of the boundary. French, on the other hand, administered the Eastern part of Cameroun. By this arrangement, France never had any

connection with Britain over the Bakassi Peninsula.

The border between Nigeria and Cameroun extends from Lake Chad to the Gulf of Guinea, including offshore areas of Bakassi Peninsula that was thought to possess no particular value. Thus, the Bakassi Peninsula was for several decades not an issue to Nigeria and Cameroun; and as such the two countries signed the Organization of African Unity (OAU) Declaration on Border Disputes among African states in Cairo, Egypt, in 1964. The essence of the Declaration was to forestall ethnic and/or national fragmentation in post-colonial African countries. Be that as it may, African countries continue to call on the international judicial institutions like ICJ to mediate on

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contemporary border disputes, including the Bakassi Peninsula.

Nigeria has favoured a diplomatic solution that would address the arbitrary nature of pre-colonial and colonial boundaries. This is important because, the Nigeria-Cameroun border is the longest, i.e., 1,680 kilometres, of all Nigeria's international boundaries and is the most complicated topography. Cameroun, on the other hand, pursued a legal solution that hinges on sustaining the inviolability of Africa's frontiers (Ikome, 2004). According to Bekker (2003), "the different positions made the Nigerian-Camerounian relationship to be characterized by mutual distrust and friction emanating from the claims by both countries to the disputed Bakassi Peninsula..." This resulted in 'limited clashes' in 1981, 1983 and 1994 (Aja, 2002 and Klare, 2004).

On 29 March and 6 June 1994, Cameroun, supported by the French government then instituted legal action against Nigeria at the International Court of Justice (ICJ) in The Hague "over her claim to the Bakassi Peninsula (BP) and parts of Lake Chad.; and also demanded payment of compensation for the period Nigeria occupied the areas" (MacOgonor, 2002). Nigeria filed objections on 17 December 1995. The problem arose from the application and/or interpretation of colonial treaties especially the maritime boundaries (Table 1), and how the ICJ relied on two (those of 1913 and 1931, out of the 8 valid treaties) to rule in favour of Cameroun on 8 October 2002 (Pakenham, 1991 and Baye, 2011). This means, the ruling that is a solution to Cameroun and French governments would lead to a new set of threat to the peace and integration of West African sub-region and Africa and has to be revisited (Onah, 2004:7). Already, there is also a growing resentment in Nigeria, and concerted pressure of the Nigerian Parliament on the federal government to explore the option of referendum where the indigenous communities in the affected parts of Lake Chad and Bakassi Peninsula will play decisive role as was the cases in sudden in 2012.

This paper, re-examines the ICJ ruling and its implications on sub-regional and regional peace and integration, and argues for re-opening the case for a referendum and consideration of 5 additional treaties, 1842, 1847, 1881, 1884 and 1961 (Table 1) to bring about equity. It is divided into five parts, beginning with this introduction; followed by a brief overview of the background and problem, theoretical and methodological issues; analysis of the judgment, from the Camerounian, Nigerian and indigenous communities' perspectives; conclusion and suggestions.

Brief Background and the Problem

Formal British-Efik relations at Old Calabar started in 1841 with the signing of the anti-slavery treaty. This was followed by additional treaties in 1842 and 1881 that gave

Britain the right to intervene with force if the anti-slavery treaty was violated in Old Calabar; and annexation of Efik territory to preclude French interference.

Thus, Britain had an overriding influence in the area, including Bakassi (Backassey) peninsula up to the time of the Berlin Conference in 1884 (Table 1). At the Berlin Conference, German acquired the Eastern part of Cameroun, leaving the Western and Southern parts for Britain. On 11 March 1913, Britain and Germany signed a treaty (agreement) to cover the sovereignty of Bakassi Peninsula. The treaty defined the land and maritime boundary at the Rio Del Rey (Gooch and Temperley, 1926). At the end of World War I, the German's portion of Cameroun was split between Britain and France. Britain administered the Western and Southern Cameroun until the Eastern part was placed under the League of Nations Mandate System in 1922 and later the United Nations (UN) Trusteeship system in 1946. Within the Trusteeship period, the British and French governments exchanged Diplomatic Notes in 1931 on the sovereignty of Bakassi, and conditions for Britain to continue to administer Bakassi Peninsula as part of the then Eastern Nigeria (Table 1).

In August 1959, the UN requested the British Colonial Administration to organise a conference in Mamfe to achieve consensus on how the people of Southern Cameroun would secure independence. The British Commissioner for Southern Cameroun then invited 45 opinion leaders to deliberate on it. Incidentally, out of the 45 attendees, 11 voted for union with Nigeria while 34 voted for independence for the Southern Cameroun. The British ignored the large majority vote and rather recommended to the UN a joining of Southern Cameroun with Nigeria. Following this, there was an Exchange of Notes between the British Consul and Ahidjo (former President of Cameroun) that terminated the Trusteeship Agreement on 27 September 1961 (Adam, 1998).

The Notes of 1961 recognized *Rio Del Rey* estuary as frontier between Nigeria and Cameroun, and there was no dispute over the ownership of Bakassi Peninsula and parts of Lake Chad. The problem arose when crude oil was discovered in the Peninsula and Cameroonians then laid claims of ownership based on the Anglo-German treaty of 1913 (Table 1). Nigerian government challenged the claims that the 1913 treaty imprecisely and poorly demarcated the border. The misinterpretation of the treaty resulted in military hostilities in 1981, 1983, 1994 and Cameroun has to file a case against Nigeria's sovereignty over the peninsula and parts of Lake Chad at the ICJ in The Hague on 29 March 1994. Cameroun requested the Court to determine the maritime frontier between the two countries under Article 31(2) of the Statute of ICJ (Bekker, 2003). Cameroun equally alleged that Nigerian troops were occupying several areas of the Peninsula, thereby violating the fundamental principles of respect for frontiers inherited from colonial masters. Cameroun supported its claims with the British-German treaty of 11

Table 1. Pre-colonial and Colonial Treaties of Friendship and Protection in Bakassi Peninsula.

Year	Character of Treaty	Treaty Partners	Content
1841	Anti-Slavery	British-Efik at Old Calabar	To stop slave trade and embrace legitimate trade
1842	Enforcement of Anti-Slavery activities	British and Efiks	To empower Britain to intervene on slavery matters with force
1847	Friendship and protection	French and King of Duala, Karmarun (Cameroun)	Part of Cameroun sought to remain under Britain rule and Eastern Nigeria
1881	Annexation	British and Efiks	Annexation of territory from Bini (Benin) to Cameroun to preclude French territorial ambition
1884	Balkanisation of Africa (Berlin Conference)	British and Germans	Deciding on Colonial borders and claims, and making <i>Rio Del Rey</i> estuary as accepted ethnic frontier between Nigeria and Cameroun on the Peninsula to forestall territorial conflict of ownership
1913	Sovereignty over Bakassi Peninsula	British and Germans	Defined land and maritime boundary by relying on <i>Rio Del Rey</i> as accepted frontier on the Peninsula
1931	Henderson Fleurian Exchange of Notes on Sovereignty of Bakassi	British and French	Setting out conditions for British continued retention of Bakassi area as part of Eastern Nigeria
1961	Trusteeship Agreement	British and Ahidjo	Exchange of Notes on withdrawal of British occupation of Southern Cameroun. It was fast but not totally unexpected or sudden.

Sources: Author's compilation, 2012.

March 1913 and Henderson-Fleurian Exchange of Notes between Britain and France on 9 January 1931 (Table 1). Nigeria filed 8 objections to Cameroun's claims on 17 December 1995, as well as, questioned the jurisdiction of ICJ to entertain the suit filed by Cameroun.

The major contentious issue in the dispute was on the question of sovereignty over the Bakassi Peninsula and parts of Lake Chad. Camerouns argued that ownership of the Peninsula has been settled since 1913 and what was rather ambiguous was the precise definition of the maritime boundaries. The ICJ relied on two (i.e., 1913 and 1931), out of 8 relevant treaties (Table 1) to rule in favour of Cameroun on 10 October 2002. The ruling has raised problems of credibility, procedure and methodology (Kalama, 2007).

THEORETICAL AND METHODOLOGICAL ISSUES

The theoretical framework adopted for this study is the "doctrine of collective security and peaceful settlement" promoted by the United

Nations, as well as regional and sub-regional organisations (Pius and Ndoh, 1998) in Africa, namely, African Union (AU/OAU) and Economic Community of West African States (Obinazie, 1998, ECOWAS) (Consultative Act of AU, 2002, and Etekpe, 2010:51-62). Incidentally, Nigeria and Cameroun are members of these organisations and signatories to declarations on border disputes among African states. The doctrine "seek to confront would-be aggressors with the concerted power of states determined to keep peace" (Wolfers, 1959: 41-70, and Wainhouse, 1966: 278-290). The essence of the doctrine is to prevent war through the application of non-coercive and/or non-violent procedures. "In spite of its utility", Palmer and Perkins (2004: 238) wrote, "the machinery of collective security has not been satisfactorily developed". The framework is part of Article 1 of the UN Charter that calls for "effective collective measures (machineries) for prevention and removal of threats to peace, and for the suppression for acts of aggression or breach of peace." The Charter then established the Security Council, and ICJ to implement it. In supporting the framework, the then UN Secretary-General, Trygve Lie reported to the General Assembly in 1951 that:

I believe that the development of a strong and effective UN collective security system combined with renewed efforts at mediation and conciliation can improve the chances of ameliorating

Table 2. Composition of ICJ and Senior Support Staff, Hague, October 10, 2002.

S/No	Name	Position Held	Country of Origin
1	Shijiu Yong	President	China
2	Raymond Ranjeva	Vice-President	Madagascar
3	Abdul G. Koroma	Judge	Sierra-Leone
4	Vladlens Vereshchetin	Judge	Russia
5	Rosalyn Higgins	Judge	United Kingdom
6	Gonzalo Parra Aranguren	Judge	Venezuela
7	Pieter H. Kooljans	Judge	Netherlands
8	Francisco Rezek	Judge	Brazil
9	Awunshawkat Al-Khasaw Neh	Judge	Jordan
10	Thomas Buergenthal	Judge	USA
11	Nabil Elaraby	Judge	Egypt
12	Hisashi Owada	Judge	Japan
13	Brouno Simma	Judge	Germany
14	Peter Tomka	Judge	Slovenia
15	Ronny Abraham	Judge	France
16	Philippe Couvreur	Registrar	Belgium
17	Jean-Jacques Arnaldez	Deputy Registrar	France

Source: Author's compilation, 2012.

Table 3. Witnesses at ICJ on Nigeria-Cameroun Boundary Dispute at Hague, February 18 – March 21, 2002.

S/No	Witnesses for Nigeria	Witnesses for Cameroun
1	Hon. Musa E. Abdullahi	Amadu Ali
2	Mrs. Nella Andem-Ewa	Mr. Maurice Kanto
3	Sir Arthur Watts	Mr. Alain Pellet
4	Mr. Lan Brownlie	Mr. Peter Y. Ntamak
5	Mr. George Abi Saab	Mr. Malcom N. Shaw
6	Alhaji Abdullahi Ibrahim	Mr. Bruno Simma
7	Mr. Alastar MacDonald	Mr. Jean Pieprre Cot
8	Mr. James Crawford	Mr. Daniel Khan
9	Mr. Richard Akinjide (Attorney)	Mr. Joseph Marie Bipoun Woun
10	Prince Bola Ajibola (Attorney)	Michael Aurillac
11	-	Christian Tomuschat
12	-	Maurice Mendelson
13	-	Jean-Marc Thouvenin
14	-	Oliver Corten
15	-	Sir Lan Sinclair

Source: Author's compilation, 2012.

and, in times settling the great political conflicts that must endanger world peace today (Wolfers, 1959).

As earlier stated, in an effort to popularise the doctrine, the UN obliged the regional and sub-regional organisations, that is, North Atlantic Treaty Organisation (NATO), Arab League, AU (OAU) and ECOWAS to incorporate it (that is, collective security and peaceful settlement) into their respective charters (Imobighe, 2003). The Charter of AU was then strengthened to "enhance efficiency and effectiveness of the organisation in addressing the challenges of a changing region and sub-region" on 9 July 2002 (Consultative Act

of AU, 2002). It then established the mechanism for conflict prevention, management and resolution (CPMR) to promote peace, unity and integration. ECOWAS was equally patterned towards AU with a clear mandate to intervene in conflicts within the sub-region. The methodology applied in this study is based on secondary sources, and the paper examined the ICJ ruling, alongside the characters of judges of the Court (Table 2) and witnesses (Table 3), as well as the 8 relevant pre-colonial and colonial treaties (Table 1). It is worth stating that the character of the judges is an important issue because of France's involvement in Nigeria's affairs. It is believed in Nigeria that the presence of a French judge and deputy

registrar influenced the judgement in favour of Cameroun.

Otherwise, why should the ICJ unduly relied on the 1913 treaty that is vague on the border, and ignored the other 5 treaties of 1842, 1847, 1881, 1884 and 1961 (Table 1). When the Nigerian Prime Minister, late Sir Abubakar Tafawa Balewa Exchanged Notes with the British High Commissioner to Nigeria in respect of relevant treaties in 1961, "334 were found to be valid" (Etekpe 2004). And most of them are found in Dappa-Biriye (treaty mandatory) library that are accessible. The author accessed them and went further to visit Arewa House (Centre for Historical Documentation), Ahmadu Bello University, Kaduna, and other independent sources. In addition, the author visited 18, out of the 33 villages, along Lake Chad territory that were handed over to Cameroun between 7–24 June 2006. The area included Darak, Kukaulu and Shagara; interviewed 250 Bakassi returnees at their temporary camps in Cross River, Akwa Ibom, and Bayelsa States between 8 January 2007 and 30 June 2008. In all, the methods were rigorous, but worthy for this type of study.

In reviewing *related literature*, Dappa-Biriye was mandated by the Rivers Chiefs and Peoples Conference (RCPC) to discuss the treaty rights and obligations of the Niger Delta people in Nigeria in the 1957 and 1958 pre-independence constitutional conferences in London. As he (Dappa-Biriye, 1995: 19-20) reported, "The 334 treaties (earlier pointed out) were considered valid and enforceable even at independence" The issue is that some of these treaties were presented to the ICJ by the Nigerian government in 1997, but the court ignored and relied only on two of them (1913 treaty and Henderson Fleurian Exchange of Notes in 1931), in determining the final judgment That informed the *Niger Delta Forum Study Group (NDFSG)* to write the then Head of State and Government, General Sani Abacha in 1997. Titled, *The Niger Delta Forum's Initiatives on Resolving the Bakassi Peninsula Conflicts, and Reversing Commonwealth Antagonism Against Nigeria through Friendly Treaty Obligation*, the study group urged the federal government to apply "friendly treaties/agreements to support the Nigerian sovereignty over the Bakassi Peninsula" and pursue three essential strategies (Etekpe 1997:1-3) to involve Chief Harold Dappa-Biriye, *treaty mandatory* of coastal city state, Obong of Calabar, General Dr. Yakubu Gowon, former Head of State and Government during whose administration the Bakassi Peninsula became an international issue, to share their experiences on the issue at the Hague.

The emphasis on existing friendly treaties is important because it is a powerful weapon to oblige Britain to support Nigeria as crown witness at the ICJ.... the same way France is supporting Cameroun based on their defence pact. But the Nigerian government relied too much on the expertise of Bola Ajibola and Richard Akinjide to whittle down French influence in the case (Fatile and Adejwon, 2012). France's interest in the case cannot be overstated. Oduntan (2006) was particular of the "French connection". He, as earlier pointed out, emphasized the fact that France has a judge and the deputy registrar of the Court. In addition, it is a member of EU, which has senior staff working in ICJ. The Nigerians perceived that the judge and deputy registrar influenced the judgement to favour Cameroun.

This is not the first time France has worked against Nigeria. It started by supporting the Biafran secessionists in 1967. In 1977, France blocked Nigeria's bid to secure a seat in the UN Security Council (Adam, 1998). It went further to prevent the then Nigeria's Minister for Foreign Affairs, Major-General Joseph Garba from addressing the European Union (EU) Assembly in 1977. Ironically, that was the year French companies operating in Nigeria benefited most from contract awards for building of roads and other social infrastructure.

Quoting from his book, *Diplomatic Soldiering*, Garba (1997) reported that:

There is scarcely any area of our external relations whether in

Africa or in Europe where we do not run up against the interference of the French.

He emphasised that despite over 50 major French companies operating in Nigeria. France has frustrated Nigeria's effort to draw closer to her Francophone neighbours especially Camerouns for peaceful resolution of the dispute. "Against the backdrop of the strategic danger of the presence of French troops in all countries neighbouring Nigeria", MacOgonor (2002) wrote, "its Gaullist penchant for intervening militarily in intra-African disputes is a matter of very grave concern for Nigeria". The concern, indeed, took another dimension in 1994 when France supported Cameroun to challenge Nigeria's ownership of and authority over the Bakassi Peninsula and Lake Chad at the ICJ (Omoigui, <http://www.omoigui.com>).

As earlier stated, Table 2 shows France's alleged influence in the ICJ ruling as it has both a judge and deputy registrar. In addition, Ambassador Gerard Araud, President of UN Secretary Council that oversees the activities and enforces the judgement of ICJ is a French national .

An Analysis of the ICJ Judgment

The Background

The ICJ was established in The Hague as an organ of the UN in 1946. The Court settles disputes submitted to it by states by "virtue of a jurisdictional clause, i.e., typically when they are parties to an existing treaty, reciprocal effects of declarations made by parties under the statutes whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another state having made a similar declaration, and advisory opinions on legal questions...." (Kalama, 2007). Between 1946 and 1997, the Court handled 41 contentious cases and delivered 21 advisory opinions. The court adopts both English and French as official languages; its judgment is final and enforceable by the UN Security Council. The Court has 15 judges elected to serve for a period of 9 years (Table 2). Although the judges are independent magistrates and do not represent their countries there is no clause that stops them from having moral obligation to their countries (Hudson, 1943; and Palmer and Perkins, 2004).

The Camerounian 15-member delegation to the ICJ was supported by the French government (Table 3). It backed the cas with maps. As earlier emphasized, France has both a judge and the deputy registrar in the Court. Presumably, this was the reason why Camerounians were no longer in the mood of African integration that existed in the past by not allowing African Union to resolve the dispute through diplomatic means, instead of ICJ to secure judgement. This shows that Cameroun had prepared for it for some time.

The maps are;

1. *Afrique Centrais (Republique Federale Cameroun): Scale 1:50; published 1965-6 by Institut Geographique National (Paris and Brazzaville); sheets NC-33-XX-2b (Mora), NC-33-XIV-4c-4d (Mokolo), NC-33-XIV-4a (Mokolo), NC-33-XIV-2c (Mokolo), and NC-33-XIV-1b (Mokolo).*
2. *Republiques du Niger et du Tchad: scale 1:200,000; published 1959 by Institut Geographique National (Service Geographique a Brazzaville), sheet ND-33-VIII (Boso).*
3. *Afrique Centrale (Republique du Tchad, Republique Federale de Cameroun); scale 1:200,000; published 1966 by Institut Geographique National (Annexe a Brazzaville); sheets ND-33-IX (Bol) and ND-33-III (Makari).*
4. *Nigeria: scale 1,500,000; published 1960 by Federal Surveys, Nigeria: sheets 4,8,12,11, and 15 (indicates demarcation pillars).*
5. *Republique Federale de Cameroun: scale 1:5000,000, published*

1964-67 by Institut Geographique National (*Annexe de Yaounde*): sheets Nkambe (NB-32/33-N.O.), Garoua (NC-33/34-SO), and Maroua (NC-33/34-NO).

The Camerounian Position

Cameroun traced the genesis of the dispute to 11 March 1913 when Britain and Germany signed two agreements, namely: the settlement of the frontier between Nigeria and the Camerouns (Kamerun) – covering Yola, Nigeria to the sea; and the regulation of navigation on the Cross river (BFSP, 1913:782-7). The agreements addressed the precise demarcation of the Anglo-German boundary between Nigeria and Cameroun (Kamerun) from Yola to the Cross river, and were accompanied by 5 maps.¹ The Germans that were by then controlling Bakassi Peninsula (BP) conceded the 'navigable portion' of its (i.e., offshore border) to Britain for uninterrupted and secure sea lane to Calabar. In exchange, Britain conceded the BP proper to Germany. What this meant was that Germans will no longer threaten Britain of access to Calabar, and the Obong of Calabar, Nigeria did not protest. The British and Germans maps were said to clearly show BP in Cameroun, and remained so even at the time of Nigeria's amalgamation in 1914 (Omoigui, <http://www.omoigui.com>).

At the end of World War I, all the German territories were divided between France and Britain by the *Treaty of Versailles* in 1916; and on 10 July 1919, the *Franco-British Declaration* defined the boundary between French and British mandated Cameroun (Bekker, 2003). The declaration (agreement) placed Bakassi and the rest of what became known as British Cameroun under British mandate and administered coterminous with Nigeria. The 1913 border was retained.

There were two additional agreements signed on 29 December 1929 and 31 January 1930 between Graeme Thomson, Governor of Colony and Protectorate of Nigeria and Paul Marchand, *Commissaire de la Republique Francaise au Cameroun*. The agreements were incorporated in an Exchange of Notes between the French Ambassadors in London and the British Foreign Minister on 9 January 1931. The Exchange was accompanied by earlier maps where BP was within the British Camerouns.

Going forward, on 13 December 1946 (that is, after WW II), the United Nations (UN) placed Cameroun under Trusteeship agreement. The agreement re-ratified the proper borders as codified by the previous Anglo-German and Anglo-French agreements. Again, it was accompanied by the same maps where BP was in Cameroun, not Nigeria.

In 1954, the British Secretary of State for the Colonies issued a 'legal order' – defining the border between Nigeria's Eastern region and Southern Camerouns, and placed the BP in the Southern Camerouns (Ikome, 2004). By this, BP was distinct from the Eastern region and Calabar Province. On 11-12 February 1961, the UN asked Britain to clarify the position of the Northern and Southern Camerouns living in Nigeria through a plebiscite. The result of the clarification (plebiscite) showed that while the Northern Camerouns decided to remain in Nigeria, the Southern Camerouns opted to join their counterparts in Nigeria. It was emphasized that there were 21 polling stations in BP and 73 percent of the people voted to join the Republic of Cameroun (UN Resolution 1608 (XV), 1961).

In January 1962, the post-independence Nigerian government under Tafawa Balewa exchanged diplomatic notes with Cameroun where he acknowledged the fact that BP was not Nigerian territory (Anene, 1970). This was also the position of Major-General Aguiyi-Ironsi, Nigeria's first military Head of State and Government (HOSG), that came to power in January 1966. Ironsi committed his government to respect all previous international agreements. In July 1966, the then Lt. Col. Yakubu Gowon, Nigeria's second HOSG, that took over power from Ironsi also committed his government to

honour all previous treaties/agreements. He was not bothered that the Nigerian map did not include BP.

It was after the Nigeria-Biafran war in 1970 that Nigeria sought for clarification of the maritime border that was 'vaguely' defined by the Anglo-German Treaty of 1913. This was important because the offshore boundary was ambiguous as there was no detailed demarcation of the 'navigable portion' to the Calabar estuary. The then Attorney-General of Nigeria, Teslim Elias (<http://www.gamji.com/nowa43.ktm>, 3 September 1970) then advised the Gowon's government that:

This Ministry has given a most careful consideration to the whole question in the light of all the available evidence, and the conclusion is that there is no legal basis for Nigeria's claim to the Bakassi Peninsula for the reason stated herein.... According to the information received from the Federal Director of Surveys, the Bakassi Peninsula has never been included as part of Nigeria in the administrative maps of Nigeria since the then Southern Cameroun ceased to be part of Nigeria in 1961. Also, the Northern Region, Western Region and Eastern Region proclamation of 1954 showed Bakassi Peninsula as forming part of the then Southern Cameroun. Moreover, by a Diplomatic Note No. 570 of March 27, 1962 from Ministry of Foreign Affairs to the Embassy of Cameroun in Lagos to which was attached a map prepared by the Federal Surveyors, Nigeria recognized Bakassi Peninsula as following part of Cameroun.

The main issue in the dispute was on deciding exactly what part was 'navigable' and what was not. This was then addressed by Nigeria's General Yakubu Gowon and Cameroun President, Ahmadu Ahidjo at Yaounde, Cameroun on 04 April 1971. Both parties resolved that the boundary shall be the 'Coker-Ngo line on British Admiralty Chart No. 3433 as far as the 3 – nautical mile limit'. The status of BP proper was not an issue for discussion and the maps showing BP in Cameroun was not challenged. On 01 June 1975, Gowon and Ahidjo signed the *Maroua Declaration* for the partial extension of the 1971 maritime boundary without discussion on the status of BP proper.

It was General Murtala Mohammed, Nigeria's third HOSG, who overthrew Gowon on 29 July 1975 that raised the issue of BP for the first time (Anene, 1970). He questioned 'all the domestic and foreign policy decisions' of his predecessors, including the offshore maritime border with Cameroun. In an effort to discredit Gowon, he 'accused him (Gowon) for giving away BP to Cameroun'. Muhammed then renegated on Gowon's agreements with Ahidjo but never protested that Nigerian official maps still showed BP in Cameroun. Ibrahim Babangida, Nigeria's 5th HOSG, saw it as an 'error' and ordered reprint of Nigerian maps to include BP in Nigeria in 1991.

Following Babangida's action, General Sani Abacha, Nigeria's 6th HOSG, created an administrative structure, known as Bakassi Local Government Council, as part of Cross River state, Nigeria and claimed full control of the Peninsula. This action led to sporadic clashes between the two countries until the ICJ at The Hague confirmed on 10 October 2002 what Elias had stated in 1970. The ICJ reiterated the relevance of pre-colonial and colonial treaties /agreements that placed BP and some parts of Lake Chad inside Cameroun. The ruling also provided guidelines for the final clarification of the offshore borders that placed BP and 33 villages at Lake Chad inside Cameroun (Baye, 2011).

The Nigerian Position

Nigeria recalled that Cameroun was a German colony until treaty of *Versailles* after the World War I. France was by then nowhere near the Bakassi Peninsula and could not have entered into treaty obligation with either Britain or the Efiks in 1913. It was after WW I

Table 4. ICJ Judgment on Bakassi and Lake Chad on Nigeria-Cameroun Boundary Conflict, The Hague, 10 October 2002.

S/No	Claim	Ruling	
		Cameroun (Kamerun)	Nigeria
1	Bakassi Peninsula	1) Accepted that land (boundary) had been fixed by pre-colonial and colonial treaties of friendship and protection. 2) Affectivities relied upon by Nigeria could not prevail over Cameroun's conventional titles. 3) Pursuant to Anglo-German treaty of March 11, 1913, sovereignty over Bakassi lies with Cameroun	1) Rejected the theory of historical consolidation and affectivities
2	Lake Chad	4) Pursuant to Henderson-Fleurian exchange of Notes on January 9, 1931 between Britain and France, an extremely precise boundary was drawn between Nigeria and Cameroun. 5) Pursuant to Yaounde II and Maroua declarations of 1971 and 1975, the maritime boundary from the mouth of Akwayefe to the Sea (to the advantage of Cameroun) was fixed. 6) Cameroun under an obligation to expeditiously and without condition withdraw its administration, military and police forces from Bakassi Peninsula and Lake Chad falling within the sovereignty of Nigeria 7) Cameroun to continue to be faithful to its traditional policy of hospitality, tolerance and protection of Nigerians living in the Bakassi Peninsula and Lake Chad areas.	2) Adopted the delimitation method advocated. 3) Nigeria under an obligation to expeditiously and without condition withdraw its administration, military and police forces from Bakassi Peninsula and Lake Chad falling within the sovereignty of Cameroun. 4) Rejected Cameroun's submission of seeking Nigeria to repair the injury suffered by Cameroun resulting from the occupation of Bakassi
3	Bakassi & Lake Chad	8) Cameroun secured recognition of sovereignty over Bakassi Peninsula and disputed area of Lake Chad.	

Source: Excerpts from Kalama, John (2007: 36-39). *International Law and Global Conflict Prevention: The Nigeria-Cameroun Experience*. Port Harcourt: Pearl Publishers.

when France "acquired" the Eastern part of Cameroun, and still never had any connection with Britain over Bakassi Peninsula. France came in after Nigeria's independence when Camerounians opted to join their brothers in the French-speaking part. It is, therefore, difficult to understand how the 1913 treaty became a major *prima facie* evidence.

Whereas the Western capitalist world ensures that the ICJ judgement be enforced, such enforcement are often times partial. The Nigeria position is that in the case of Israelin-Palestiane conflicts, the then President of the court, Shijiu Yong ruled on 10 July 2004 that Israel should pull down the 600 kilometres of illegal barriers at the West Bank that imposed undue hardship on the Palestinians. But the United States disagreed with the judgement and the UN Security Council did not enforce it. As Oloja (2004:10) puts it, "the United States White House Spokesman, Scott Miccellen, reacted that, we do not believe that this (ruling on Israeli pulling out) is the appropriate forum to resolve what a political issue is. This is an issue that should be resolved through the process that has been put in place, specifically, the road map"

Israel equally disregarded the ruling, and yet, the UN Security Council did not enforce it. Israel looked to US veto in the Security Council to block any bid for punishment. The other example was the apartheid South Africa that ignored ICJ ruling against its illegal occupation of the then Southwest Africa (now Namibia) in 1971 as it looked to Britain to veto UN Security Council's enforcement. Adam

(1998) describes such incon-sistencies in great deal in his book, *United Nations, Divided World*, and cautioned against the developed world's management of the post-cold war era and global peace. The caution is important in view of the far-reaching results / implications of the ICJ ruling on Nigeria-Cameroun boundary dispute on Nigeria as presented in Table 4. Table 4 shows how the Court drew a fresh boundary between Nigeria and Cameroun in Lake Chad where Nigeria ceded 33 villages in Borno State to Cameroun.

The Nigerian position is that the case be re-opened as it ignored the inputs of indigenous communities in the affected areas, as well as 5 other relevant treaties on the matter on Bakassi Peninsula is an example of the artificial and arbitrary nature of Africa's colonially inherited boundaries. Thus, ICJ ought not to have unduly relied on the 1913 treaty as the basis of ruling in favour of Cameroun. It, therefore rejected the ruling and calls for a referendum and consideration of the 5 additional treaties.

The Indigenous Communities' Position

The position of the Bakassi returnees and indigenes of the 33 villages (with a population of about 60,000) at Lake Chad that were ceded to Cameroun have frown at the ICJ ruling, and demanding for a referendum in which they would be the deciding factor as it

was done in the past, including the recent case in Southern Sudan in 2012 (Pratt, 2006). For them, their demand for a referendum is in line with both the USA position on the Israeli-Palestinian conflict (earlier highlighted) where the Americans stated that ICJ 'is not the appropriate forum to resolve what is a political issue'. They asserted that the dispute over Bakassi Peninsula is also a political issue, and should be resolved by referendum.

The people, urge the Nigerian government to re-open the case even though they expressed fear that France may block the Nigerian effort now that Ambassador Genrard Araud of France is the President of the UN 15-member Security Council. This is where Britain has to come in through treaty obligations (Crowe, 1907, and Gooch and Temperley, 1926: 402-420) the same way France is 'dragged' in by Cameroun through their Defence Pact.

The people, however blamed the Nigerian team (Table 3) that was not well composed. It never had any treaty mandatory like Harold Dappa-Biriye, Obong of Calabar, General Dr Yakubu Gowon or experienced traditional rulers privy to the colonial treaties that had hindsight to the ambiguous clauses in the 1913 treaty that formed the basis of the ruling.

RESULTS AND IMPLICATIONS

The results of the study are presented at Table 4. On Bakassi Peninsula, the ICJ accepted Cameroun claims that the "imprecise and poorly demarcated border" fixed by the colonial treaties of 1913 and 1931, and rejected Nigeria's position on "historical consolidation and affectivities". On Lake Chad, it fixed the maritime boundary from the mouth of *Akwayefe* to the sea to the advantage of Cameroun; and obliged Nigeria to "expeditiously and without condition" with draw its presence. By this ruling, Nigeria ceded 33 villages with a total population of about 60,000 in Lake Chad territory to Cameroun. The other result is that Cameroun secured sovereignty over Bakassi Peninsula and acquired 33 villager in Lake Chad territory.

The other result bothers on the ambiguous clauses in the 1913 treaty that formed the basis of ICJ's ruling. In October 1970, a Joint Committee of experts from Nigeria and Cameroun met in Lagos, Nigeria on the Bakassi Peninsula. The meeting did not agree on a precise definition of the "navigable channel" of the *Akwayefe* river upto where it joins the Calabar estuary as there was no Admiralty map that expressly delineated the navigable channel of the *Akwayefe* (Omoigui, 2012). Omoigui went further to state that the Nigerian delegation argued that the navigable channel of *Akwayefe* river had to be seen to lie wholly east of the channel of the Calabar and Cross River as was stated in the 1913 treaty.

Earlier, Prescott (1971) who was a surveyor at the Federal Surveys in Nigeria and later a lecturer in Geography at the University of Ibadan from 1956 – 1961, and now Professor Emeritus at University of Melbourne in Australia predicted that "there will be considerable difficulty in determining the navigable channel of the Nigerian–Cameroonian maritime boundary in accordance with the 1913 treaty". This prediction came to pass in 2002 as the Anglo-German treaty of 1913 "vaguely"

defined the border between Nigeria and Cameroun. It is for this reason that the ICJ should have not unduly relied on it (1913 treaty).

The implication are very weighty for Nigeria. Commenting on the implications, Fatile and Adejuwa (2012) wrote:

Nigerian government issued a statement rejecting the verdict of the ICJ. Yet, following negotiations between the two countries, facilitated by the UN and crowned by June 2006 Green-tree Agreement in New York and subsequent instruments, Nigeria completed the withdrawal of its military, administration and police from Bakassi Peninsula in August 2008... However, it will be naïve to conclude that the issue has been neatly resolved...

By the ICJ verdict, Nigeria has lost entrance to the Calabar port to Cameroun. This is because the entrance to the Calabar port lies in the Calabar channel that now belongs to Cameroun. The effect of this is the danger placed on the multibillion dollar Export Processing Zone (EPZ). This is because the Calabar EPZ depends largely on the import-export activities of companies operating in the zone, and Nigeria will have to pay charges.

Pratt (2006) has identified the security or strategic implications for the Nigerian state. The victory of Cameroun has made Nigeria lose its eastern access to the Atlantic Ocean. This implies that without Cameroun's approval, Nigeria's naval ships cannot move freely to Southern Africa. The social implication of the ruling are equally weighty as Nigerians, who have lived in Bakassi and the 33 villages in Lake Chad area all their lives will now face the reality of relocating as displaced persons to new environments in Cross River, Akwa Ibom and Bayelsa states. Most of them had their businesses located there and now detached from their source of income.

For Cameroun, the judgement is not only a boost to President Biya's government but it assured them of the importance of UN in handling international issues. The only problem left now is for Camerounian government to integrate the people of Bakassi into the system and work hard to bring about sustainable development.

The results and implications of the study clearly demonstrates that ICJ judgement has not "actually removed the threat to peace" in the sub-region, and as such the case should be re-opened for two reasons.

i) Consideration of Additional Treaties. As previously stated, two treaties i.e. 1913 and 1931 are insufficient to form the basis for ruling in favour of Cameroun in the dispute. Nigeria should, therefore, persuade the ICJ to consider the entire 8 colonial treaties on the disputed territories (Table 1) as there is no clear reason why ICJ refused to recognise, especially, the treaties of 1842, 1847, 1881, 1884 and 1961 that fixed the territorial boundary at *Rio Del Rey*.

ii) Referendum. The ruling did not also take into account the affectivities, settlement pattern, and input of the

indigenous communities living in the Peninsula and Lake Chad areas. The position of the native people in matters of international boundary dispute usually ranks uppermost as in the recent case of Southern Sudan in 2012. Thus, there should be a referendum in which they would be the deciding factor. The demand for referendum is in line with both the USA position on the Israeli-Palestinian conflict and international best practice.

CONCLUDING REMARKS AND SUGGESTIONS

The ICJ ruling on the Bakassi Peninsula and parts of Lake Chad has remained sour points in Franco-Nigerian, as well as Nigeria-Cameroun relations. This means, the judgment of ICJ on 10 October 2002 will, contrary to Camerounian and French expectations, not contribute to the final solution of the problem. As Mattick (2004) puts it, "the resolution of any problem creates a new problem", and until equity is brought into the case, it will not "remove" the UN Security Council's expected "threat to peace" in the sub-region and Africa. Accordingly, the ruling remains a keg of gunpowder in the wheel of peace and socio-economic integration in Africa.

The paper foresees Nigeria challenging the ICJ's judgment by persuading the Court to consider additional 5 treaties, and conduct a referendum. This would be stiffly opposed by France, and the paper has suggested strategies to impress it on Britain to checkmate French territorial ambition in West Africa and Africa. The true test of regional peace and integration is in the bowel of time as Nigeria and Cameroun are already locked in a war of words over the Bakassi (Backassey) Peninsula and parts of Lake Chad.

The paper wish to suggest that :

- 1) the Nigerian government "insist" on conducting a referendum; and
- 2) there should be a retrial of the case by considering 5 additional pre-colonial and colonial treaties that were previously ignored.

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