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The International Court of Justice's Disputes Settlement in International Law: A Bird's Eye View of the Dispute between Cameroon and Nigeria Relating to the Bakassi Peninsula

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ABSTRACT

The settlement of international disputes embodied in various legal instruments, especially the International Court of Justice (hereafter referred to as ICJ or the Court), with its seat at the Hague, established to ensure the principal judicial organ of the United Nations (hereafter referred to as UN) to materialize the fundamental objectives of the UN; maintenance of peace and a stable world order, adjustment or settlement of international disputes which might lead to a breach of peace. The ICJ has two main functions: to settle legal disputes submitted to it by states in accordance with international law and to give advisory opinions on legal questions referred to it by authorised international organs and agencies. The Security Council of the UN enforces judgments of the ICJ. The ICJ has been able to resolve a wide range of international disputes including that between Cameroon and Nigeria over the Bakassi peninsular. The paper examines the role of the ICJ in the settlement of international disputes with an objective to ascertain its effectiveness in adjudicating the dispute between Cameroon and Nigeria over the Bakassi Peninsula and to evaluate the effectiveness of the Court, the extent of its success and weaknesses. Doctrinal methodology applied with a qualitative research approach. Findings show some shortcomings in the workings of ICJ in the settlement of international disputes. This work benefits legal scholars as a point of reference, international legal scholars, and governments especially those of Cameroon and Nigeria as well as others in the sub-region as it highlights the importance of peaceful settlements of border disputes.

Keywords: *International Court, Dispute Settlements, International Law, Cameroon, Bakassi Penisular*

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I. INTRODUCTION

The Bakassi Peninsula covers a total area of approximately 1000 sq. km and is located on the extreme eastern end of the Gulf of Guinea between latitudes 4°25' and 5°10'N and longitudes 8°20' and 9°08'E. It consists of a number of low-lying, largely mangrove covered islands covering an area of around 665 sq. km. It is largely made up of a cluster of low-lying, swampy and mangrove covered islands with a population estimated between 150,000 to 300,000 inhabitants.²

After the arrival of European colonialists in Nigeria in the second half of the 19th Century, the King of Old-Calabar signed a Treaty of Protection with the Queen of England on September 10, 1884. The Bakassi area was at that time under the rule of the Old Calabar.³ In a series of agreements in 1913, Britain and Germany sought to establish an exact demarcation of the borders of Bakassi proper under the control between Nigeria and Cameroon, which of course did not exist as such. The first Treaty entitled: “*The Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea,*” put jurisdiction of the Germans. After the First World War, Germany lost all her colonies in Africa including Cameroon (which was divided into two territories by the League of Nations and administered as mandates under Britain and France.⁴ The Franco-British Declaration of July 1919 placed Bakassi and the rest of the “British Cameroons” under British mandate. This territory was then administered under the British system of “*indirect rule*” as part of Nigeria respecting the borders laid down by the agreements of 1913. A further agreement between both powers in 1931 was signed to further codify the declaration of 1919. Again, maps from this period clearly show Bakassi as part of Cameroonian territory.⁵ At the end of the Second World War, the British and French League of Nations Mandates over Northern/Southern Cameroons and Cameroun⁶ respectively came to an end and were succeeded by trusteeship agreements under the newly created United Nations Organization. The agreements creating these trusteeship territories re-ratified the

² K.N. Che, “Understanding the Bakassi Conflict. A Showcase of Conflict Prevention in Practice”, *European University Center for Peace Studies Research papers*, 2007, p.6.

³ K. Ngang, “Understanding the Bakassi Conflict”. A Showcase of Conflict Prevention In Practice”, *European University Center for Peace Studies Research papers*, 2007, p.5.

⁴ Che Op.cit. p.20.

⁵ *Ibid.* p.21.

⁶ Throughout this work note should be taken as to the use of the names Kamerun, The Cameroons, Cameroun, British Cameroons, French Cameroon and Cameroon. Kamerun represents the German Protectorate that was divided between the French and the British after the First World War “The Cameroons” represents British Cameroons (Northern Cameroons and Southern Cameroons) and Cameroun represents French Cameroon. The Southern part of British Cameroons (Southern Cameroons) later became West Cameroon and Cameroun (French Cameroon) became East Cameroon, after the 1961 plebiscite. Cameroon is generally used in the work which represents the Republic of Cameroon.

Anglo-German and Anglo-French treaties pertaining to the borders between both Countries. Once more, maps from this period placed Bakassi under the sovereignty of Southern Cameroons.

Upon achieving independence, the Republic of Cameroun obtained the Bakassi Peninsula in the process of a plebiscite conducted by the United Nations in 1959 and 1961.⁷ In 1966 when Lieutenant Colonel Gowon came to power, he committed his government to respect all prior international agreements made by his predecessors.⁸ Trouble began when General Murtala Muhammed came to power in 1975. His regime questioned most of the domestic and foreign policy decisions made by General Gowon including the offshore maritime border with Cameroon.⁹ General Gowon was accused for "giving away Bakassi". Then Nigeria started questioning the agreement signed previously given Bakassi to Cameroon especially with the discovery of oil¹⁰ in the area and thus started the conflict between the two countries over the Bakassi Peninsula.¹¹ The major problem facing the International Court of Justice was jurisdiction; *sine qua non*¹² for the exercise of judicial powers. Where it is lacking, a judicial body cannot legally exercise binding judicial power over a subject. It is said that the jurisdiction of the ICJ is compulsory, but in principle it is not the case.¹³ States that have accepted ICJ compulsory jurisdiction still reject the jurisdiction of the court. For instance, in the *Bakassi Case*, Nigeria rejected ICJ jurisdiction even though it had accepted ICJ compulsory jurisdiction in 1965.¹⁸

The ICJ lacks an effective mechanism of enforcement,¹⁴ because, enforcement of judgments of the ICJ are not the mandate of the ICJ but the sole responsibility of the UN Security

⁷ Ruben de Koning, www.c3ed.uvsq.fr/cdgecorev/fr/pdf/t2/DeKoning.pdf. page 7. 20081025, visited, 11/10/2014 See General Assembly Resolution 1608 (XV) of 21 April 1961.

⁸ Ironsi (Nigerian President from January to July 1966) and Balewa (Nigerian President from 1962 to 1966) governments.

⁹ A.N, Evenye, "Women caught in Arm-Conflict: The Cameroon-Nigeria Dispute over the Bakassi Peninsula", thesis submitted to the WARC-WARA Peace Initiative for West Africa for the fulfillment of the December 2011Scholarship Award, 2011, p.28.

¹⁰ In 1975 according to the Nigerian Institute of Oceanography and Marine Research (OIMR), the continental shelf in the South Eastern section of Bakassi is very rich in minerals resources, including oil as well as fish, and could yield about 100,000 metric tons of fish per year. See T.B. Agbor, "The Perceptions/Views of Cameroon – Nigerian Bakassi border conflict by the Bakassi people", Master's thesis, Uppsala University (Sweden), Unpublished, 2013, p.45. Available at <http://www.divaportal.org/smash/get/diva2:686188/FULLTEXT01>, visited, 01/03/2022.

¹¹ *Ibid*.

¹² Something that is absolutely needed,(www.merriam-webster.com/dictionary, visited,01/03/2022.

¹³ Renata Szafarz recognizes two kinds of current ICJ jurisdiction as compulsory jurisdiction which are: Compulsory Jurisdiction of the ICJ Based on Treaty Provisions and Compulsory Jurisdiction of the ICJ Based on the Optional Clause in the compulsory jurisdiction of the international court of justice. See R., Szafarz, *The Compulsory Jurisdiction of the International Court of Justice*, Netherlands, (Kluwer Academic Publisher, 1993), p.34. ¹⁸ See the Preliminary Objection of Nigeria in chapter three of this thesis.

¹⁴ K. Suter *op cit*. p.3.

Council.¹⁵ This often leads to non-compliance of ICJ judgments; once an ICJ decision is made, there is no automatic "*police force*" to follow it up.¹⁶ Thus, there is the absence of a standing body to implement ICJ rulings. The problem with the ICJ resolution in the dispute between Cameroon and Nigeria over the Bakassi Peninsula (hereafter referred to as *Bakassi Case*) is the fact that adjudication in the settlement of the dispute between Cameroon and Nigeria over the Bakassi Peninsula was time-consuming.

II. JURISDICTION OF THE ICJ IN THE SETTLEMENT OF INTERNATIONAL DISPUTES

(A) NATURE OF THE ICJ

The Court has a dual role: to settle in accordance with international law, the legal disputes submitted to it by states, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.¹⁷ There is an operational relationship between the ICJ and the Security Council which are two 'complementary organs' of the UN. J. G. Starke affirms to this assertion and opines that "In as much as the International Court of Justice is firmly anchored in the system of the United Nations, member states are just as bound to the Court as to any other principal organ of the United Nations, while reciprocal duties of co-operation with each other bind the Court and the United Nations organs."¹⁸ Under the framework of the Charter, therefore, responsibility for ensuring compliance is not within the ICJ's mandate, but rather, with the principal political organ for maintaining peace and security; the Security Council.

The ICJ has been a permanently working forum that has adopted its own Rules. The trinity of the following documents form the legal basis for the world Court: (a) The UN Charter, (b) the Statute of the Court, and (c) the Rules of the Court adopted on 14 April 1978 representing a major revision of prior Rules of 1946.¹⁹ The ICJ is a judicial institution that decides cases on the basis of international law as it exists at the date of the decision. It cannot formally create law as it is not a legislative organ.²⁰ Article 36(2) of the Statute of the Court requires that a matter brought before it should be a legal dispute. Although it is not possible to identify a specific definition, the approach adopted by the Permanent Court in the *Mavrommatis*

¹⁵ See chapter 2 of this thesis for details on this point.

¹⁶ *Ibid.*

¹⁷ G. Gilmore, "The International Court of Justice", *Yale Law School Legal Scholarship Repository*, 1946, p.1051.

¹⁸ J.G.S. Starke, *Introduction to International Law*, (New Delhi: Butterworth, First Indian Reprint, 1994), p. 492.

⁴¹ See article 94(2) of the Statute of the ICJ.

¹⁹ The Rules are supplemented by different resolutions concerning the court's internal practice, for example, one of 12 April facilitating for exchange of views between the judges regarding particular points.

²⁰ See the *Fisheries Jurisdiction* case, ICJ Reports, 1974, p. 3, 19; 55 International Law Report, p. 238, 254.

*Palestine Concessions (Jurisdiction) Case*²¹ constitutes the appropriate starting point.

(B) ORGANISATION AND JURISDICTION OF THE ICJ

The Court is composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris consults of recognized competence in international law. It also consists of fifteen members, no two of whom are nationals of the same state. The members of the Court are elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.²² *The Concept of Jurisdiction* is the *sine qua non*²³ for the exercise of judicial powers. Where it is lacking, a judicial body cannot exercise legally binding judicial power over a subject. In law, jurisdiction refers to a particular area containing a definite authority to hear and determine a cause of action. Jurisdiction can also be used to define the proper court in which to bring a particular case. Finally jurisdiction refers to inherent authority of court to hear a case and to declare a judgment.²⁴ Jurisdiction is the power of a state under international law to govern persons and property by its municipal laws,²⁵ which include both the power to prescribe rules (prescriptive jurisdiction) and power to enforce them (enforcement jurisdiction). Jurisdiction may be concurrent with the jurisdiction of other states or it may be exclusive. It may be civil or criminal. The rules of jurisdiction identify the person and property within permissible range of state laws and its procedures for enforcing that law. They are not concerned with the content of state's law except in so far as it purports to subject a person to it or to prescribe procedure to enforce it." States jurisdiction connotes "essentially the extent of each state's right to regulate conduct on the consequences of events". A state may regulate its jurisdiction by legislation through its courts or by taking executive or administrative action. State jurisdiction concern both international law and internal law of the state. While the former determines the permissible limits of state jurisdiction in the various forms it may take, the latter prescribes the extent to which, and the manner in which, the state in fact asserts its jurisdiction. Though the

²¹ See also the *South-West Africa Cases (Ethiopia v. South Africa Liberia v. South Africa)*, ICJ Reports 1962. ⁴⁵ The Court declared that a dispute could be regarded as 'a disagreement over a point of law or fact, a conflict of legal views or of interests between two persons'. It is to be distinguished from a situation which might lead to international friction or give rise to a dispute. This is a subtle but important difference since, for the process of settlement to operate successfully, there has to be a specific issue or issues readily identifiable to be resolved. ⁴⁶ Article 2 Statute of the ICJ. ⁴⁷ *Ibid.* article 3.

²² *Ibid.* article 4.

²³ Something that is absolutely needed, www.merriam-webster.com/dictionary, visited, 2004/2021.

²⁴ *Ibid.*

²⁵ D.J., Harris, *Cases and Material on International Criminal Court* (London: Sweet and Maxwell, 1973) p.235.

⁵² R. Jennings and A., Waltz, *Oppenheim International law*, op cit., p. 456.

relationship between jurisdiction and sovereignty is close, jurisdiction is not co-extensive with state sovereignty. Each state has jurisdiction normally over all persons and things within its territory. Shivji and others²⁶ argue that the court's power to determine matters that are brought before it are restricted in three ways: territorial jurisdiction (that is, the court's power to hear matters arising in the specified geographical area; pecuniary jurisdiction (this involves the court's power to hear matters whose subject matter is worth up to certain value only; and the subject matter itself which means that the court has power to hear certain matters only.⁵⁴ It should be noted that jurisdiction is a creature of statutes. Therefore, relevant provisions of law have to be fully examined before one comes to a conclusion of the jurisdiction of a certain court or judicial body. For a domestic court to exercise criminal jurisdiction over an offender, there must be some legal jurisdictional basis. Going by article 34 of the ICJ Statute, only states may be parties in cases before the Court. It means that the Court has the jurisdiction to hear only cases brought to it by states. The substantive or material jurisdiction of the ICJ is enshrined in article 36 of the ICJ Statute. It states: 1. *the jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.* 2. *The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation and the nature or extent of the reparation to be made for the breach of an international obligation.* The ICJ also exercises jurisdiction if a case is referred to it by a Treaty or Convention. In this light, article 37 states: *Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.*

Advisory Jurisdiction

The advisory jurisdiction of the ICJ is found in article 96 of the UN Charter. It states: *The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their*

²⁶ I.G., Shivji, *et.al. Constitutional and Legal System of Tanzania: A Civics Sourcebook*, (Dares Salaam: Mkukina Nyota Publishers Ltd., 2004) p. 222. ⁵⁴*Ibid.*

*activities.*²⁷ Since States alone are entitled to appear before the Court, public (governmental) international organizations cannot be parties to a case before it. However, a special procedure, the advisory procedure, is available to such organizations and to them alone. This procedure is available to five United Nations organs, fifteen specialized agencies and one related organization.²⁸ Though based on contentious proceedings, advisory proceedings have distinctive features resulting from the special nature and purpose of the advisory function.²⁹

Contentious Jurisdiction.

The contentious jurisdiction of the ICJ is stipulated in article 38 of the ICJ Statute, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations; subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.³⁰

From the above, it is clear that the ICJ acts as a world court with competence to resolve disputes between states. In resolving disputes between states, it applies international law that is treaties, customary law, general principles of law and judicial decisions. The jurisdiction of the ICJ in the Settlement of International Dispute States have increasingly put their trust in the Court, given that its judicial process invariably culminates into impartial judgments that are grounded in legal arguments and evidence presented by both parties to a dispute, in accordance with applicable rules and principles of international law. The Court contributes maintaining good relations between States, furthering and strengthening international rule of law by peaceful settlement of disputes.³¹

²⁷ See also article 34 of the ICJ Statute which provides that “the Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative”.

²⁸ The International Court of Justice, available at <https://www.icj-cij.org/en/advisory-jurisdiction>, visited, 08/03/2022.

²⁹ *Ibid.*

³⁰ Article 38(1) of the ICJ Statute.

³¹ Judge Peter Tomka (President of the international court of justice) Lecture on the Rule of Law and the Role of the International Court of Justice in World Affairs Monday 2 December 2013,p.7, available at <http://www.icj-cij.org/presscom/files/9/17849.pdf>, visited,03/08/2022.

III. THE CASE BETWEEN CAMEROON AND NIGERIA OVER THE BAKASSI PENINSULA: EXAMINATION OF THE ROLE OF THE ICJ

(A) BACKGROUND OF THE BAKASSI DISPUTE

Cameroon is located in Central and West Africa on the Bight of Biafra, part of the Gulf of Guinea and the Atlantic Ocean.³² Nigeria is a country located in West Africa.³³ Both countries share the same border extending from Lake Chad to the Gulf of Guinea.³⁴ This border has been a bone of contention between the two countries dating back to 1913. The Bakassi Peninsula covers a total area of approximately 1000 sq. km and is located on the extreme eastern end of the Gulf of Guinea between latitudes 4°25' and 5°10'N and longitudes 8°20' and 9°08'E. It consists of a number of low-lying, largely mangrove covered islands covering an area of around 665 km². It is largely made up of a cluster of low-lying, swampy and mangrove covered islands with a population estimated between 150,000 to 300,000 inhabitants.³⁵ The inhabitants are predominantly of the Efik tribe, who consider themselves as part of the Federal Republic of Nigeria.³⁶ Akanmode, pointed out that the Peninsula which covers a marshy area of about 1,000 square kilometers and located in Cross River State is occupied by a population of Nigerians.³⁷ After the arrival of European colonialists in Nigeria in the second half of the 19th Century, the King of Old-Calabar signed a Treaty of Protection with the Queen of England on September 10, 1884. The Bakassi area was at that time under the rule of the Old Calabar. According to Ngang,³⁸ in signing this accord, he literally ceded his Kingdom to Britain as a protectorate. To him, Britain therefore could do whatever she wanted to do with it. His view is however problematic as will be discussed subsequently.

In a series of agreements in 1913, Britain and Germany sought to establish an exact demarcation of the borders between Nigeria and Cameroon, which of course did not exist as such. The first Treaty entitled: "The Settlement of the Frontier between Nigeria and the Cameroons, from Yola to the Sea," put Bakassi proper under the jurisdiction of the Germans.

³² <http://www.slideshare.net/AfricaInMe/cameroon>, visited, 02/03/2022.

³³ *Ibid.*

³⁴ See M. F. Bolak Funteh, "The Paradox of Cameroon-Nigeria Interactions: Connecting between the Edges of Opportunity/Benefit and Quandary", *International Journal of Peace and Development Studies*, 2015, p.1. ³²F.B. Menjo, "Implications of the Bakassi conflict resolution for Cameroon", *African Journal on Conflict Resolution*, 2010, p.10.

³⁵ K.N. Che, "Understanding the Bakassi Conflict. a Showcase of Conflict Prevention in Practice", European University Center for Peace Studies *Research papers*, 2007, p.6.

³⁶ *Ibid*, p.2.

³⁷ V. Akanmode, "Bakassi Peninsula: Nigeria vs. Cameroun at last, the Judgment." 2002, *Punch*, p.4.

³⁸ K. Ngang, "Understanding the Bakassi Conflict". A Showcase of Conflict Prevention in Practice", European University Center for Peace Studies *Research papers*, 2007, p.5.

The second: “The Regulation of Navigation on the Cross River,” ceded the “navigable portion” of the offshore border of the Peninsula to Britain. It is important to note that the main agreement that demarcated the boundary between Cameroon and Nigeria is the Anglo-German Agreement of March 11, 1913.³⁹ Ngoh⁴⁰ notes that the Anglo-German Agreement of 1913 was aimed at settling the frontier between Nigeria and the Cameroons from Yola to the Sea, and regulating navigation on the Cross River.

Article 21 of the Anglo-German Treaty of 1913 quoted below states the exact position of the border.⁴¹ *From the centre of the navigable channel on a line joining Bakassi Point and King Point, the boundary shall follow the centre of the navigable channel of the Akwayafe River as far as the 3-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akwayafe River shall be considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers.*⁴²

From 1913 onwards, British and German maps clearly show the Bakassi Peninsula as part of Southern Cameroon (see figures one and two). After the First World War, Germany lost all her colonies in Africa including Cameroon (which was divided into two territories by the League of Nations and administered as mandates under Britain and France.⁴³ The Franco-British Declaration of July 1919 placed Bakassi and the rest of the “British Cameroons” under British mandate. This territory was then administered under the British system of “indirect rule” as part of Nigeria respecting the borders laid down by the agreements of 1913. A further agreement between both powers in 1931 was signed to further codify the declaration of 1919. Again maps from this period clearly show Bakassi as part of Cameroonian territory.¹⁴² At the end of the Second World War, the British and French League of Nations Mandates over Northern/Southern Cameroons and Cameroun⁴⁴ respectively came to an end and were succeeded by trusteeship agreements under the newly created United Nations Organization. The agreements creating these trusteeship territories re-ratified the Anglo-German and Anglo-

³⁹ This agreement was signed in London by Edward Grey for Britain and Prince Lichnowsky for Germany. It contained thirty articles. Article 18 of this agreement moved the Cameroon-Boundary from Rio del Rey to the Akwayafe River.

⁴⁰ V.J. Ngoh, *History of Cameroon Since 1800*, (Cameroon: Limbe Presbook, 1996), p.121.

⁴¹ *Ibid.* p.7.

⁴² Article XXI Anglo-German Treaty, March 1913.

⁴³ Che Op.cit. p.20.

¹⁴² *ibid.* p.21.

⁴⁴ Throughout this work note should be taken as to the use of the names Kamerun, The Cameroons, Cameroun, British Cameroons, French Cameroon and Cameroon. Kamerun represents the German Protectorate that was divided between the French and the British after the First World War “The Cameroons” represents British Cameroons (Northern Cameroons and Southern Cameroons) and Cameroun represents French Cameroon. The Southern part of British Cameroons (Southern Cameroons) later became West Cameroon and Cameroun (French Cameroon) became East Cameroon, after the 1961 plebiscite. Cameroon is generally used in the work which represents the Republic of Cameroon.

French treaties pertaining to the borders between both Countries. Once more, maps from this period place Bakassi under the sovereignty of Southern Cameroons. Meanwhile, in the run-up to independence for both countries in the late 50s, the UN asked Britain to carry out a plebiscite in the territories under her jurisdiction that is British Northern Cameroons and British Southern Cameroons to ascertain the wishes of the local population as to which country they would like to become independent with.⁴⁵ The Republic of Cameroun obtained the Bakassi Peninsula in the process of a plebiscite conducted by the United Nations in 1959 and 1961.⁴⁶ By the same process, Nigeria also obtained some territories which formerly belonged to Cameroon. British Northern Cameroons officially joined Nigeria on 1st June 1961, while British Southern Cameroons officially joined The Republic of Cameroun on 1st October, 1961.⁴⁷ Omoigui emphasizes that there were 21 polling stations in Bakassi and that 73% of the population (casted votes) declared their desire to become independent by joining the independent Republic of Cameroun.⁴⁸

It can be gleaned that, even at the point of independence, evidence on the ground strongly pointed to the fact that Bakassi was part of Cameroon. Other important documents that concern the demarcation of the border between Cameroon and Nigeria are the following: The Anglo German Protocol signed in Obokun, on April 12, 1913; The exchange of letters between British and German governments on July 6th 1914; the endorsement in 1961, by both the United Nations General Assembly and the International Court of Justice of the results of the plebiscite conducted in Northern and Southern Cameroons on February 11th and 12th, 1961; and the diplomatic note, accompanied by a map, dispatched to the government of Cameroon by Nigeria, in 1962 accepting the results of the plebiscite.⁴⁹ Information available from the Federal Directorate of Survey, showed that the “Bakassi Peninsular” has never been included as part of Nigeria since Southern Cameroon ceased to be part of Nigeria in 1961.⁵⁰

In 1966 when Lieutenant Colonel Gowon came to power, he committed his government to respect all prior international agreements made by his predecessors.⁵¹ Moves by independent Cameroun and post-civil war Nigeria to clarify their maritime border which was vaguely

⁴⁵ K. Che, *op cit*, p.5.

⁴⁶ Ruben de Koning, www.c3ed.uvsq.fr/cdgecorev/fr/pdf/t2/DeKoning.pdf. page 7. 20081025, visited, 11/03/2022
See General Assembly Resolution 1608 (XV) of 21 April 1961.

⁴⁷ www.dawodu.com/bakassi 2, visited, 01/04/2022.

⁴⁸ N. Omoigui, the Bakassi story, 2006, Available from: <<http://www.omoigui.com>> [visited 29/08/2014.

⁴⁹ See <http://www.postwatchmagazine.com>, visited, 02/04/2022.

⁵⁰ I. Olumide, “Letter from the Attorney General of the Federation to the Ministry of External Affairs,” Punch, 2002, p.7.

⁵¹ Ironsi (Nigerian President from January to July 1966) and Balewa (Nigerian President from 1962 to 1966) governments.

defined by the 1913 Anglo-German Agreement, in 1970 produce maps which show the Bakassi Peninsula in Cameroon but the offshore boundary was unclear since there was no detailed demarcation of the "navigable portion" of the approach channel to the Calabar estuary.⁵² On June 1st, 1975, Gowon (former Nigerian President) and Ahidjo (Former Cameroon President) signed the Maroua Declaration for the partial extension of the 1971 maritime boundary. It is important to note that, the status of the Bakassi Peninsula was not even an issue for discussion.⁵³ Trouble began when General Murtala Muhammed came to power in 1975. His regime questioned most of the domestic and foreign policy decisions made by General Gowon including the offshore maritime border with Cameroon.⁵⁴ General Gowon was accused for "giving away Bakassi". Then Nigeria started questioning the agreement signed previously given Bakassi to Cameroon especially with the discovery of oil⁵⁵ in the area and thus started the conflict between the two countries over the Bakassi Peninsula.⁵⁶

It is important to mention here that Equatorial Guinea in order to safeguard its rights in the Gulf of Guinea requested the court for permission to intervene in the case.

IV. ROLE OF THE ICJ IN SETTLEMENT OF DISPUTES

Judgment The ICJ as the adjudicator in international conflict resolutions in its October 2002 judgment awarded Cameroon the Bakassi Peninsula. It also awarded Cameroon the Lake Chad boundary it sought, and allocated around 30 villages to Cameroon and a few to Nigeria.⁵⁷ Nigeria won the maritime related rulings contained in the Judgment. The Court explicitly obligated both parties to withdraw their military, police, and administration from the affected areas 'expeditiously and without condition.'⁵⁸ As for Equatorial Guinea, the intervener, the ICJ drew the maritime boundary in a manner favourable to it. This judgment is in accordance with international law and the Statute of the ICJ. This therefore means that the judgment was a valid

⁵² K.P. Nougue, "United Nations Mediation in Africa: A Case Study of the Bakassi Conflict Intervention", Master's thesis, Nelson Mandela Metropolitan University, unpublished, 2011, p.108, available at unpublished, available at dspace.nmmu.ac.za:8080/jspui/.../Kenmore%20Nougue%20Plamielle, visited, 27/02/2022.

⁵³ *Ibid.*

⁵⁴ A.N, Evenye, "Women caught in Arm-Conflict: The Cameroon-Nigeria Dispute over the Bakassi Peninsula", thesis submitted to the WARC-WARA Peace Initiative for West Africa for the fulfillment of the December 2011 Scholarship Award, 2011, p.28.

⁵⁵ In 1975 according to the Nigerian Institute of Oceanography and Marine Research (OIMR), the continental shelf in the South Eastern section of Bakassi is very rich in minerals resources, including oil as well as fish, and could yield about 100,000 metric tons of fish per year. See T.B. Agbor, "The Perceptions/Views of Cameroon – Nigerian Bakassi border conflict by the Bakassi people", Master's thesis, Uppsala University (Sweden), Unpublished, 2013, p.45. Available at <http://www.divaportal.org/smash/get/diva2:686188/FULLTEXT01>, visited, 27/02/2022.

⁵⁶ *Ibid.*

⁵⁷ <http://www.ejil.oxfordjournals.org/content/18/5/815.full>, visited, 27/02/2022.

⁵⁸ *Case Concerning Land and Maritime Boundary between Cameroon and Nigeria*, (hereafter referred to as the *Cameroon Case*) ICJ Rep 303, 2002, para. 325.

and reasonable ruling. The maps below bring the picture of the disputed area.

(A) Addressing the issue of the 1884 Treaty of Protection

Nigeria in its counter-memorial, requested the Court to declare its sovereignty over the Bakassi Peninsula basing its claims on original title, as confirmed by the Treaty of Protection which the Kings and Chiefs of Old Calabar signed with Great Britain on 10 September 1884.⁵⁹ Nigeria argued that the 1884 Treaty was a treaty of protection and in no way did it transfer sovereignty to Britain over the territories of the Kings and Chiefs of Old Calabar. It cited the maxim *prior est tempore, prior est jure*.⁶⁰ Thus, to Nigeria, Britain was not entitled to cede the territory to a third party.⁶¹ Cameroon in response argued that the treaty signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar established a "colonial protectorate" and, "in the practice of the period, there was little fundamental difference at international level, in terms of territorial acquisition, between colonies and colonial protectorates." To Cameroon, the key element of the colonial protectorate was the "assumption of external sovereignty by the protecting State".⁶² The question here is how did the Court address this issue of the 1884 treaty of protection? With regards to the question whether Great Britain was entitled to pass title to Bakassi based on this treaty, the Court observed that during the era of the Berlin Conference the European Powers entered into many treaties with local rulers. Great Britain concluded some 350 treaties with the local chiefs of the Niger delta to wit: the July 1884 treaty with the Kings and Chiefs of Opobo and the September 1884 Treaty with the Kings and Chiefs of Old Calabar.⁶³ The Court regarded these treaties as notable personages owing to the fact that these treaties were concluded by the Consul, expressly as the representative of Queen Victoria, and the British undertakings of "gracious favour and protection" were those of Her Majesty the Queen of Great Britain and Ireland.⁶⁴ The Court called attention to the fact that the international legal status of a "Treaty of Protection" entered into under the law obtaining at the time cannot be deduced from its title alone. Some treaties of protection were entered into with entities which retained there under, a previously existing sovereignty under international law. This was the case whether the protected party was henceforth termed "protectorate" (as in the case of Morocco, Tunisia and Madagascar (1885;

⁵⁹ J.U. Nsongurua, *Op.cit.* p.24.

⁶⁰ He who is before in time, is preferred in right.

⁶¹ *Cameroon Case*, ICJ 2002 Judgment, para.201.

⁶² It stated clearly that this manifested itself principally through "the acquisition and exercise of the capacity and power to cede part of the protected territory by international treaty, without any intervention by the population or entity in question".

⁶³ Che, *op cit.*,p.4.

⁶⁴ http://www.mpil.de/de/pub/forschung/archiv/wcd.cfm?fuseaction_wcd,visited,25/02/2022.

1895) in their treaty relations with France) or "a protected State" (as in the case of Bahrain and Qatar in their treaty relations with Great Britain). According to the court, in sub-Saharan Africa, treaties termed "treaties of protection" were entered into not with states, but rather with important indigenous rulers exercising local rule over identifiable areas of territory.

(B) Addressing State Responsibility and Compensation

The Court rejected Cameroon's submissions regarding the state responsibility of Nigeria. It likewise rejected Nigeria's counter-claims.⁶⁵ The Court's rejection of Cameroon's submission regarding state responsibility is correct given that pursuant to the ICJ Statute,⁶⁶ each party bore its own costs. The Court also 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 welfare.⁶⁷ This shows that irrespective of the fact that the people of Bakassi were not party to the case, their interests were protected.

(C) Withdrawal of Troops

After addressing the issue of sovereignty over the Bakassi Peninsula, the Court in order to give effect to the judgment requested Nigeria expeditiously and without condition to withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula.⁶⁸ It also requested Cameroon expeditiously and without condition to withdraw any administration or military 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 fell within the sovereignty of Nigeria.⁶⁹ It is against the background of the theory of perpetual peace that the Court ordered this withdrawal. The presence of these military could have endangered peace and security in these areas. Peace prevails in these areas today thanks to the ruling of the ICJ.

V. SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

(A) SUMMARY OF FINDINGS

It has been averred that the ICJ has jurisdiction over international disputes between states parties to the Statute of the ICJ and also that member states of the UN automatically have access to the

⁶⁵ *Ibid.*

⁶⁶ Article 64 of the Statute of the ICJ.

⁶⁷ M.C. Anekwe, ICJ ruling on Bakassi: Matters arising, *Nigeriaworld.com*, 27 December 2002, available at nigeriaworld.com/articles/2002/dec/273.htm, visited, 25/02/2022.

⁶⁸ <http://www.icj-cij.org/docket/index.php>, visited, 15/02/2022.

⁶⁹ *Ibid.*

Court. The findings show that the ICJ plays a key role in resolving international disputes. Decided cases of the ICJ have been discussed to show the effectiveness of the ICJ. Nevertheless, it is far from achieving the objectives which visionaries had of it from the origin. The ICJ has settled many disputes between states.⁷⁰ Disputes which took a violent twist such as the *Bakassi Case* were prevented from escalating into war thanks to the role of the ICJ in resolving the dispute. The major contributions of the ICJ in the settlement of international disputes is evident in its judgments which are binding on the parties. The Bakassi Dispute would have escalated into war if not of the judgment of the ICJ. Even though the final judgment faced compliance problems, the 1998 preliminary ruling on interim measures of protection ended hostilities in the area. It has also been shown in the work that the question of sovereignty over the Bakassi Peninsula which was the subject matter of the dispute was properly addressed by the Court. It follows therefore that the ICJ judgment of 2002 that awarded the Bakassi Peninsula to Cameroon is justified even though Nigeria considered it a travesty of Justice.⁷¹

(B) CONCLUSION

The ICJ has been instrumental in the settlement of international disputes. A good number of disputes have been resolved by the Court. Thus, the Court has prevented the resort to violence by states. The peaceful resolution of the Bakassi dispute between Cameroon and Nigeria is evidence of the veracity in this assertion.

(C) RECOMMENDATIONS

1. Enforcement of Decisions

Enforcement of decisions of international tribunals⁷² is not always a “bed of roses”, nevertheless, some are hailed for their formidable enforcement system.⁷³ For example the Dispute Settlement Mechanism (hereafter referred to as the DSM) of the World Trade Organization (hereafter referred to as WTO) has a good mechanism for the enforcement of rulings of the panel and appellate body.¹⁷⁸ The ICJ Statute should therefore adopt the enforcement system of the WTO, DSM and the ICC so as to guarantee its independence from the UN Security Council and to address the problem of noncompliance of ICJ decisions emanating from the lacunae of the enforcement of ICJ judgments in the Statute of the ICJ. As

⁷⁰ <http://www.icj-cij.org>, visited, 25/04/2015.

⁷¹ The major problem with the court reasoning which has already been pointed out is the fact that the court did not properly address the issue of the 1884 Treaty of Protection.

⁷² For a list of international tribunals see http://www.en.wikipedia.org/wiki/International_court, visited, 25/04/2022

⁷³ E. Petersmann, *The GATT/WTO Dispute Settlement System*, (London, Kluwer Law International, 1997), p. 56.

¹⁷⁸ See article 1(1) of the Dispute Settlement Understanding of the WTO (DSU) which gives the ICJ compulsory jurisdiction over all disputes arising from the WTO covered agreements.

already pointed out, adjudication in the *Bakassi Case* was time consuming. To solve this problem, the Statute of the ICJ should be amended to fix a period for litigation. In this light, it should adopt the system of the WTO, DSM which provides time limits for proceedings.⁷⁴

⁷⁴ See articles 4(3) (consultations); article 12(8) (panel proceedings) of the DSU of the WTO.

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