

The International Court of Justice (I.C.J.) Judgment Over the Bakassi Peninsula: A Model in the Resolution of African Boundary Disputes

M. O. Bonchuk

Department of History and International Studies University of Calabar, Nigeria

ABSTRACT

The imposition of colonial boundaries in Africa created serious problems for the postcolonial states. In most instances boundary problems have resulted to border skirmishes and conflicts that have made many African states enemies of themselves as such. These boundaries are not pure boundaries since they have divided related ethnic groups, the sea bed and natural features into two or more states foisting on them a new notion of citizenship. The paper submits that boundary conflicts between Nigeria and Cameroon have been fuelled by the presence of hydro-carbon deposits in the area. The International Court of Justice (ICJ) judgment has confirmed the Peninsula as being Cameroonian territory. It is indicated that this judgment be sustained by the two states in order to enable the Green Tree Agreement and the Mixed Commission to functionalise the decisions of the court. It is suggested that the option of war and litigation cannot resolve the impasse, rather, both states could benefit from the European Transboundary regionalism and convert their borders from irritants of war to bridges of development. This policy is in consonance with the Pan African idea of closer unity; including the Lagos Plan of Action, the African Economic Treaty Charter and the need to ground African economic integration on the realities of African history.

INTRODUCTION

The International Court of Justice (ICJ) judgment over the Bakassi Peninsula has aroused serious nationalistic sentiments from Nigerians and Cameroonians alike. This is expected since territories and boundaries determine the position of states in relation to their neighbours. In a classical sense boundaries are states territories that ought to be guarded jealously. They are conceptualized as exclusive to the citizens of other nations and

relations with proximate neighbours are determined by these dividing lines. However, this notion of boundaries as exclusive barriers were replicated in Africa by the Post-Westphalia states in Europe, particularly Britain, France, Germany, Portugal, Spain, etc. during the scramble for and partition of Africa. The notion of boundary was not alien to the Africans. Pre-colonial boundaries in Africa were permeable and allowed free movement of peoples and goods between communities. They did not restrict movement of goods and services as the various trade routes either in the savannah or the forest regions revealed. Though they had potential for conflict, the co-operative element was emphasized.

The paper argues that this pre-colonial setting was disrupted by the colonialists who imposed a new notion of boundary that separated not only the sea bed, but its related ethnic groups natural regions, the environment, including flora and fauna placing them in more than two antagonistic systems that foisted a new notion of citizenship on the related but divided groups.

In the Cross River region with southern Cameroon, it was the British and Germans that replicated their "sins" in Africa. It is against this background that the 1913 Anglo-German Agreement and the ICJ judgement is discussed. It is indicated that it was the failure to evolve an ethnolinguistic boundary in this region or that responding to the "Efik Commercial" Empire that led the British and Germans to use the river systems which proved to be unreliable and conflictual for the status of an international boundary.

The paper submits that the Green Tree Agreement and the Nigeria – Cameroon Mixed Commission should be allowed to carry out its assignments. While these mechanisms are novel and models for African States to emulate in the resolution of border conflicts, it was also indicated that prospects for transboundary regionalism, aimed at economic co-operation and integration abound. The option of war to resolve the matter is anachronistic. In the light of the above, the historical antecedents to the crisis are given in order to clarify the contour of the discourse.

The paper concludes that economic co-operation between Nigeria and Cameroon would reduce the borders as irritants of war to bridges of development for the benefit of both states as the European experience reveals.

Historical Antecedents

The Berlin West African Conference, 15th November – February 1885, marked for Africa the inception of the Post-Westphalia notion of the modern state system, with a precise and characteristically, "artificial" and "often arbitrary" territorial framework. What happened after Berlin was an accelerated process of scrambling and partitioning of African pre-colonial territories in order to effectively occupy them. The process was marked by the singing of Treaties of "Protection" by European Agents, Traders, Missionaries, etc. during the period of "informal imperialism". When

European rivalry became intense, "informal imperialism" gave way to "formal imperialism" occasioned by wars of "pacification" marked by colonial conquest of indigenous groups in Africa.

This resulted to the lost of sovereignty by Africans. The process of boundary negotiation, allocation, delineation and demarcation between the British, Germans, French, Portuguese and Spain, led to the current international boundary configuration between African states. The later liberation movements in Africa took place within the territorial arrangements put in place by the colonialists (Obaro I., 1986: 2-19).

In the Cross River region with Southern Cameroon, it was the rivalry between the British and Germans that led to demarcation of the boundary between what later became Nigeria and Cameroon from the Coast to Lake Chad in the North. The coastal town of Old Calabar and Duala formed the termini or end points from which the Nigeria – Cameron boundary emerged. The occupation of the coast required these powers to delineate and demarcate their spheres for economic exploitation and administration.

The implication of the above was that Germans and British had to establish not only economic relations, but political and social relations between themselves and the Africans. Given the logic of effective occupation, the need to define areas for administrative and juridical competence led the Germans to embark on wars of conquest in the upper Cross River region and the Cameroon hinterland with the most ferocious atrocities (Rudin H., 1968: 24).

Contrary to the often generalized view that African boundaries were imposed by Europeans and therefore "artificial" with "little" or no regard for realities on the ground, the British and the Germans desired that the boundary should respect and respond to the ethnic-linguistic composition in the Upper Cross region even through the dominant interest was European. It was the failure of both powers to agree to an ethno-linguistic boundary, or that based on the extent of "Efik Commercial Empire" that led them to utilize physical features such as river system especially the Rio del Rey, Akpafaye, and Ndian which proved to be conflictual from 1885 to date (Bonchuk O. M., 1999:124).

For instance, in August 7, 1879 Duala Chiefs had written a letter to Queen Victoria demanding for British protection. This was followed in 1881 by a letter by King Bell to Consul Hyde Edward also indicating his interest for British protection (Ardener, S., 1960:20). In spite of British procrastination, they desired to have an "uninterrupted" coastline from Lagos to Duala" and this became known as the "Nigerian Policy". It was the delay caused by British officialdom that enable Padolf Woerman, a German agent to conclude treaties of protection with Duala chiefs that enable Germany to present same at the Berlin Conference and finally occupied parts of the Coast to Lake Chad.

The implication of the above historical survey is that Britain and Germany divided not only the seabed but a cultural coherent area, with

divided but related ethnic groups with common origins, belief systems, common socio-cultural religious institutions into two antigotrosic systems that foisted on them a new notion of citizenship.

Boundary Negotiation

The boundary was negotiated between 1885 and 1913 between British and German officials. Over fifteen agreements and protocols were signed on the boundary from the coast to Lake Chad. The major considerations that influenced the boundary evolution were the Niger Delta river system, the extent of "Efik Commercial Empire", the ethnography of the region, particularly the extent of the Ejagham, Boki and Becheve Akwaya's settlements in the Upper Cross region, river systems such as the Ndian Akpayafe, Rio del Rey, Cross River and Calabar, the Baptist Mission at Victoria including the Cameroon mountain.

On November 15, 1893 British and German officials defined their boundaries in Africa in 1895. The British and Germans agreed that the Rio del Rey should be the provisional boundary. When it was discovered that the Rio del Rey was an estuary that receive two rivers, the Ndian and Akpafaye, another controversy emerged to present difficulties for the colonial powers. This was later supplemented by another agreement on March 19, 1906 and covered British and German Territories from Yola to Lake Chad. From 1900, 1903 to 1906, key declarations were made on this boundary (Hershet E., 1970 chaps 3 & 40).

The Germans were interested in water systems for strategic and economic reasons. They argued that since the British had occupied the Niger – Delta river system, it was justifiable and equitable for them to occupy the next river system. The British studied the ethno-linguistic pattern and spread of the Boki, Ejagham and Becheve Akwaya, including the Efik settlements and insisted that they have treaties of protection with the Obong of Calabar and as such these areas be made part of the British sphere. Subsequent boundary negotiations centered on the Bakassi Peninsula, or the Bakassi question Germans insistent on waterways aroused the indignation and frustration of the British. British officials on the ground began to indicate that:

"The territory (i.e. Bakassi) dispute might prove to be an oldorato or a worthless swamp" and that: the area under dispute is a dismal swamp that was peopled by miserable fisher folk; and the "settlement of this disputed boundary should finally dispose of the Akpafaye controversy" (Anene 30-40).

The British Foreign Office suggested that the boundary should be negotiated to skip Ejagham, Boki and Becheve Akwaye ethnic groups in favour of Britain in order to preserve both their unity and Efik markets.

They began to issue testimonials to these groups indicating that they were under the protection of her Britanic majesty.

Finally, in 1913, the British and Germans reached an agreement on the boundary from Yola to sea. The fist of these agreements were signed in London on March 11, 1913 titled: (1) The settlement of the Frontier between Nigeria and Cameroon's from Yola to the sea, (2) The Regulation of Navigation on the Cross River, signed at Obokun April 12, 1913 by the Hans Detzner (Germany) and W. W. Nugent (Britain). This addressed the "precise" demarcation of the Anglo-German boundary between Nigeria and Cameroon from Yola to Cross River with Bakassi Peninsula as the boundary as indicated in Articles 20, 21 and 22 that:

"Should the lower course of the Akpafaye change its mouth as to transfer it to the Rio del Rey, it is agreed that the area now known as the Bakassi Peninsula should still remain German territory. They same condition applies to any portion of territory now agreed to as being British may be cut off in similar manner". Those wishing to move to either side of the boundary were given six months to do so, but the Germans erected boundary vitas to prevent such movements (Herslet, 1970).

The Anglo-French Condominium, 1916 – 1961

When Germany was defeated in the First World War, she lost her oversea possessions in Africa. With the above development, British and France established a Condominium over German territory in Cameroon. The provisional boundary was arrived at in the interest of continued co-operation, after consultations between General Aymerich (France), the provisional boundary agreement divided German territory occupied by France and Britain from the coast to Yola in 1916. In 1919 after a series of boundary negotiations between the British and the French, a new arrangement was embodied in the Anglo-French Agreement over Cameroon signed by Viscount Milner (Britain) and Henry Simon (France). This established the British and French boundary at the Mungo River. Each of the powers was authorized to administer her portion of the former German territory as the Franco-British Mandate Cum Trusteeship divide (Garin & Betley, 1973, 300).

On February 11th – 12th 1961, a plebiscite was held to request the people living in southern and northern Cameroons to decide whether to integrate with Nigeria or unite with French Cameroon to form the Republic of Cameroon. While northern Cameroon voted to integrate with Nigeria, Southern Cameroon voted for unification with French Cameroon. At independence in 1961, the 1913 Anglo-German boundary, which hitherto was a provincial boundary between Eastern Nigeria and Southern Cameroon province (1954), was not dissolved. By Customary International Law, reflected in Articles II of the Vienna Convention on Succession of States in

respect of Treaties, 1978, the 1913 Anglo-German Agreement is binding on Nigeria and Cameroon.

Uti Possedetis and African Boundaries

The concept of "*Uti Possedetis Juris*" is derived from Roman Law. In international law, its meaning is more fully expressed in "*Uti Possedetis*" or as your possess, so may you possess (Boggs, S. W., 1940:79).

"The artificial division and territorial boundaries created by the imperialists powers are deliberate steps to obscure the political unity of the African people" (Touval, S., 1972:84).

Further to the above, African Heads of States and Governments re-affirmed their stand on the issue of boundaries at the May 1963 Submit Conference of Independence States at Addis Ababa. The then Prime Minister of Nigeria, Tafawa Belewa submitted that:

"It was unfortunate that African states have been broken into different groups by the colonial powers ... Nigeria recognizes all existing boundaries in Africa, this is the basis of unity which we in Nigeria pray for our continent" (Bukurambe, 1963:9-12).

The Ethiopian Prime Minister stated that:

"It is in the interest of all Africans now to respect the boundaries drawn on maps, whether they are good or bad by the former colonial powers".

In the same vein, the Madagascan President submitted that:

"Redrawing the boundaries would mean introducing "black imperialism in Africa" it was no longer possible or desirable to modify that boundaries".

Finally, the African Heads of states and Governments stated that:

"We reject the desperate attempt to fossilize Africa into the wounds inflicted upon it by the vultures of colonialism ... it is no use smothering this problem with he verbiage of "*Uti possedetis*" since it will always come back to hunt the continent as it has done in the past (Nsogura, 2003:3)".

In June 1975, at Maroua in Cameroon, General Yakubu Gowon (Nigeria) and Ahidjo (Cameroon) signed the Maroua Declaration in respect of their maritime boundary to point.

The International Court of Justice (I.C.J.) Judgment over the Bakassi Peninsula and the Nigeria – Cameroon Mixed Commission: An Appraisal

The territorial history of Africa is marred with boundary conflicts and disputes between adjacent states. Most of these boundary conflicts have not been resolved in spite of the defunct "Organisation of African Unity's "acceptance of the sanctify and inviolability of African boundaries. Boundaries skirmishes territorial claims and conflicts usually vitiate against regional unity and economic integration.

It is against this background that the acceptance of the ICJ judgement by Nigeria and Cameroon has been interpreted to mean a model in the resolution of African boundary conflicts. This boundary, particularly the Cross River segment housing the Bakassi Peninsula has been the most volatile and functional from 1884 to date. In 1983, both countries almost had a shooting war when five Nigerian navy ratings were supposedly killed by Cameroon gendarmes at Ikang. Like the ICJ that confirmed Bakassi as Cameroonian territory the 1993 incident aroused nationalistic emotions in Nigeria to the effect that some Nigerians wanted war against Cameroon.

This need not be so had the issue involved been thoroughly investigated historically. It is against this historical evidence that the option of war becomes irrelevant. Boundaries either in European or African share similar characteristics of their "arbitrariness", "artificiality" with attendant consequences of dividing coherent ethnic groups, the sea bed, national regions, etc. into two or more units. However, Europe that replicated their "sins in Africa" have forgiven themselves and are moving towards integration and union for the benefit of development (Asiwaju, A. I., 1996:30).

The ICJ judgment of 10th October 2002, in the manner of Land and Maritime Boundary between Nigeria and Cameroon should be welcome by both parties. It is in this light that Nigeria and Cameroon recognize the land and the maritime boundary between the two countries as delineated by the court and commit themselves to continuing the process of implementation already begun. While Nigeria agree to withdraw all its armed forces from the Bakassi Peninsula within sixty days of signing the agreement, Cameroon is bound by Article 3 of the Agreement to guarantee the safety of Nigerians living in the Peninsula, the exercise of their fundamental rights and freedoms enshrined in international human rights law and other relevant provisions of international law.

In particular, Cameroon shall not force Nigerians living in the Peninsula to leave the zone or change their nationality, to respect their culture, language and beliefs, their rights to continue their agricultural and fishing rights, to protect their property and customary land rights, not to levy in a discriminatory manner any taxes, other dues on Nigerians living in the zone, or any form of harassment (ICJ Judgment, 200, U.N. 1-30).

In order to accelerate the modest achievement and maintain the momentum, on 5th September 2002, the Cameroon – Nigeria mixed commission was established in order to avert confrontation on the issue which for years has been a serious bone of contention. The example of the Mixed Commission is seen as a novel approach in preventive diplomacy and model for peaceful settlement of conflicts between states.

The mandate of the Mixed Commission covers various aspects that have to do with the peaceful decomposition of the issues arising from the judgment. Most importantly, the Mixed Commission is to demarcate the land boundary between the two countries, to withdraw civil administration, including military and police forces and transfer of authority in relevant areas along the boundary. It envisaged that demilitarization of the Peninsula, protection of the affected populations, development of projects promote joint economic ventures including cross border co-operation and to reactivate the Lake Chad Basin Commission.

In order to achieve the above objectives sub-commissions on demarcation, affected populations, working groups withdrawal of civil administration, military and police forces, transfers of authority on the land boundary, working group on the Maritime Boundary, etc, were set up with support from the United Nations Organization.

The Mixed Commission has recorded tremendous achievements in relation to its mandate. The Joint Technical Team (JTT) established by the sub-commission on March 2005, started its pilot assessment and identification of pillar sites and verification in the field of the actual location of the physical boundary features mentioned in the ICJ decision.

Finally and despite some expected initial disagreements between the two parties which have now been resolved, the demarcation process is expected to commence its mandate (Mixed Commission, 2002 UN, 1-25).

The I.C.J. Judgment and Policy Relevance

The judgement of the ICJ over the land and maritime boundary between Nigeria and Cameroon has raised fundamental questions that relate to policy issues between the two countries. It is imperative to note that historically speaking the 1913 Anglo-German boundary divided not only the sea bed into two, but related ethnic groups, the Boki, Ejagham and Becheve Akwaya, and placed them in the Cross River borderlands in Nigeria and in Maniju Division, southwest Cameroon. These splintered groups still maintain their pre-colonial relations in spite of the inherited colonial structures. To them the boundary divided only the British, Germans and the post-colonial elites at the state-centric level. At the grassroots level, there is much more contacts and micro-integration formalities going on along and astride the perforated boundaries.

It should also be noted that there are prospects for trans-boundary policy articulation between the two nations. Both countries could embark on

economic co-operation and integration projects, which would form building blocks for wider economic integration of the regional level.. Both countries share boundaries not only between the economic community of West African States (ECOWAS), which Nigeria is a member, but Cameroon is a member of the Central African Economic Organisation. Both countries are therefore natural choice points in terms of a shared sea bed, environmental connectivity, linguistic affinity, culturally coherent area with common features such as the *Mgbe, Ekpe, Atam, Obassijom, Monikim,* etc, that make this region a cultural coherent one.

The two countries share similar agricultural practices, small market economies (even though Nigeria has a larger market) and pulling resources together can improve the living conditions of their citizens (Bonchuk O. M, 1999). Regional economic integration is often seen as the major way out of the poor economic performance of African states. Nigeria and Cameroon share a lot in common to initiate vigorous economic integration projects between the two, collaboration in the development of cultural and ecotourism, development of fish and fisheries stock that abound in the region are some potentials begging for policy relevance.

In Europe, boundaries have also divided natural choice regions including flora and fauna, related ethnic groups, resulting in their boundaries being conflictual. But since 1945, the European experience has shifted towards Europe of the regions, ("Eurogies") rather than Europe of the nation state. Transboundary regionalism in Europe has transformed the hitherto conflictual barrier function of European boundaries from flash points of conflicts ad wars to Europe of the regions for economic co-operation and integration. The nationalistic barrier function of the Nigeria – Cameroon boundary must be persuaded to yield ground to a boundary regime of co-operation and integration.

The idea of rooting African economic integration is predicated on the realities of African history. It is also in consonance with the Pan-African concepts of closer unity. The Lagos Plan Action (L. P. A.), the Lagos Act, the 1991, African Economic Community Treaty, are constant reminders of policy options to be adopted by African states to resolve their boundary conflict and move close to co-operation and integration as the European experience revealed.

Not too long ago, the United Nations Commission for Africa (ECA) stated that:

"Africa urgently needs to integrate its economies. The go it alone approach that has characterized African development efforts since independence has proved a total failure. African countries must realize that only by working together will they survive and develop. Divided, they will fall and their development will be doomed to fail (ECA, U.N., 1990: 120).

It is in relation to the above that the two countries must formulate policies that would encourage the development of the border region. Harmonizing their trade policies to reduce the loss of revenue due to the "unofficial" trade that goes along and astride their common boundary could be a sound starting point.

Nigeria and Cameroon should note that of all Nigeria's international boundaries, this segment of the boundary is the least developed, most volatile, and most miserable. Transboundary regionalism aimed at economic cooperation and integration can change this trend and convert the borders from "barriers" to "bridges" of development as can be noticed in other borders between Nigeria and her proximate neighbours. It was Lord Curzon who noted that:

"Frontiers (i.e. Borders) are indeed the razor edge on which hanged suspended the modern issues of war or peace, of life or death to nations". (Lord CUrzon, 1904:23).

In relation to the above, Raimoldo Strassaldo stressed that:

"Borders divide and unite, bind the interior and link the interior; they are barriers and junctions, walls and doors, organ of defence and attack. Boundaries can be managed to maximize either of these functions. They can be maintained as bulwarks against neighbours or made into areas of peaceful exchange (Strassaldo R., 1988:337).

In international relations borders are conceptualized in their binary functions. Shared "borders are like coins with one side issuing with "risks" and the other with opportunities in international interaction" (Strassaldo and Most, 1976: 40). Before the ICJ judgment the chosen path between Nigeria and Cameroon has been "war or death", as opposed to "peaceful co-operation for opportunities". The barrier function of exclusion and excessive nationalism which usually lead to war and conflicts must be persuaded to yield ground to a new regime of boundary management based on "Mutual Necessity", cooperation, integration and development of the borderlands for the benefit of the border impacted groups who yearn for closer interaction.

CONCLUSION

The paper examined the evolution of the Nigeria – Cameroon international boundary in historical perspective. It was indicated that contrary to the wide spread view that European nations did not take into consideration local African conditions before drawing their boundaries, the British and Germans undertook both ethnographic and geographical study of the area. While the

British insisted that the boundary should be drawn to skip the Boki, Ejagham and Becheve Akwaya, the Germans were interested in waterways. It was the failure of both parties to agree on an ethno-linguistic boundary that had them to rely on river systems which proved to be unreliable and conflictual. The Anglo-German boundary of 1913 therefore divided the sea bed into two, including related ethnic groups, a cultural coherent area and placed Bakassi Peninsula in the German sphere. The ICJ judgment only confirmed the "sins" of 1913 committed by the British and Germans. It is instructive to accept the judgment as the Green Tree Agreement and the Mixed Commission have sufficient intervention mechanisms to douse the fears of those who are still not appeased.

It was emphasized that, rather than preach war, the alternative of transboundary regionalism for co-operation and economic integration should be exploited as policy options. The potentials for economic co-operation and integration abound. Currently, there is much more micro integration processes going on at the borders. This could be articulated and utilized at the level of policy for the benefit of the larger macro integration at the state-centric level. This would be in tandem with the Pan-African dream at closer unity among divided but related groups and the border regions converted from barriers to bridges of development.

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