

Nigeria and the ICJ Bakassi Magouille

By

Bola A. Akinterinwa

Last month, the International Court of Justice (ICJ) ruled that sovereignty over the Bakassi peninsula should henceforth belong to Cameroun and that Nigeria and Cameroun should take necessary measures to avoid unnecessary military hostilities. In a 150-page ruling, Mr. Gilbert Guillaume, President of the ICJ, said, "the court decided that pursuant to the Anglo-German Agreement of 11 March 1913, sovereignty over Bakassi lies with Cameroun." Consequently, "the court requests Nigeria expeditiously and without condition to withdraw its administration and military or police forces from the area of Lake Chad falling within Camerounian sovereignty and from the Bakassi peninsula." In the same vein, the court also "requests Cameroun 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 or territories which pursuant to the judgment fall within the sovereignty of Nigeria." The UN Secretary-General, Mr. Kofi Annan, has also asked both countries to take necessary steps to comply with the ruling of the ICJ. Is this possible? Is it acceptable to Nigerians? Will it solve the practical problems on the ground? Time will tell but the ICJ ruling is interesting from many perspectives.

First, it raises the nature and character of the court as the principal judicial organ of the United Nations. The ICJ ruling on the Bakassi Dispute is, at best, very political. It seems to be a resultant of what the French people call a "magouille", that is a decent fraud and this is not the first time this has happened. ICJ statutes are part and parcel of the UN Charter. Any member State of the UN can freely bring a case before it but non-members can still do so subject to the recommendation of the UN Security Council. Switzerland, which accepted the ICJ Status on 28 July 1948 and Nauru, were until 1995, the only non-member States of the UN that were parties to the ICJ Statutes. Before then, Liechtenstein acceded to the ICJ Status on March 29, 1950, while Saint-Marin did the same on February 18, 1954, being non-members States of the ICJ; the UN Security Council has the right to recommend that a legal dispute be referred to the Court.

Essentially, the ICJ has a consultative and advisory function. It does not have its own law enforcement agents. A party to a dispute brought before the court is not obliged to accept its jurisdiction. Although the ICJ decides disputes before it on the basis of international conventions, international customs, recognised reputable international conflicts, the general practice is that parties to a dispute refer such a dispute to the ICJ after signing an agreement, having the status of a treaty or convention, and that expressly provides for the referral of the case to the ICJ or by also making a declaration that accepts the compulsory jurisdiction of the court.

What is of particular interest is that the 15 members of the ICJ are elected by the UN General Assembly and the UN Security Council in a separate voting, on the basis of their qualifications. This gives the impression that whatever they do will not be done on the basis of any iota of bickering. Perhaps, in an attempt to ensure professional commitment of the judges and prevent manifestations of national politics at the court, there is a rule that there cannot be any two nationals of the same State in the court and at the

same time and no member of the ICJ can engage in any other occupation during his or her term of office of nine years, which is renewable. The ICJ normally sits in a plenary session and at times, especially on request, sits in smaller units called Chambers. The ruling of the Chambers is considered as having been given by the plenary court. Against this background information, we can now examine the problematic dimensions of some cases brought before the court by African States.

The dispute over a part of the frontier between Burkina Faso and Mali was taken to an ICJ Chamber for delimitation and this was done in 1986. Libya and Chad also referred their territorial dispute to the ICJ in 1990. Tunisia and Libya in 1982, and Libya and Malta in 1985, sought "the principles and rules of international law applicable to the delimitation of the areas of the Mediterranean continental shelf appertaining to each of them respectively." Guinea Bissau and Senegal also referred their dispute over Maritime boundaries to the court in 1993.

The problem here is that while the disputes brought before the ICJ by non African States border essentially on diplomatic protection, rights of asylum, environmental protection, interpretation of treaties, territorial rights, etc., disputes taken to the ICJ by African States concern their international boundaries, hence querying the foundations of the sanctity of colonial frontiers. One particular case that has a different nature is the issue of South African mandate in the former South West Africa now Namibia. This is the very case that clearly shows the extent to which the ICJ can be very politicised in its ruling. Ethiopia and Liberia complained about the inefficient discharge of duties of South Africa, as the Mandatory Power for the Territory of South West Africa. The court in its ruling in 1966 noted that Ethiopia and Liberia had "not established any legal interests in the claim they had brought against South Africa".

It is not the ruling that matters but how the ruling came about. Seven judges agreed with the claims of Ethiopia while seven judges were against. It was the casting vote of the President of the court that was against the Ethiopia-Liberia position that led to the aggravation of the nefarious activities of South Africa in South West Africa thereafter. It took the President some time in determining how to cast his vote. Much politics was involved and has always been involved. Consequently, the ICJ ruling on the Bakassi cannot but have its political magouille and coloration the politics of the ICJ should also be understood at the level of the member States. The instrument of acceptance of the compulsory jurisdiction of the ICJ by any member State may be withdrawn when the national interests of such member States are at stake. For instance, Article 36 of the ICJ statutes makes the acceptance by States of the ICJ jurisdiction of the ICJ optional. This is why, as at 31 May 1976, only 45 out of 144 State parties to the ICJ Statute accepted the mandatory jurisdiction of the court.

France indicated her acceptance of the mandatory jurisdiction of the court on 18 February, 1947 and was further ratified by a law on 10 July 1948, which was modified on 10 July 1959. However, when Australia and New Zealand were to bring the problem of French nuclear tests in the Pacific before the ICJ, the French quickly changed her position. She was no longer prepared to accept the mandatory jurisdiction of the ICJ as from 10 January 1974. Today, France is still interested in the jurisdictional competence of the ICJ. Even if France had not withdrawn her instrument of acceptance of the mandatory jurisdiction of the ICJ, there is still another problem. Article 94 of the UN Charter provides that UN member States shall comply with the decision of the ICJ in a dispute to which it is a party. It also says that, in the event a party to a dispute does not respect the obligations of a sentence or decree given by the court, the other party to the dispute can refer the matter to the UN Security Council, which shall make recommendations on what to

do and as to how the ICJ sentence can be enforced. Thus, the ruling of the ICJ on the Bakassi dispute cannot be enforced directly unless through the UN Security Council.

Additionally, if one takes a closer look at the various pronouncements of public officials from Cameroun, they have always insisted on their confidence in the ICJ and that Cameroun would certainly be favoured by ICJ ruling. Professor Ngole Ngole, Camerounian Minister for Special Duties, said last February that "Cameroun trusts the ICJ and sees the process going on right now as natural and we are hopeful and confident that the proceedings at the ICJ will favour Cameroun." If there is no politicisation of justice, if there is no magouille, there is no way one would have been predicting with much confidence and correctly the direction of a court ruling in this particular case. Hence, there is the need to look at the membership of the ICJ, where they come from and what ideological views they hold on the matter. There is the need to look at the role of Britain and France.

Secondly, the ICJ ruling on the Bakassi raises the contradictions between territory, on the one hand, and people, on the other. There can be land for the people but there cannot be people for the land. With the ICJ ruling, Cameroun can have sovereignty over the territory but not over the people. The people in the disputed area claim to be Nigerians by place of birth and by blood descendance. They refuse to accept Camerounian citizenship or to be an integral part of Cameroun. Thus, they owe their political allegiance to Nigeria.

The implication of this is that Cameroun may decide to use force to push out Nigerians and then the Government of Nigeria may then be compelled to respond militarily if its international responsibility to protect its citizens is not to be queried nationally and internationally. If the Nigerian Government fails to protect the citizens there, there may be internal violence in Nigeria.

It should be recalled that the inhabitants of the Bakassi, essentially Nigerians, have been complaining bitterly about the way the Camerounians have been mistreating them since 1968 when Camerounian gendarmes first arrived in the Bakassi. For instance, one Mr. Etim Andem Okon of Atabong was beaten to death by Camerounian gendarmes in 1969 while Mr. Mbuk Sereke Mbuk suffered the same fate in 1973. Apart from the cold murder of several Nigerians, official and private, over the years, the expulsion by about 200 Camerounian gendarmes of all Nigerian fishermen in Bakassi on June 1973 angered the people, a situation that compelled the Obong of Calabar's protest to the Head of State, General Yakubu Gowon.

In the welcome address presented by the Etubom's Council, Calabar on 10th July 1973 to Rear-Admiral N.B. Soroh, Head of the Nigerian Navy, on the occasion of his visit to the Eastern Naval Command, the Council complained that their people "have been forced to flee the fishing ports and thereby lost their occupations and source of income." However, the Council noted, "we are not frustrated... We have every hope that... there will be a conscious effort to adjust matters so evenly and equitably that not an inch of Nigerian territory will be sacrificed. This will, of course, entail hard work and sleepless nights..."

Today, with the ICJ ruling, more than an inch of Nigerian territory has been sacrificed. What next? Before the ICJ ruling, last Thursday, Cameroun's Minister of Special Duties at the Presidency, Professor Ngole Ngole, declared in a BBC interview that his country not only had the will and the might but was battle ready over its claim on the Bakassi. In other words, even if Cameroun were to lose in the ICJ, she would

still have opted for war. As put by the Minister, "As far as we know, we are serious. We have the might and we have the will and the 16 million people of Cameroun are behind the government to defend the territorial integrity of our country. Therefore it is not a joking matter".

On the side of Nigeria, the reactions of most Nigerians to the ICJ ruling have been very hostile. Nigerians have indicated non-preparedness to accept the ruling in spite of the good assurances from the Federal Government that a careful study of the ICJ ruling would be promptly taken, that there would not be any effects on Nigeria's oil and gas reserves, and that necessary consultations would be undertaken." In the words of Senator Florence Ita-Giwa, who is representing the Bakassi at the National Assembly, "the judgment was devastating, but our people are not moving anywhere. We will continue to be in Nigeria. We refuse to be part of Cameroun because we have never been part of that country. We are Nigerians and we will remain in Nigeria."

The problem now is that, on a legal paper, it is written that Bakassi belongs to Cameroun but the people living there are not. This raises again the principles of self determination and sanctity of colonial frontiers. In principle, self-determination applies to dependent territories. The inhabitants in the Bakassi are not, and are not even asking for autonomy. However, one way of resolving the problem may be to allow the people living there to determine their future by themselves. Camerounian nationality can be imposed if the people are prepared to accept the imposition but the people cannot be forced out of their land and fishing activities. They have to live with and on their land and waters for economic survival.

If the inhabitants of Bakassi, forcefully or otherwise, become citizens of Cameroun, there is likely to be a fundamental problem of loyalty and insecurity, for Cameroun in the near and distant future. Already, English-Speaking Camerounians have not been fully integrated with their Francophone compatriots. They are asking for full independence. A natural alliance between Bakassi people and Anglophone Cameroun cannot but emerge in the near or long run. So, the enemy within will become stronger and too strong to the detriment of Yaoundé authorities...

As regards the sanctity of colonial frontiers, it is not only the major dynamic of territorial disputes in Africa but will also continue to be the major source of irritants in Nigeria's future relations with Cameroun. The ICJ based its ruling on the colonial treaty of 1913. The OAU Charter and the succeeding Constitutive Act of the African Union recognise this principle of sanctity of colonial frontiers. The inhabitants of the Bakassi are apparently contesting the principle by refusing to accept the ICJ ruling.

Thirdly, the ICJ ruling is interesting in its making, and particularly important in terms of its implication for domestic and international politics. The making of the ICJ decision had a difficult foundation. Nigeria and Cameroun had many joint declarations that were adopted but not ratified: The Declaration of Yaoundé I of 14 August 1970; Yaoundé II of 4th April, 1971; Declaration of Lagos of 21 June 1971; Declaration of Kano of 1st September, 1974 and Declaration of Maroua of 1st June, 1975 are pointers to this difficulty. These Declarations were not ratified but were taken into consideration by the ICJ. In fact, Cameroun tendered a number of its correspondence between Nigeria's former Head of State, General Yakubu Gowon and his Camerounian counterpart, Alhaji Ahmadou Ahidjo, in which General Yakubu Gowon admitted Cameroun's ownership of the Bakassi.

On 29 March, 1994, Cameroun asked the ICJ to determine the course of the maritime frontier between Nigeria and Cameroun. Also on 11 June, 1994, Cameroun asked the court to determine on a definitive basis, Nigerian-Cameroun frontier from Lake Chad to the Sea and to order the withdrawal of Nigerian troops from the disputed peninsula.

Although on 13 December 1995, Nigeria raised preliminary objections to the jurisdiction of the court and to the admissibility of Cameroun's claims, the ICJ rejected on 11 June, 1998, seven out of the eight preliminary objections raised by Nigerian and declared that it had jurisdiction to prosecute the case. Consequently, on 3 March, 1997, the court fixed 31 May 1999 as the time limit for the filing of Nigeria's Counter-Memorial. On 23 February 1999, Nigeria indicated that it "would not be in a position to complete its counter-memorial until it knew the outcome of its Request for Interpretation," which she submitted to the ICJ on October 1998. But on 24 February, that is, on the following day, Cameroun "resolutely opposed" any extension of the time limit, arguing that such an extension of time would create a precedent that would encourage making requests for "interpretation or revision of judgments on preliminary objections".

Thus, Cameroun has always responded one-on-one basis and promptly, while relying heavily on its deal with General Yakubu Gowon. The question to address is why would a leader sign away a part of the territory of his country without the consent of his people? This is the problem of non-accountability in political governance in Nigeria and this is why Nigeria has always been entrenched in political imbroglio, going from one problem to the other. At the international level, the ICJ ruling also raises questions on foreign interests in the Bakassi and its environ. If there is any war between Nigeria and Cameroun today, the scenarios are likely to favour Nigeria more than Cameroun.

Even though the United States signed a mutual defence and assistance agreement with Niger Republic in 1962, it will be very difficult for Niger to support Cameroun, even if again, there is a defence agreement between France and Niger. Niger is the friendliest neighbouring country. It is landlocked and uses Nigeria's ports for most of her imports. Chad is a house divided against itself politically. She is not stable and therefore will have little to contribute even if she chooses to assist either party. Considering the francophone factor and the fact that Chad is in the Central African region like Cameroun, Chad may want to support Cameroun. Spain signed a military pact with Equatorial Guinea in 1981 and Equatorial Guinea also asked the ICJ to take into account her own interests in the resolution of the Bakassi dispute. So, she too has onions to grind with Cameroun.

China, like France, has military assistance with Cameroun and with Equatorial Guinea under a 1982 accord. China supported Biafra in the past and may give support to Cameroun in the event of a new conflict. The support from China cannot be reliable. The role of France seems to be difficult to predict. If we consider the volume of economic interests in Nigeria compared with Cameroun, it can be argued that France will prefer to support Nigeria. But if the factor of cultural ties is considered, France can support Cameroun. But with the aggressive pursuit of French cultural policy in Nigeria and the deepening crises in Francophone Africa, it may be in the interest of France to ensure that there is no war, in order to gain at both levels of Nigeria and Cameroun. Cote d'Ivoire is already a trouble spot for France. Creating another theatre of war in the Bakassi will create additional headaches for France.

As for the United States, Nigerians are in love more with the people of America than with the Washington government. President George W. Bush's policy in Africa is such that American aid may be taken with caution. The US, because of France's independentist policies vis-à-vis Washington may compel it to engage in covert support for Nigeria in order to deal with France. There is no reason why the US would not also want to support Cameroun, at least, discreetly. Britain and the US foreign policies predicated on double standard. If the problem of Bakassi exists today, the double standard of the British is a major factor that explains it. The position of the British will be neither here nor there, more so that Cameroun is not only bilingual, but has also joined the Commonwealth. Britain cannot be the friend of Cameroun and the enemy of Nigeria.

Finally, the ICJ ruling on the Bakassi dispute is more a resultant of 'Magouille' than of law. The nationality of the ICJ President and the European solidarity in the context of Franco-British relations, especially that Cameroun is a bilingual State, cannot be ruled out in the final making of the ICJ decision. The decision has not solved the problem of the habitants of the peninsula, but has only addressed the issue of who has control over the territory. The specific interests of the people have not been addressed. The ICJ ruling only opens the doors of war more widely.

Consequently, African leaders should promptly begin to consider alternative options to war, like condominium, referendum, internationalisation of the territory, etc. Besides, while the review of the status of colonial frontiers is desirable, it is also necessary to look at the solution from the objectives of African integration. IntraAfrican war is not consistent with African Unity and integration. So border community integration strategies may be explored. More importantly, Nigerians should express gratitude, not only to the late General Sani Abacha, who took the bull by the horn, by deciding to fight to maintain for what belongs to Nigeria, but also to Nigeria's panel of international lawyers. They have done their best but no best can succeed when there is magouille.

Nov 2002