

Why Bakassi belongs to Nigeria

By Richard Akinjide (before the ICJ at The Hague)

Mr. President distinguished Members of the Court. It is again my privilege to address this honourable and august Court in opening the second round of oral presentations for the Federal Republic of Nigeria. This is a great honour for me, appearing before the most powerful and the most prestigious court in the world. I have been associated with this case from its outset in March 1994.

Before I proceed with my presentation I would like to acknowledge the presence in court on my left of His Majesty the Obong of Calabar and his Majesty's Queen, and his senior Etubom of Bakassi, who is also sitting on the left of Her Majesty. To give them their full title, I state as follows: His Majesty Edidem, Professor Nta Elijah Henshaw VI, the Obong of Calabar, Treaty King, Natural Ruler and Grand Patriarch of the Efiks wherever they may be, and on His Majesty's immediate left is Her Majesty Mrs. Grace Henshaw, and immediately to the left of Her Majesty is His Royal Highness Etubom, Okon Etim Okon Asuquo III, who is the Etinyin Akamba of Bakassi.

Mr. President, I would like to begin with a comment on some of the remarks made by Cameroon's Co-Agent in his opening of Cameroon's second round presentation. I will, if I may, summarize them in English. On the one hand, he criticizes our team for "not playing the game at the public hearings" by repeating matters contained in Nigeria's pleadings. On the other hand, he said that there were new elements which would raise eyebrows. He accused us of contradictions and of trying to ensure that the Court does not rule on Cameroon's request. He said we claimed to be consistent but were inconsistent and that our inconsistencies developed the case in such a way as to bring us closer together in certain respects.

Mr. President, all these remarks leave me in a state of some confusion. Nigeria believes in giving the facts to the Court in an effort to assist the Court in reaching a decision. We have tried to do this in as straightforward a way as possible and will leave to the Court the question of deciding on the validity of our submissions. Nigeria has nothing to fear from the Court's scrutiny of its case.

One striking feature of the oral procedure is that it highlights the credibility of the assertions being made by each of the Parties. By credibility, Mr. President, I do not mean relatively minor matters such as an incorrect statistic or two-such errors can always be corrected. No, what I am referring to is the good faith of the Parties. In this respect it is my sincere belief that the Court, when it analyses all that has been said and written, will not find Nigeria wanting. Time and again, however, Nigeria's advocates have had to highlight issues on which Cameroon seems either to fail to face up to the truth and invents new allegations or in some cases avoids the truth altogether. I shall refer to some of these issues in my presentation today: others will become apparent during the presentations of my

colleagues.

It is, however, Cameroon which seeks to make out that Nigeria is a country which cannot be trusted and fails to keep her word. Nowhere was this more apparent than in the closing remarks of Cameroon's distinguished Agent on Tuesday. He made it clear that Cameroon is, in fact, unable to sit down with Nigeria in the same room without third parties being present "to see fair play". This is a remarkable assertion, Mr. President, and one which has greatly saddened the Nigerian team.

It will not have escaped the Court's notice that, fortunately, Nigeria's other neighbours do not seem to suffer from the same paranoia. The examples of Nigeria's treaties with Equatorial Guinea and Sao Tome and Principe give the lie to Cameroon's assertion that Nigeria is an impossible neighbour. Yet, Cameroon cannot bear to see these examples of Nigeria's willingness to encourage international co-operation. We are accused of having used threats or worse in order to bully our neighbours into submitting to these treaties.

Mr. President and Members of the Court, Equatorial Guinea will be able to speak for herself during the intervention round next week. Sao Tome and Principe is not before the Court- to Cameroon's apparent regret. Nigeria regrets that too. If Sao Tome and Principe had been before the Court she would have been able to tell the Court how the two countries have negotiated one of the largest joint development zones in the world in which resources will be shared on a 60/40 basis: that is, 60 per cent will go to Nigeria, with a population of 120 million at least, and 40 per cent will go to Sao Tome and Principe which has a population of approximately 120,000. Such generosity on the part of Nigeria does not send out the message of a bullying State or a bullying neighbour.

In addition to the treaties I have just referred to, Mr. President, Nigeria is, as has been mentioned, negotiating a maritime boundary treaty with her western neighbour, that is, the Republic of Benin. When the result of those negotiations is seen, Nigeria does not think that she will be accused of having pressurized her much smaller neighbour into an unfair or inequitable bargain.

As to Nigeria's other boundaries, Nigeria and Benin have a Joint Boundary Commission which meets on a regular basis and is making real progress with resolving issues on their common boundary. The same goes for Nigeria's northern neighbour, the Republic of Niger. The National Boundary Commission is tackling these boundaries with all the benefits of modern technology, including GPS and satellite imagery. Maps that are being used are at a scale of 1:50,000 and are, for the most part, maps produced by DOS and IGN. There are issues relating to villages which are "on the line", yet these issues are being resolved amicably in a constructive atmosphere unhampered by fear, despite the disparity in the sizes of the respective populations.

Mr. President, so where is Cameroon's problem? Instead of sitting down with Nigeria, she has felt it necessary to come before this honourable Court and involve both Parties in lengthy proceedings involving huge expenses. At the end of the day, she asks the Court to set up some kind of arbitration procedure involving third parties. Mr. President, you will be hearing more from my colleagues concerning these proposals. I would just like to place on record that Nigeria finds it extraordinary that Cameroon seems now not only to be unable to trust Nigeria but now, also, she seems unable to trust the outcome of these proceedings, at least in so far as they relate to the land and maritime boundaries.

Following these remarks, I would like to move on to some of the specific issues raised in these proceedings and do so not only as a member of Nigeria's legal team since the inception of the case in March 1994, but also as a former Attorney-General and Minister of Justice of the Federal Republic of Nigeria during the last civilian government, that of President Shehu Shagari, who was in power from 1979 to 1983.

I think it is quite true to say, Mr. President and Members of the Court, that when President Shagari came to power, our relations with our neighbour Cameroon were cordial. Negotiations on boundary issues, many of which were listed by me during the course of the hearing on Nigeria's second preliminary objection, were proceeding much as they had always done. There were joint committees of technical experts, political meetings and joint confidence-building measures. Progress may have been relatively slow, but this stemmed in part from the fact that there was no hint of any real trouble along our extensive common land boundary.

Bakassi

This changed dramatically in May 1981. The incident of 16 May 1981 has been referred to right from the start of these proceedings. Nigeria, I believe, demonstrated beyond any reasonable doubt that Cameroon was the aggressor, yet Cameroon still attempts to paint the incident in different colours. What I can be sure about, Mr. President, and Members of the Court, is the effect it had on President Shagari's Government. That Government was galvanized. Out of the blue Nigeria had a neighbour, whom she had previously regarded as friendly, ambushing and killing members of her armed forces. The outrage in Nigeria was huge: President Shagari's Cabinet met in urgent session. It was a clear act of provocation on the part of Cameroon which might have had very serious consequences. But, in the event, Nigeria was not provoked. We decided to give Cameroon the chance to apologize. Cameroon, sensibly, took that chance. But a marker had been laid down. In my own case, as Minister of Justice and the Attorney-General, I resolved to probe more deeply into the legal situation regarding our common boundary. I caused extensive research to be undertaken. That research was still continuing when President Shehu Shagari's Government was overthrown by the military at the end of 1983.

In conducting that research, I came, in particular, to realise that Cameroon had a potential claim to Bakassi based on the 1913 Treaty. At the same time, however, I knew that there was something radically wrong here. Bakassi was, and so far as I was aware, had always been, regarded by Nigerians as being part of Nigeria. It was inhabited by Nigerians and it was governed by Nigerians forming part of the local government area in that region. There had not, so far as I was aware, been a Cameroonian claim to Bakassi as such. Over the years that followed, and in particular during the course of the preparation of Nigeria's written pleadings, I have become aware of the existence of one or two Protest Notes but I can honestly say that, at the time I was in office as Attorney-General, Bakassi had not, until May 1981, been regarded as a problem.

Mr. President, in retrospect this seems the more amazing when one considers the prominence which Cameroon has given to the 1975 Maroua Declaration in these proceedings. I would like, if I may, to give my own perception of Maroua. In doing so, I should say that it is, I believe, a perception which is shared by many Nigerians. The Maroua Declaration was made on the 1 June 1975. Less than two months later, to be exact in July 1975, General Yakubu Gowon was overthrown in a bloodless military coup.

It was not long before Nigerians began to question the validity of the Maroua Declaration and, in particular, General Gowon's ability under the Constitution to have bound Nigeria to it. You will hear more on the constitutional position later in our presentations. What is quite clear, however, is that in 1978, in the Nigerian city of Jos, Nigeria had made it absolutely clear to Cameroon that she did not regard Maroua as being binding upon her. Cameroon has accepted that this was the position.

Mr. President and Members of the Court, I have to say that there were many practical reasons for Nigeria not to regard Maroua as a binding instrument, quite apart from the constitutional issues. One glance at the map on the screen and at tab 1 of the judges' folder will show the causes of Nigeria's concerns.

Mr. President, the Court has been shown variations of this map many times during the course of these proceedings. There are four major rivers which drain into the Cross River estuary. There is the Cross River itself, there is the Calabar River, the Kwa River and there is the Akwa Yafe River. The estuary gives access to Calabar, a large Nigerian city which was very nearly made the capital of Nigeria, but Lagos was chosen instead. At Calabar Nigeria has a major naval base. Nigerian navy vessels proceed up and down the estuary on a daily basis. The estuary is approximately 20 km wide. Any vessel passing up and down the estuary is well within gunshot of either bank of the estuary.

The implications are obvious, Mr. President. Can Nigeria seriously contemplate having a major part of her fleet passing up and down a narrow stretch of

water on a regular basis beneath the guns of Cameroon? It is just not credible from a practical, military point of view. Yet this would be the practical result if the Maroua Declaration were to be regarded as conferring sovereignty over Bakassi on Cameroon.

Nigeria admits that there is, for Cameroon, an access problem as far as the Akwa Afe River is concerned. This watercourse forms, for most of its length, a major land boundary. It would seem obvious that both Nigeria and Cameroon should have equal access to the river which divides them. In reality, however, the majority of Cameroonian traffic which comes up the Cross River estuary is bound for Calabar. Very little Cameroonian traffic, in fact, goes up the Akwa Yafe which is, in any event, only navigable for about 50 km before reaching the first set of rapids. This is probably because there is not much need for it to do so as Calabar, with all its markets, is the major local commercial centre.

Nigeria would have had no objection in principle to access to the Akwa Yafe being granted to the normal river traffic of Cameroon or indeed boats of any other nationality, subject to proper controls. I understand that the Court in the recent case of Kasikili/Sedudu Island between Namibia and Botswana recognized, of its own volition, access to the Botswana southern channel of the Chobe River by Namibian tourist boats. Nigeria would have no difficulty with a similar arrangement granting access to the Akwa Yafe.

I said earlier that I commissioned research into the legal status of the Nigeria-Cameroon boundary. As a result of my efforts a considerable body of documentary evidence was amassed. I was, as I said, never able to take the matter very much further forward because of the downfall of the Government. I think however it is worth making two points here. The first is that, even at that early stage, I did have cause to look at the earlier Treaties of Protection and I was struck by the same thought that has been articulated so effectively by Sir Arthur Watts. As a common-law lawyer, I was unable to "trace title" from the Kings and Chiefs to Germany via Great Britain. The Roman doctrine "nemo dat quod non habet" is a basic concept in every legal system, as far as I know. The second point I would like to make is that, with all due respect to my learned predecessor in office as Attorney General, Dr. T. O. Elias, and his stature as a public international lawyer, I have no means of knowing what materials he had at his disposal when he wrote that opinion. A lawyer's opinion is only as good as his briefing.

Following the military coup at the end of 1983, I had effectively to live abroad for the next ten years or so. Whilst I thought from time to time about the Bakassi situation, I was not aware of outward change. Nigerian citizens continued to live in peace on Bakassi as far as I was aware. No doubt there continued to be occasional harassment by Cameroon gendarmes but, in a way, there was nothing new in that. It was well known that Cameroon gendarmes were poorly paid and that the Nigerians living in Bakassi and, indeed, in other border

regions, were hard working and, relatively speaking, prosperous.

Mr. President, one has only to look at the fishing fleet sailing from West Atabong to see that these are serious fishermen—we counted nearly 100 large canoes on our field trip in 1997. If you visit mainland Atabong you will see not only large open ferry boats transferring people to and from the mainland to the Atabongs on Bakassi—that is West Atabong and East Atabong—but also huge quantities of fish being landed and loaded into refrigerated trucks to be transported inland. Fish is, and has always been, an important staple in the Nigerian diet.

By contrast, as I know from having spoken to the Nigerian fishermen on our field trips, there is no great activity by Cameroon fishermen along the coast. At West Atabong we have fishermen from as far afield as Ghana, Benin and Togo, fishing freely alongside Nigerians in the waters in and around Bakassi. Seldom, if ever, do Cameroon fishermen appear. When they do appear Nigeria does not shoot them. Regrettably, that has not been the case with our neighbours, as Nigeria's counter-claims have shown, and by that "neighbour" we mean Cameroon. In any event, the existence of a peaceful, well organized and relatively prosperous community living near the borders of Nigeria has, over the years, been an irresistible target for Cameroonian officials intent on traditional methods of supplementing their no doubt meager personal income.

The Court has seen the photographs of Bakassi provided by Nigeria. It has also seen the short video. The Court will therefore have some understanding of the topography of the area. Cameroon's counsel called into question the descriptions of Bakassi vegetation given by Nigeria in various pleadings and in her first round speeches. He also called into question the ability of the area to support the population claimed by Nigeria.

It is regrettable, but perhaps unsurprising, that Cameroon, although she claims to administer the territory, has not been able to produce any visual evidence of her activity on Bakassi, either present or past. Had Cameroon been able to see for itself how the population on Bakassi is distributed, it would not have made the comments that it did.

Cameroon's counsel did a rough calculation of the area of Bakassi and came up with entertaining analogies between Bakassi, the Netherlands and Manhattan. Interestingly, he was probably closer to the mark with his Manhattan analogy than with the Netherlands, which he described as Europe's most densely populated country. One does not have to go very far out of The Hague, or even within The Hague itself, to see that houses occupy large sites, many have gardens and in the country they are frequently surrounded by acres of glasshouses and tulip fields.

Mr. President and Members of the Court, Bakassi is not like that. The houses, many of which are built of light materials such as cane and palm leaves, are

literally cheek by jowl. It is difficult often to tell where one house ends and the next house begins. The scarcity of land makes it necessary to utilize every available square metre. If you look at the settlements comprising houses on stilts, you can see those houses stretching for perhaps 1 km or more along the riverside with serried ranks of houses behind. A small example of this type of village is shown on screen now and at tab 2 in the judges' folder [graphic 2: stilt village]. Each house will contain a fisherman, his wife or wives and children, grandparents and perhaps members of the extended family as well, in the African tradition. Even on Manhattan they do not pack people in like that, do they?

Mr. President and Members of the Court, the same is true of the land utilization on dry land at places like the Atabongs-that is West Atabong and East Atabong-and at Abana. Those are settlements which are built on low-lying sandy promontories. The streets are so narrow that if you stretched out both arms you would touch the buildings on the other side. This is the reality of the villages nestling in the mangrove areas.

Of course, as one moves north, as the Court has seen from the map of Bakassi which has been shown so frequently, towns like Archibong are no longer in the mangrove belt and that is why one saw extensive areas of green open spaces near the schools in the video presentation.

By the time I returned to Nigeria in late 1993, the situation in Bakassi had clearly deteriorated considerably. In fact, so much had it gone bad that the Government felt it necessary, as we know, to send in army detachments in order to protect the local population and in order to quell unrest that had arisen as the result of the competing claims of Cross River and Akwa Ibom states-both of them in Nigeria. In no sense could that be termed an invasion, as Cameroon is so fond of describing it. There had always been Nigerian troops in the area, as the incident of 1981 demonstrates. The resources were increased at the end of 1993 because of perceived threats to Nigerian sovereignty over the Bakassi Peninsula.

Cameroon's claims to the substantial Nigerian population which lives on Bakassi are just incomprehensible to Nigeria. Mr. President, as Cameroon has been fond of saying in these proceedings, she always "offers hospitality" to a substantial Nigerian population in Cameroon. Why does she want more Nigerians to join the party? In particular, why should she want a large group of Nigerians who clearly feel very strongly about their nationality and ties to Nigeria? It seems to me that Cameroon would only be storing up trouble for herself with the people of Bakassi if she were to succeed in her claims.

Mr. President and Members of the Court, Cameroon, at one point, characterised Nigeria's so-called "occupation" of Bakassi as being motivated by greed for its mineral resources. This analysis ignores the tremendous good fortune Nigeria enjoys of the rich hydrocarbon resources to be found in the Niger delta area and out to sea where the seabed once formed part of the same delta

structure. Nigeria really has no need, and commercial companies certainly have no desire, to exploit areas on the margin of Mount Cameroon basalt ridge where oil and gas are relatively scarce and, what is more, expensive to extract. The harsh fact is that Bakassi is not, and has never been, an area of high prospectivity.

We have seen from the figures produced by Cameroon in its final round of pleadings, the tremendous imbalance in oil reserves between Cameroon and Nigeria. This is clearly unfortunate for Cameroon. However, even if any reserves which might lie under Bakassi were one day deemed to be commercially viable, it is hard to imagine that they would make any significant difference to Cameroon reserves. Any theoretical gain has to be set against the potential disruption of the lives of many thousands of Nigerians in this generation and for generations to come.

Mr. President, that brings to an end my submissions relating specifically to Bakassi. I would like, however, if I may, to move on briefly to Lake Chad.
Lake Chad

Mr. President and distinguished Members of the Court, Cameroon's claims to the former bed of Lake Chad and certain islands in what currently remains of the lake follow a similar pattern to the claims she has made over Bakassi. As Mr. Brownlie, Q.C., has so clearly and brilliantly explained, this is an area over which title has yet to be determined. It is, in the areas claimed by Nigeria, inhabited by a population of farmers and fishermen who come mainly from Nigeria and not at all from Cameroon. When the legal team visited Darak in 1997 we could not fail to be impressed by the fact that we were surrounded not by just a few Nigerians but literally by hundreds as we walked towards the main settlement on the island. As you can see from the photograph now on screen and at tab 3 in the judges' folder, the Darak crowds could be seen; all of them Nigerians.
[Graphic: Darak crowds.]

Darak is a major population centre and it looks to the Nigerian Government, both local and federal, as well as the State Government, for its governance. This is true of all the villages which we visited on our trip across the Lake bed. Any visitor to the area will readily see that every village owes its allegiance to Nigeria and, as our account of the administration of the area has shown, it is Nigeria that looks after the population in terms of security, health care and education, as well as collecting tax.

Once again, Mr. President and Members of Court, Nigeria never had any cause to doubt her own sovereignty over this area until it was characterized as territory which had been "illegally occupied" in Cameroon's protest Note of 11 April 1994. There had, again, been sporadic attempts by local Cameroonian forces to raise taxes and even an attempted military occupation. This military

action by Cameroon does not appear to have been preceded by any diplomatic moves.

If central government in Cameroon had really been concerned about what it now claims to be illegal occupation, one would have expected to see protests, or, at the very least, the matter being raised by the Cameroon representatives in the LCBC. Nigeria's legal team has scoured the minutes of LCBC meetings since the inception of the Commission and those minutes are lodged at the Court for all to see. Nowhere in them does Cameroon raise the issue of illegal occupation. On the contrary, Cameroon's security forces patrol with the Nigerian forces in an evident show of solidarity in the area.

Once again, as with Bakassi, one is at a loss to understand why Cameroon wishes to absorb this large Nigerian population which is currently being successfully administered from Nigeria at no cost to Cameroon. There is, not even, so far as is presently known, the lure of oil in this particular area of Lake Chad.

One is forced also to take note of what is said in the report of the Special Rapporteur submitted to the United Nations Commission on Human Rights in November 1999. This document has been lodged with the Court by Nigeria. The Court may have noted in particular the report of the lawless situation the Special Rapporteur found especially in Northern Cameroon. Mr. President, Members of the Court, I venture to say that private armies operating under local chiefs are not an attractive prospect for the maintenance of law and order amongst the Nigerian population in Darak and in the surrounding villages. Other matters

I shall now move on very briefly to the other aspects of this case. Nigeria's eminent counsel have demonstrated in a clear, calm way, how Cameroon's claims in this case are based on bluster and unfounded assertion. They have shown how Cameroon, even in these proceedings, has had to back off when she comes up against the harsh reality of the facts. In the memorable words of Sir Arthur Watts, Q.C., on the final day of Nigeria's first round presentation:

"Cameroon having abandoned its claim to Tipsan, and having abandoned individual responsibility claims, and having tried to abandon its request to have the land boundary specified definitively, and having abandoned a succession of its earlier maritime boundary lines, the remnants of Cameroon's case are looking rather tattered"

The proposals made by Cameroon's distinguished Agent on Tuesday referred to by me at the beginning of my speech seem rather to confirm Sir Arthur's view of Cameroon's claims.

Land boundary

I need not remind the Court that the whole land boundary issue came before the Court, despite Nigeria's fifth preliminary objection, largely on the basis that there was alleged to be a dispute over the border at Tipsan, which now turns out not to be so.

On our 1997 field trip we also visited some locations on the land boundary. We had hoped to visit Tipsan ourselves but the length of the journey from Yola proved to be such that we were only able to get as far as Toungo, which is about 24 miles short of Tipsan. The state of the roads was so that further progress would only have resulted in our arriving at night. We were thus not able, on that occasion, to take photographs, unlike counsel for Cameroon. However, as the Court knows from the preliminary objections, we did visit Lip and were mistaken by our opponents for having been a Nigerian raiding party. We took photographs of the hills surrounding Lip and it is possible from those photographs to see what complex and remote terrain this is. As you can see from the photograph on screen, and at tab 4 in the judges' folder, this is rough country. And the graphic is now being shown, of the hills beyond Lip [graphic 4: Hills beyond Lip]. Mr. President, it was a two-day journey to Lip and two days back. All I can say as a lay person is that, having seen some of these locations, I would hate to see a boundary commission carrying out a demarcation without having clear guidance from the delimitation treaty as to where I should start and finish my demarcation exercise.

Mr. President and Members of the Court, time and again Cameroon has asserted that incidents have taken place on the border which, on further investigation, turn out to be little more than what might be termed "cattle rustling". Nigeria comprehensively demolished the State responsibility claims made by Cameroon in its Memorial and Observations on Nigeria's Preliminary Objections. She has comprehensively demolished the further claims made in Cameroon's Reply and she has comprehensively demolished the later claims that Cameroon has made by correspondence and other means.

Mr. President, I talked about credibility at the beginning of this speech. I do with respect submit that Cameroon has a serious credibility problem with regard to these claims.

I do not claim to be a maritime boundary expert. During my period in office as Attorney- General and the Minister of Justice, I sat for four years as the leader of the Nigerian delegation to the Law of the Sea Convention negotiating sessions and I signed that treaty as well as the Final Act at Montego Bay on behalf of Nigeria. My understanding of Cameroon's claims is that, as presently expressed, they would cut into well-established Nigerian offshore oilfields. Were this to be permitted, Mr. President and Members of the Court, Nigeria would presumably face compensation claims from oil operators running into

billions of dollars. This is not something Nigeria can face with equanimity. However, we also saw from Professor Crawford's presentations that Cameroon's claims do not accord with any known precept of international maritime boundary law, so it may be that Nigerian fears on this account are unfounded.

Mr. President and Members of the Court, before I conclude my presentation and inform the Court how Nigeria proposes to spend the remaining time in this second round, I would like, with respect, to mention that His Majesty the Obong of Calabar, whom I introduced at the beginning of this presentation, will be assisting the Nigerian team with answers to some of the questions posed by Judge Kooijmans. The Obong is the Grand Patriarch of the Efiks. The loss of Bakassi would be a serious matter for Nigeria: the loss for the Obong of Calabar would be, proportionately, of an even greater magnitude.

Following my presentation, Ian Brownlie, Q.C., will be dealing with Bakassi from independence. That will complete the morning session.

This afternoon, Alastair Macdonald will speak again on the land boundary and he will be followed by Sir Arthur Watts, Q.C., also speaking on the land boundary and on Bakassi pre1960. The afternoon session will finish with Ian Brownlie, Q.C., speaking on Lake Chad.

Mr. President and Members of the Court, tomorrow Professor Georges Abi-Saab will open on State responsibility. That subject will again be taken up by Sir Arthur Watts, Q.C., and he will be followed by Professor James Crawford, S.C., on counter-claims. Professors Abi-Saab and Crawford will then address the maritime boundary, and our presentations will be brought to a close by Nigeria's Agent.

· Chief Akinjide, Second Republic Attorney General presented this address at the International Court of Justice at The Hague on the Bakassi case March 2002.