



ISSN: 0975-833X

REVIEW ARTICLE

ANGLO-GERMAN TREATY OF 1913 AND ITS INFLUENCE ON WORLD COURT DECISION IN THE
NIGERIA V. CAMEROON CASE CONCERNING BAKASSI

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ARTICLE INFO

Article History:

Received 17th August, 2014
Received in revised form
22nd September, 2014
Accepted 06th October, 2014
Published online 18th November, 2014

Key words:

Nigeria,
Cameroon,
Treaty,
Bakassi,
World Court,
Effectivities,
Pacta Sunt servenda,
Nemo dat quod non habet

ABSTRACT

This article analyses the legal impact of colonial treaties on Africa with particular reference to the Anglo-German Treaty of 1913 by which the British ceded Bakassi to Germany. In 2002, the World Court delivered judgment in the *Cameroon v. Nigeria* case ceding the disputed Bakassi Peninsula to Cameroon. The Court relied heavily on the Anglo-German Agreement of 11 March 1913 to reach its decision. Since that judgment was delivered there has been controversy generated by Nigerian legal luminaries, scholars and public commentators. The legality of the Agreement entered into between Great Britain and Germany during colonial rule has been put to question. The judgment, though being implemented, is still under severe intellectual attack. The chief aims of this article are to find out the legal impact of the Agreement and the reasons the Court relied on it so heavily to reach its decision. This study is a legal history. It adopts a descriptive analysis method to interrogate relevant sources of information about the treaty. The article reveals that the Court relied on the Agreement based on a number of reasons. These included Britain's right to cede Bakassi to Germany in 1913; lack of protest by Nigeria against the Anglo-German treaty during or after colonial rule; Nigeria's acquiescence in the Agreement. The Nigerian legal team over-relied on *effectivities* or historical consolidation, but the Court held that Cameroon had a valid conventional title, which prevails over any *effectivities* or historical consolidation.

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INTRODUCTION

In delivering its historic judgment in the case between Cameroon and Nigeria in 2002, the International Court of Justice (ICJ) relied heavily on the 1913 Anglo-German Agreement. It said: "[t]he Court accordingly concludes that the boundary between the Cameroon and Nigeria in Bakassi is delimited by Articles XVIII to XX of the Anglo-German Agreement of 11 March 1913, and that sovereignty over the (Bakassi) Peninsula lies with Cameroon" (World Court Judgment in *Cameroon v. Nigeria*, 2002). The Court's emphasis on the Anglo-German Agreement as the basis of its judgment in the case was underscored by Judge Bola Ajibola in his Dissenting Opinion where he said, "[o]f all these instruments relied on by the Court, the earliest and perhaps the most important is the Anglo-German Agreement of 11 March 1913 and, in particular, its Articles XVII-XXII that spell out the boundary within the Bakassi Peninsula. This is what Cameroon considers as its legal title..." (Dissenting Opinion of Ajibola in *Cameroon v. Nigeria*, 2002). The importance of the 1913 Anglo-German Agreement was also stressed by Professor Bassey Ate (1993:143) who described it as "a landmark agreement in the history of Nigeria-Cameroon boundary dispute." This implies that the 1913 Anglo-German

Agreement was a very important legal instrument in the determination of the Cameroon-Nigeria case. It will be shown later, however, that the 1913 Agreement was not the earliest Anglo-German Agreement. The earliest Anglo-German Agreement dates back to 1885.

However, many Nigerians are still expressing doubt as to why the World Court could attach so much weight to the 1913 Anglo-German treaty, which ceded Bakassi to Germany without the consent of the Kings and Chiefs of Old Calabar who were exercising authority over the Peninsula. It is believed that the doubt in the minds of some Nigerians is borne out of the impact the judgment is having and will continue to be having on Nigeria. Bassey (2010:95-109) has given historical background and reasons for the 1913 Anglo-German. The chief aims of the present article are to find out the legal impact of the Agreement and the reasons the Court relied on it so heavily to reach its decision. Being a legal history, the article adopts descriptive analysis method to interrogate the relevant primary and secondary sources. The article is divided into five sections. Sections one and two discuss the brief history and the criticisms of the 1913 Anglo-German Agreement, while section three shows some other Anglo-German Treaties concerning Bakassi. Section four examines the legal impact of the Treaty. Section five conveys summary and conclusions of the paper.

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A Brief History of the 1913 Anglo-German Agreement

Before stating what some significant Nigerians have said about the 1913 Anglo-German Agreement, it is deemed necessary to briefly recall the origin of the 1913 Anglo-German Agreement. The history of the Agreement could be traced back to the activities of rival agents of the European Powers, especially Britain, France, Germany, Portugal, Italy and Spain in Africa in the nineteenth century. The rival agents of these European Powers were determined to establish claims over villages in the hinterland of their coastal possessions. The struggle gave rise to the making of many treaties between the European Powers. The international rivalries also led to the Berlin West African Conference, which was convened by the German Chancellor, Otto Von Bismarck in 1884-1885. One of the chief aims of Conference was to partition the African continent peacefully among the competing European Powers. The Berlin Conference brought forth the *Final Act of Berlin* (1885), which was a legal instrument that authorized the European Powers to take possession of African territories, provided they had notified each other of their intention to occupy. Following the provisions of the *Berlin Act*, many more treaties were entered into between the European Powers. As will be shown later in this paper, Britain and Germany had, from 1885 to 1893, entered into a set of negotiations involving the Nigeria-Cameroon border, particularly the disputed Bakassi Peninsula. In spite of the principles of the *Berlin Act* which were designed to ensure peaceful occupation of Africa by the European Powers, Great Britain and Germany were still having border problems. It was reported that the Germans were encroaching into the territory of the Royal Niger Company, now in Northern Nigeria. Arthur Cook (1964: 128) confirmed that this rivalry situation seriously strained the relationship between Britain and Germany, so much that there was some talk of war, even by responsible leaders in Germany. Fortunately, the rebellion in Cameroon influenced positively the British policy that was inclined to adopt a stiff attitude with Germany. Britain changed its mind because, "England desired nothing but a friendly relations with Germany" (Cook, 1964:128). England's desire for friendship with Germany demonstrates the fact that, though Britain and Germany were rival European Powers, Great Britain was more friendly with Germany than it was with France. Further evidence to support this position could be seen in the instruction given to Claude MacDonald when he was appointed Commissioner and Consul-General for the Protectorate of Southern Nigeria in 1891. He was instructed by the British Foreign Office: "...Your relations with the Germans should be governed by international obligations and should be friendly..." (Dispatch of 18 April, 1891).

In order to avoid or reduce border conflict in the territory that later became Nigeria- Cameroon boundary, Great Britain and Germany began to enter into several treaties to delimit their boundaries in the region. Consequently, on March 20, 1885, Britain and Germany agreed that the right bank of the Rio del Rey be made the starting point for a boundary that was to extend in a straight line to a point on the Cross River marked "Rapids" on an Admiralty map (Cook, 1964:129). On 11 March 1913, Great Britain entered into an Agreement whereof Article XXI delimited the Nigerian- Cameroon "[f]rom the centre of the navigable channel on the line joining Bakassi

Point and King Point, the boundary shall follow the centre of the navigable channel of Akpa Yafe River as far as the 3-mile limit of territorial jurisdiction..." Article 20 of the Agreement provided thus: "should the lower course of the Akwa Yafe so change its mouth as to transfer it to the Rio del Rey, it is agreed that the Area now known as the Bakassi Peninsula shall remain German territory". The 1913 Anglo-German Agreement superseded all previous texts in connection with the disputed area.

Criticisms of the 1913 Anglo-German Agreement

The World Court's reliance on the 1913 Anglo-German Treaty has come under intense attack and thus generating controversies among legal luminaries, scholars and commentators. As Professor Bassey Ate (1993:143) rightly stated, "the 1913(Anglo-German) Agreement which purported to alter the status quo to Nigeria's disadvantage, is subject to great controversy as to its legality." In 1985, a Research Fellow at the National Institute of Policy and Strategic Studies (NIPSS), Professor Sam Chime carried out a study and concluded that "the facts on ground demonstrate that Rio-del-Rey was agreed upon as the extent of the eastern frontier of British Oil Rivers Protectorate. This implies that Bakassi fell under the British sphere of influence" (Chime cited in *The News*, 21 March, 1994). It is not in doubt that Bakassi was part and parcel of the Oil Rivers Protectorate which came into existence in 1885-1891. It was also part and parcel of the Niger Coast Protectorate that was established in 1891-1900, and also part of Southern Protectorate 1900-1906. But it must be noted that from 1885 to 1913, many international events had taken place which had legally affected Bakassi as part of Old Calabar, whose Kings and Chiefs had entered into treaty of protection with the British in 1884. The *Berlin Act* of 1885 had authorized the British to take possession of this and other territories, and by 1891 Britain was by the international practice of that time legally allowed to take full control of Old Calabar including Bakassi, which it could dispose of as of right.

In his article titled "The Bakassi Crisis in a Historical Context", John (2010) based his analysis on historical facts and stated that the colonial masters did not clarify the maritime boundaries and the navigable portion of the Calabar estuary. Therefore, as the Anglo-German Treaty of 1913 did not clearly define the navigable portion of the waters, the status of Bakassi never came up as an issue. However, the Treaty had established clear-cut regulations on navigation on the Cross River. As part of Old Calabar, Bakassi came under British protectorate on September 10, 1884 when Great Britain signed a treaty of Protection with the Kings and Chiefs of Old Calabar. When the colony of Lagos was amalgamated with the Southern Protectorate in 1906 and when Southern Protectorate was amalgamated with Northern Protectorate in 1914, Bakassi became part of Southern Cameroon. In effect, what this implies is that the World Court should not have relied so heavily on the Anglo-German Treaty to determine the case. The Court should have placed more emphasis on other legal and administrative instruments including historical consolidation, and if that was done Nigeria would have won the case.

Falana (2012) submitted that the treaty of 1913, like the Cession Treaty of Lagos of 1861, was illegal in every material particular. The indigenes whose landed property were seized or confiscated were not involved in the “negotiations” while the Kings and Chiefs who ceded them did not have the authority or consent of the owners. The Senior Advocate of Nigeria further submitted, and rightly, too, that under the doctrine of *nemo dat quod non habet* (meaning: “no one gives what he does not have”) recognized in English and French laws, the transfer of the territories via the 1913 treaty like the 1861 treaty was illegal. The relevant authority here is the case of *Amodu Tijani v. Secretary, Southern Provinces* (1915) where the Plaintiffs successfully challenged the acquisition of their land in Lagos on the ground that King Dosumu had no right to alienate it under native law and custom. The case was appealed to the Privy Council which held that “a mere change in sovereignty is not to be presumed as meant to disturb rights of private owners, and the general terms of a cession are *prima facie* to be construed accordingly.” A similar decision was given in the case of *Oduntan Osinowo v. Attorney-General* (1912). Falana opined that “the illegality of the ceding of Bakassi Peninsula by the British colonial regime and the Yakubu Gowon military regime ought to have been questioned at the International Court of Justice. But Nigeria’s defence was erroneously anchored on the legal validity of the 1913 treaty. The ruling of the Court could not have been otherwise in the circumstances” (Falana, 2012). Contrary to Falana’s view, the present research does not believe that the ceding of Bakassi by the British to Germany in 1913 was illegal. As noted earlier, from 1884/1885 when Britain proved to other European Powers at the Berlin Conference that Old Calabar including Bakassi was its possession, it had the right to dispose of any part of its possession or negotiate the boundaries of its colonial territories in accordance with the emerging international law of the time.

To this, a Professor of Economic History, Walter Ofonogaro (2012) has added his voice, which surprisingly is more legal than historical. Professor Ofonogaro wrote: “nothing compels Nigeria to accept as sacred uncritically, any treaty entered on her behalf, during colonial rule. If the treaty is eventually found to be legally invalid, then any decisions based on it must be quashed in a judicial review.” Professor Ofonogaro seems to be unhappy with part of Professor Elias’s Legal Opinion which advised Nigeria that “[e]very effort should be exerted on our side to ensure that Nigeria does not show ingratitude to a sister country that stood by us during the Civil War.” Ofonogaro described Elias’s opinion or rather legal advice as “sentimental.”

Contrary to Ofonogaro’s “nothing compels Nigeria” position, the present study believes that something can compel Nigeria to honour colonial treaties. One thing that can compel Nigeria is the *Exchange of Notes* between Nigeria and the United Kingdom on October 1, 1960. As some Legal experts have observed, the *Exchange of Notes* binds Nigeria to honour obligations Great Britain had entered into with other countries of the world on behalf of Nigeria. The 1913 Agreement is one of such pre-independence Agreements Britain had entered into with Germany on behalf of Nigeria. The acceptance of the *Exchange of Notes* implies that Nigeria accepted the 1913

Treaty as binding on it. *Pacta sunt servanda*: Agreements must be honoured and are binding on the parties that entered into them. An exception to this rule is protest against colonial treaties that are not in the best interest of Nigeria. The Kings and Chiefs of Old Calabar should have protested against the Anglo-German treaty of 1913 in which Britain wished away Bakassi to Germany without their consent. If there was any protest by the people of Old Calabar during the colonial rule or by Nigeria at independence, it is believed that the World Court might have held in favour of Nigeria in the *Cameroon v. Nigeria* case (2002). This belief is premised on the fact that the ICJ said that it had not been presented with any evidence of protest against the 1913 Anglo-German treaty. The Court noted, “[m]oreover, the Court has been presented with no evidence of any protest in 1913 by the Kings and Chiefs of Old Calabar; nor of any action by them to pass territory to Nigeria as it emerged to independence in 1960” (*Cameroon v. Nigeria*, Held 10 para.208). Legally speaking, the absence of any protest meant that the Nigerian government and people had acquiesced in the 1913 Treaty.

Adebayo Adeolu (2012) believes that the World Court ceded Bakassi to Cameroon because of the United States military encroachment in Africa. According to the author, the United States was the only superpower that showed interest in establishing military bases in Africa, specifically in the Bakassi region. He argues that the move by the United States was not welcome in Europe because Bakassi was a strategic region located in Nigeria that was a forbidden zone for any superpower to occupy. He therefore concluded that it was in response to this encroachment by the United States that the World Court in a controversial decision ceded the territory to Cameroon, thus ending Nigeria- Cameroon dispute over Bakassi. “This decision effectively and deliberately kept the United States out of the region, but it also deprived Nigeria of a region that had belonged to it for centuries—from before even the Europeans arrived in Africa” (Adeolu, 2012). Adeolu’s conclusion seems to lack historical and legal foundations, though it is rich in international politics.

While Adeolu and others are holding that the World Court was biased in its judgment, some scholars do not think so. It has been revealed that some Nigerian legal luminaries with historical consciousness had advised Nigerian government not to go or allowed itself to be dragged to the World Court for claim of ownership over Bakassi, because it was a bad case for Nigeria. According to Idumange John (2010), the then Attorney-General Taslim Elias, who later became President of the World Court, had advised the Gowon administration based on the post-colonial agreements, that Nigeria had no legal basis for contesting the Bakassi Peninsula. In other words, as far back as September 3, 1970, T. O. Elias had in his Legal Advice to the External Affairs Minister, Okoi Arikpo, advised Nigeria against claiming ownership over Bakassi. Elias predicted that Nigeria would not win the Bakassi case in the International Court of Justice, should Nigeria initiate any legal action against Cameroon or ever allow itself to be dragged to the Court over the Bakassi issue. Elias was very sure that Nigeria would certainly lose the case. His prediction came true on October 10, 2002 when the World Court delivered judgement in the *Cameroon v. Nigeria* case, ceding the

disputed Bakassi Peninsula to Cameroon. Elias was Attorney-General and Commissioner for Justice in the Government of General Yakubu Gowon. He was the Chief Justice of the Federation of Nigeria. He was also a Professor of Law at the University of Lagos and President of the International Court of Justice at The Hague. Perhaps, based on his legal advice and other evidence, some Nigerians have concluded that Nigeria had no claim to the disputed Bakassi Peninsula and that the World Court was fair in its judgment.

The empirical bases of Elias legal opinion on Bakassi were the 1913 Anglo-German Agreement and the decisions of the Nigeria/ Cameroon Joint Commission. As Ofonogaro (2012) has noted, “[i]t is evident that Dr. Elias placed extra-ordinary weight on the work of Nigeria/Cameroon Joint Commission which met at Yaounde from August 12 to 14 1970. The major decisions taken at that meeting ‘after considerable discussion’, was that the ‘Joint Commission agreed to used the 1913 Treaty as the basis for demarcating the boundary.’” Ofonogaro also noted that this decision was made without seeking guidance from either the office of the Attorney-General, or the Honourable Minister of Transport through the office of the Head of State, otherwise Elias would not been referring to decisions reached at the Yaounde meeting of August 12-14, 1970. The vital decision had been taken at that meeting of the Joint Commission, at which the most senior Nigerian officials present was the Federal Director of Surveys (Ofonogaro 2012). Actually, General Yakubu Gowon and his Survey Experts appeared to have made a technical but costly mistake when they negotiated the Nigeria – Cameroon boundary with the Cameroonian President, Alhaji Ahmadou Ahidjo, at a summit held in Yaounde in April 1971. The Heads of State agreed to define the navigable channel of Akpa Yafe up to Point 12. According to Baye (2011) and Omoigui (2012), during the summit Ahidjo asked his survey experts to stop arguing and asked Gowon to draw the line where he wanted it, and Gowon turned to his own technical experts for guidance. The Nigerian experts marked a point on the map and Gowon drew the line towards that point. Unfortunately, the line Gowon drew (on direct advice from the Director of Federal Surveys) was not true navigable channel of the Akpa-Yafe River as established by the colonial masters.

Not only did the line run right into a ridge, but it also crisscrossed the navigable channels of the Calabar and Cross Rivers, which the British had intended (with German Agreement) to be completely on the Nigerian side, West of the Akpa-Yafe channel. When Gowon was overthrown in a military coup d’etat on July 29 1975, the new regime decided to question the 1971 and 1975 Gowon-Ahidjo Maritime agreements. It is believed that either the new military regime did not really understand the issues or was acting mischievously by creating an impression that Gowon had given away the Bakassi Peninsula to Cameroon to compensate for President Ahidjo’s neutrality during the Nigerian Civil War. Baye (2011) rightly described this impression as “an unfortunate and totally false notion which persists in many quarters to this day.” However, once the Joint Boundary Commission had taken the decision, there was no way Nigeria could have escaped from the implications of Article 20 of the Anglo- German Treaty of March 11, 1913. The said Article 20

stipulated that, “should the course of the Akwa Yafe so change its mouth to transfer it to the Rio del Rey, it is agreed that the area now known as the Bakassi Peninsula shall remain German territory...”

Some Anglo-German Treaties Concerning Bakassi

Contrary to some legal opinions, the 1913 Agreement is not the earliest on the list of the Anglo-German Agreements involving the Bakassi Peninsula. Certainly, the earliest Anglo-German Agreements concerning Bakassi were those entered into in 1885, 1886, 1890 and 1893. In reaching its judgment, the Court looked into colonial and post-colonial treaties and historical evidence. According to the *Reports of Nigeria* (Vol. 34, 2002), the World Court had considered more than eighteen legal and administrative instruments concerning Bakassi. Some of the principal instruments the World Court relied on to determine the *Cameroon v. Nigeria* case include: Franco-British Convention of 29 May 1906ⁱⁱⁱ, Franco-British Protocol of 19 February 1910ⁱⁱⁱ and Franco-German Convention of Berlin on 15 March 1894^{iv}. Others are Anglo-German Agreement of 15 November 1893^v, Anglo-German Agreement of 19 March 1906^{vi}, Anglo-German Agreement of 11 March 1913^{vii}, Anglo-German Agreement of 12 April, 1913^{viii}, Yaounde I Declaration of 14 August 1970, Yaounde II Declaration of 4 April 1971, and the Maroua Declaration of 1 June 1975^{ix}. It could be seen from the above list of legal instruments that two Anglo-German Agreements were entered into in 1913 to redefine the southern part of the boundary between the two countries. These are the Anglo-German Agreement of 11 March 1913 and the Anglo-German Agreement of 12 April 1913. The present study will be dealing mainly with the Anglo-German Agreement of 11 March 1913. Certain Researchers have emphasized on the pre-1913 Anglo-German Agreements as valid background legal sources for Nigeria to win the case. Ate (1993:141) opines that negotiations which were intended merely to resolve controversial provisions of the 1913 Anglo-German agreement or the Maroua Declaration of 1975 as a basis for border demarcation would not advance the national interests of Nigeria and Cameroon. Ate said the 1913 Anglo-German treaty attempted to shift the boundary from what the pre-1913 Agreements regime had fixed at Rio del-Rey to Akpa Yafe. With his wealth of experience as a researcher on international borders including Nigeria – Cameroon border, Professor Ate had advised the Nigerian legal team at the ICJ not to focus its argument of claim only on the 1913 Agreement, but also to emphasize on the pre-1913 Agreements as valid reference point in a new legal strategy for claiming Bakassi. Some of the pre-1913 instruments are the 1885, 1886, 1890 and 1893 agreements which laid down the legal basis of the original Eastern border between Nigerian and Cameroon (Ate 1993:142). It is to be noted that during the pre-1913 agreements regime, the line of demarcation was the Rio-del-Rey, which put Bakassi in colonial Nigeria administered by the British.

The 1885 agreement was defective in the sense that while attempting to define the respective zones of influence of Britain and Germany around the Rio del Rey, it failed to make the demarcations precise. The imprecision was due to the fact

that landmarks were not used for the demarcation. A new Anglo-German Agreement of July/August 1886 was therefore necessary in order to rectify the boundary demarcation anomaly. The new agreement attempted to demarcate the "boundary from Rio-del-Rey to the East of this river and from there to Yola in the North. Of all the Pre-1913 Agreements, it was the 1893 agreement that clearly indicated that the bank of Rio-del-Rey should be the boundary between the Oil Rivers of Protectorate and the German colony of Cameroon (Articles 1 and 2, 1893 Anglo-German Agreement). From 1893 to 1913 when the Anglo-German treaty was signed, the boundary between German Cameroon and the Oil Rivers Protectorate (in Southern Nigeria) was demarcated by the Rio-del-Rey, "a fact which further established the inclusion of Bakassi within Nigeria in addition to the original Efik claim to it" (Ate 1993:142).

It is not in doubt that the pre-1913 legal instruments had placed Bakassi within the British sphere of influence or colony. However, the question is: did Great Britain have the legal right to cede Bakassi to Germany in the 1913 Anglo-German Treaty? This question can be answered by taking a critical look at the relevant provisions of the International Law including the *Final Act of the Conference of Berlin* (1885), and the modes for acquisition of territory that were prevalent in the 19th and 20th centuries. The recognized modes for acquisition of territories by the European Powers included: occupation, prescription, cession, annexation, accretion, plebiscite/referendum, and self-determination (*Eastern Greenland Case*, 1933; *Palmas Case*, 1928; *Anglo-Norwegian Fisheries case*, Treaty with Sokoto 1885/1890, Treaty with Lagos, 1861). Occupation was a mode of acquiring a territory that was not controlled by another State. Except Liberia, Sierra Leone and Ethiopia, other territories were occupied by the European Powers. The modes of occupation included first occupier rule, Papal Bull of Demarcation of 1493, discovery, and planting of flags to convey titles. Consul Hewett planted the British flags in the Old Calabar territory. For occupation to be valid, it must be peaceful, genuine, and continuous. In the *Eastern Greenland Case (Norway v. Denmark, 1933)*, the Permanent Court of International of Justice laid down the ingredients of effective occupation to include an intention to act as sovereign and adequate exercise or display of sovereignty. By virtue of the 1884 Anglo-Old Calabar Treaty, the Berlin Conference of 1884/1885, and the *General Act of Berlin* of 1885, Great Britain had occupied Old Calabar including the Bakassi Peninsula. The *General Act of Berlin* legally but surreptitiously transferred sovereignty from the Kings and Chiefs of Old Calabar including Bakassi (as was the case with other parts of pre-colonial Nigeria) to Great Britain

Legal Impact of the Anglo- German Treaty of 1913

The legal effects of the 1913 Anglo-Germany Treaty could be assessed by looking more closely at the arguments by Nigeria and Cameroon before the International Court of Justice. After the First and Second World War, the 1913 Anglo-German treaty had continued to have impact on Nigeria-Cameroon relations. Following the reorganization of the Nigerian provinces between 1951 and 1954, northern Cameroon was administered by Northern Nigeria. At the same time, Southern

Cameroon was jointly governed by the Federal Government of Nigeria and its Eastern Regional government. By this time, the Bakassi Peninsula was administered from Eket, now in Akwa Ibom State, South-South Nigeria. Bakassi was enumerated as part of Nigeria in the Nigerian censuses of 1953 and 1961. The Bakassi inhabitants participated actively in the elections into the Nigerian Federal legislature Eastern Regional House of Assembly. They also took part in the County Council elections of Okobo /Oron. Okobo and Oron are now two distinctive Local Government areas in Akwa Ibom State of Nigeria.

These political and administrative issues and the accompanying acquiescence gave rise for an argument for and against ownership of Bakassi by Nigeria and Cameroon. It was on this basis that Nigeria contended at the ICJ that its claim to ownership of Bakassi rested on "effective administration by Nigeria, acting as sovereign and an absence of protest, and manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigeria sovereignty" (*Cameroon v. Nigeria*, 2002). Nigeria also contended that its claim rested on long occupation by it and by its nationals thus constituting a historical consolidation of title. Cameroon on the other hand canvassed the argument that, as a holder of conventional territorial title to Bakassi, it did not have to demonstrate the effective exercise of its sovereignty over the area, since a valid conventional title prevails over any *effectivities* to the contrary. Cameroon further contended that no form of historical consolidation could prevail over a conventional territorial title in the absence of clear consent on the part of the holder of that title to the cession of part its territory. It also contended that it had exercised its sovereignty in accordance with International Law by peacefully administering the peninsula claimed by Nigeria. It further contended that "the establishment of Nigerian villages on the Cameroonian side of the boundary by private individuals followed by Nigerian public services must therefore be treated as acts of conquest which cannot found a valid territorial title under international Law" (*Cameroon v. Nigeria*, 2002). As far as the Anglo-German Treaty of 1913 and the question of sovereignty over Bakassi were concerned, Cameroon argued that,

...the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between the parties in the area of the Bakassi Peninsula placing the later on the German side of the boundary. Hence, when Cameroon and Nigeria acceded to independence, this became the boundary between the two countries, successor states to the colonial powers and bound by the principle of *uti possidetis*. (*Nigeria v. Cameroon*, 2002).

In relation to sovereignty over Bakassi and the 1913 Anglo-German Agreement, Nigeria in its *Counter Memorial*, energetically tried to convince the ICJ that sovereignty over Bakassi was Nigerian. Nigeria sustained its argument on the following:

- (a) That title lay in 1913 with the Kings and Chiefs of Old Calabar.
- (b) That in the pre-colonial era the City States of the Calabar Region constituted an "acephalous Federation" consisting

of “independent entities with international legal personality.”

- (c) That under the Treaty of Protection signed on 10 September 1884 between Great Britain and the Kings and Chiefs of Old Calabar, the latter remained their separate international status and rights, including their power to enter into relationships with other international persons”, although under the Treaty that power could only be exercised with the knowledge and approval of the British Government.
- (d) That the treaty only conferred certain limited rights on Great Britain; in no way did it transfer sovereignty to Britain nor the territories of the Kings and Chiefs of Old Calabar. Great Britain was therefore unable to pass title to Bakassi to the Germans in the Anglo-German Agreement of 11 March 1913, as it had no title to pass.
- (e) That the Anglo-German Agreement of 11 March 1913 is defective on the grounds that it is contrary to the preamble to the General Act of the Conference of Berlin of 26 February 1885 and that it was not approved by the German Parliament.
- (f) Nigeria also claimed that it was abrogated as a result of Article 289 of the Treaty of Versailles of 28th June 1919 (*Federal Republic of Nigeria, Counter Memorial in Cameroon v. Nigeria*, 2002).

Based on the claims and counter claims by Cameroon and Nigeria, the Court raised six issues for determination. Among the issues raised was “whether the Treaty of Protection between Great Britain and the Kings and Chiefs of Old Calabar entitled Great Britain to transfer title over Bakassi Peninsula under the Anglo-German Agreement of 11 March 1913 and determine its boundary with Germany”. The Court said it “cannot fail to observe that Nigeria was consulted during the negotiations for its (i.e. Nigeria’s) independence and again during the plebiscites that were to determine the future of the populations of the Northern and Southern Cameroons... At no time did it (i.e. Nigeria) suggest, either so far as Lake Chad area was concerned, or elsewhere (including Bakassi) that the frontiers there remained to be delimited (*Cameroon v. Nigeria*, held 1, Para. 52). By this observation, the Court had raised the issue of acquiescence against Nigeria. The Court sought to determine whether approval of the German Parliament of the Anglo-German Agreement of 11 March 1913 was a relevant factor in determining the validity of the treaty as canvassed by Nigeria. As stated earlier, Nigeria had contended that under contemporary German domestic legislation, all treaties providing for cession or acquisition of colonial territory by Germany had to be approved by Parliament. Nigeria pointed out that the Anglo-German Agreement of 11 March 1913 was not so approved by the German Parliament. It further argued that the Agreement involved the acquisition of colonial territory, namely, the Bakassi Peninsula, and accordingly ought to have been approved by the German parliament, at least so far as its Bakassi provisions were concerned. On its part, Cameroon contended that the German Government took the view that in the case of Bakassi the issue was one of simple boundary ratification, because Bakassi had already been treated previously as belonging *de facto* to Germany. According to Cameroon, parliamentary approval was not required.

The World Court noted that Germany itself considered the procedures prescribed by its domestic law had been complied with; and that Great Britain never raised any question in relation to approval or non-approval of the agreement by the German Parliament. The Court further pointed out that the Agreement had moreover, been officially published in both countries (Britain and Germany) without any dissenting opinion against the instrument. The World Court accordingly held, “[i]t is therefore irrelevant that the Anglo-German Agreement of 11 March 1913 was not approved by the German parliament. Nigeria’s argument on this point accordingly cannot be upheld” (*Cameroon V. Nigeria*, held 9, paras. 196-7).

The Court also examined the legal status of the 1884 Treaty of protection between Great Britain and the Kings and Chiefs of Old Calabar as to whether the treaty entitled Britain to transfer title over Bakassi under the Anglo-German Agreement of March 11, 1913. The Court observed that during the era of the Berlin Conference the European powers entered into about 350 treaties with the Kings and Chiefs of the Niger Delta, including the Kings and Chiefs of Old Calabar and Opobo in 1884. According to the World Court, these traditional rulers were regarded as “notable personages” but not “international personality. The evidence for this position “is clear from that 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”. The World Court also said it had been presented with no evidence of any protest in 1913 by the Kings and Chiefs of Old Calabar, nor of any action by them to pass territory to Nigeria as it emerged to independence in 1960.

The implication of what the World Court was saying is that by not protesting against the Anglo-German Treaty of 1913 during the colonial or post-colonial periods Nigeria had acquiesced in the 1913 Agreement. The World Court therefore concluded that, “under international law at the time, Great Britain was in a position in 1913 to determine its boundary with Germany in respect of Nigeria including in the Southern section” (*Cameroon v. Nigeria*, held 10, Paras. 203-209). Nigeria contended that until its independence in 1960, Bakassi had remained part of Old Calabar and by extension part of Nigeria, notwithstanding the 1913 Anglo-German Treaty. The World Court examined the effect of inclusion of Bakassi peninsula in British Cameroon within the terms of the British Mandate in 1922 that was confirmed by the British Order in Council of 1923. The World Court also sought to determine the continuation of status of Bakassi as a territory district from Nigeria under the Trusteeship arrangement. It noted that after the First World War Germany renounced its colonial possession and that under the Versailles Treaty, the German possession of Cameroon was divided between Great Britain and France. The Court further observed that in 1922 Great Britain accepted the mandate of the League of Nations for “that part (of the former German colony) of the Cameroons which lay to the west of the line down in the (Milner – Simon) Declaration signed on the 10th July, 1919”. Bakassi was necessarily comprised within the mandate. Great Britain had no power unilaterally to alter the boundary nor did it make any

request to the League of Nations for any such alteration. When the League Council was notified it did not object to the British suggestion that it administer Southern Cameroon together with eastern region of the Protectorate of Nigeria. Accordingly, the British Order in Council of 26 June 1923 which provided for the Administration of the Mandated Territory of the British Cameroons stipulated that British Cameroons lying Southwards of the line described in the schedule would be administered "as if it formed part of" the Southern Provinces of the protectorate of Nigeria. Rejecting the Nigerian thesis, the Court observed that the terminology used in the Order in Council had preserved the distinctive status of the mandate territory while allowing the convenience of a common administration.

Guided by this evidence the Court said that it was unable to accept Nigeria's contention that until its independence in 1961(sic), and notwithstanding the Anglo-German Agreement of 11 March 1913, the Bakassi Peninsula had remained under the sovereignty of the Kings and Chiefs of Old Calabar; and that neither the League of Nations nor the United Nations considered that to be so. The Court also rejected Nigeria's claim of acquiring Bakassi from the King and Chiefs of Old Calabar. The President of the World Court, Guillaume said: Equally, the Court has seen no evidence that Nigeria thought that upon independence it was acquiring Bakassi from the Kings and Chiefs of Old Calabar. Nigeria itself raised no query as to the extent of its territory in this region upon attaining independence. (*Cameroon v. Nigeria*, 2002, held 11).

However, as stated in the Legal Brief (*elombah.Com*2012) to the Federal Government of Nigeria, the 1913 Anglo-German Agreement was the document the Court used to draw the boundary between Cameroon and Nigeria. Nigeria energetically argued that the Agreement was invalid when the case was before the World Court. The Court rejected this argument. Nigeria was said to have discovered fresh facts that confirmed that the Anglo-German Treaty was invalid. On the basis of this discovery, the government of Nigeria was pressurized in 2012 to revisit the Court judgment in accordance with the provisions of the Statute of the International Court of Justice (1948). Nevertheless, the Nigerian Government did not yield to the pressure as it declined to go back to the World Court.

Summary and Conclusion

This article has revealed the reasons the World Court relied so heavily on the 1913 Anglo-German Agreement to reach its decision that ceded Bakassi to the Republic of Cameroon in 2002. Britain had the right to have ceded Bakassi to Germany in 1913 because of the prevailing international law of that time, especially the 1885 *Final Act of the Berlin Conference*. Nigeria did not protest against the Anglo-German treaty during or after colonial rule, implying that Nigeria had acquiesced in the Agreement. Subsequent legal and administrative instruments, including the *Exchange of Notes* between Nigeria and the United Kingdom on October 1, 1960 and the Maroua Declaration of 1975, showed that Nigeria had directly or indirectly accepted the Agreement. Contrary to what the Nigerian legal team canvassed, the Court held that Cameroon

had a valid conventional title, which prevails over any *effectivities* or historical consolidation. Under International law, a valid conventional territorial title prevails over any *effectivities* or historical consolidation in the absence of clear consent on the part of the holder of that title to the cession of part its territory.

In addition, the impact of the Anglo-German Agreement of 11 March 1913 has been assessed. The Agreement has had tremendous legal impact on Nigeria-Cameroons relations since the colonial era. Through the bilateral Agreement, Great Britain unilaterally ceded the Nigerian territory of Bakassi to Germany for diplomatic, economic and security reasons. It is believed that if Britain had known that the Bakassi Peninsula was/is very rich in mineral and aquatic resources, it would not have so generously wished it away to Germany. The Agreement had been the major source of frosty relationship between Nigeria and Cameroon and the attendant crises, particularly in the Bakassi Peninsula. The treaty was strongly relied upon by Cameroon in its claim for ownership over Bakassi at the World Court, where it contended that the Anglo-German Agreement of 11 March 1913 fixed the course of the boundary between Nigeria and Cameroon in the area of the Bakassi Peninsula, placing the latter on the German side of the boundary.

Though the Court also gave weight to the Maroua Declaration of 1975 and other instruments, such weight was not as strong as that given to the 1913 Anglo-German Agreement. Very little or no weight at all was given to the 1884 Treaty which showed that Bakassi was part and parcel of Old Calabar. Great Britain was said to have, through the Anglo-German Treaty, breached the two oldest principles of international law, namely *pacta sunt servanda* and *nemo dat quod non habet*. The Court did not give any attention to the weightier evidence of historical consolidation, which Nigeria energetically and consistently pleaded. The Court also held against Nigeria on the grounds of legal question of acquiescence in the 1913 Treaty, because according to the Court, Nigeria did not protest against it during the colonial or post colonial periods. With the Court's decision based on the 1913 Anglo-German Agreement and the 2006 Green Tree Agreement which was reached to implement the judgment, the legal and historical title to the disputed Bakassi Peninsula has been vested in the Republic of Cameroon. A very significant effect of the 1913 landmark agreement is that Nigeria has lost a strategic chunk of its territory and a sizable population to Cameroonian control, without compensation. Professor Bassey Ate had predicted this monumental loss since 1993.

Notes

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²This was the instrument that defined the boundary between France and Great Britain respecting the delimitation of the frontier between their possessions to the East of the Niger. It was signed at London on 29 May 1906.

³The Franco-British Convention of 29 May 1906 was supplemented by the Franco-British Protocol of 19 February 1910.

⁴The boundary between the French Republic and Germany was defined by the Franco-German Convention of 15 March 1894 for the delimitation of the colonies of French Congo and of Cameroon and French and German spheres of influence in the Region of Lake Chad. It was signed at Berlin on 15 March 1894.

⁵The boundary between Great Britain and Germany was first defined by the Agreement between Great Britain and Germany respecting boundaries in Africa, signed at Berlin on 15 November 1893.

⁶This supplemented the Anglo-German Agreement of 15 November 1893 respecting the boundary between British and German Territories from Yola to Lake Chad.

⁷The southern part of the boundary between British and German was subsequently redefined by two Agreements concluded between Great Britain and Germany in 1913. The first of these was the Anglo-German Agreement of 11 March 1913, signed in London. This Agreement had two main purposes. First, it was for settlement of the frontier between Nigeria and the Cameroons, from Yola to the Sea. Second, it was for the regulation of navigation on the Cross River, covering some 1,100 km of boundary.

⁸This was the second Anglo-German Agreement signed in 1913 to determine the southern part of the boundary between British and German. It was signed at Obokum, now in northern Cross River State of Nigeria, on 12 April 1913.

⁹This was an agreement signed at Maroua (Cameroon) by the Heads of State of Cameroon and Nigeria for the partial delimitation of the maritime boundary between the two States.

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