

AKSU JOURNAL **OF HISTORY & GLOBAL** **STUDIES**

Volume 1, Numbers 1&2, 2014

ISSN: 199 006X

**Department of History
& International Studies,
Akwa Ibom State University,
Nigeria.**

AJHGS, Vol.1 Nos.1&2, 2014

AKSU Journal of History and Global Studies(AJHGS),
Volume 1, Nos.1&2

Published by
Department of History & International Studies,
Faculty of Arts,
Akwa Ibom State University,
Obio Akpa Campus, Akwa Ibom State, Nigeria
(in collaboration with *Ibom Journal of History and International
Studies, University of Uyo*).

ISSN: 199 006X

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© December 2014.

Printed by Robertminder International Limited.

THE CASE OF CEDING BAKASSI TO CAMEROON BEFORE THE COURT OF HISTORY

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Abstract:

More than a decade after the International Court of Justice (ICJ) had delivered judgement in the *Cameroon v. Nigeria* (2002) case in which it ceded Bakassi to the Cameroons, some Nigerians are still alleging that it was the former Nigerian Military Head of State, General Yakubu Gowon who wished away Bakassi to the Republic of Cameroon as compensation for the support that country gave to Nigeria during the Nigeria-Biafra War. The issue has remained a controversial one, especially as General Gowon has consistently denied ever giving away any Nigerian territory to the Cameroons. The major aim of this article is to probe General Gowon's involvement or otherwise in the ceding of Bakassi to Cameroons. Being a legal-history and diplomatic study, the paper adopts historical/descriptive analysis methodology to interrogate relevant legal and historical documents concerning Bakassi since the colonial times. Findings reveal that Bakassi had been ceded by Britain to Germany, through Anglo-German agreements in 1893, 1907 and 1913, ever before Gowon was born.

Introduction:

In recent times, some Nigerian scholars and mass media have accused the former Nigerian Head of State, General Yakubu Gowon of giving away the Bakassi Peninsula to the Cameroons as compensation for Cameroon's support to Nigeria during the Nigeria-Biafra War (1967-1970). Specifically, they opined that General Yakubu Gowon did this when he entered into the Maroua agreement with his Cameroonian counterpart, Alhaji Ahmadu Ahidjo in 1975. As General Gowon has consistently denied this allegation, the issue has remained a controversial one, begging for the attention of legal historians to resolve it. One of the functions of the discipline of history is to resolve controversy and bring out the truth. Gowon himself believed that with the aid of history, the truth would be revealed. Therefore, the aims of this article are to, among other things, find out who actually ceded Bakassi and when was it ceded to Cameroons, and the role of General Gowon in the act. The Study is a legal history and diplomacy.

Methodology:

Being a legal-history study, historical/descriptive method of enquiry was adopted. The purpose was to interrogate relevant legal and historical documents concerning Bakassi since colonial times. Sources of information consulted included text books, journal articles, decided cases, statutes, treaties, official speeches, OAU Charter, Newspapers and Magazines. Paying attention to chronology, the article is broken into eleven sections. It commences by highlighting the usefulness of the discipline of history in section one. Section two set out the main controversy. Section three reviews the 1884 British Treaty with the Kings and Chief of Old Calabar. Section four discusses the Anglo-German Agreements of 1893 and 1907, while section five analyses the Anglo-German Treaty of March 11, 1913. Section six and seven respectively examine the role of the World Wars and Nigerian Eastern Region Crisis in the ceding of Bakassi. Section eight and nine takes a look at the 1958 Geneva Convention and the 1958 Willink Commission's answer to the

minority question. Section ten examines the *Exchange of Note* and the Doctrine of *Uti Possidetis* as they affected Bakassi. Section eleven evaluates the Joint Committee of Experts Meeting and the agreements General Gowon entered with President Ahidjo of Cameroons. The article closes with summary and conclusions.

1. Historical Framework:

As already hinted above, this article is predicated on the concept of history, its meaning, its usefulness and the likely consequences of ignoring it. According to Collingwood¹, history is a kind of research or inquiry. History is the science of *res gestae*: That is, a research or an inquiry into the actions of human beings that have been done in the past, the forms of thought whereby one asks questions and tries to answer them². However, history is not about the past alone, because according to Carr³, history is a continuous process of interaction between the historian and his facts, an unending dialogue between the present and the past. To Benedetto Croce⁴, history consists essentially in seeing the past through the eye of the present and in the light of its problem. The task of the historian is not only to record but also more importantly, to evaluate the past, comparing with the present and projecting into the future. No wonder Geoffrey Barraclough⁵ saw history as the attempt to discover on the basis of fragmentary evidence the significant things about the past. In this sense, history is "a series of accepted judgements"⁶. In spite of "history being the supreme discipline that trains dynasties"⁷, some political and economic leaders, administrators and policy makers, more often than not treat history and historians with disdain. It is only through the knowledge of history that a society can have knowledge of itself. As Professor Collingwood put in, "history is for human self-knowledge"⁸. In the words of Arthur Marwick, "history is the necessary recollection (and evaluation) of the past activities of men and the society to orientate themselves amid the bewildering currents of human diversity." History is a *necessity*; "[i]ndividuals, communities, societies could scarcely exist if all knowledge of the

past was wiped out”⁹. As individuals without memory, find great difficulty in relating to others, in finding their bearings, in taking intelligent decisions, so is a society without history would be in a similar condition. History is for pleasure, for training the mind, and for practical guide to solving problems of human society. “It familiarizes us with variation in social forms, and cures us of a morbid dread of change”.¹⁰

If society needs to know and understand its past, it must certainly need history, so also must its leaders and administrators. Moreover, as Professor Levi-Strauss has rightly observed, “[t]hose who ignore history condemn themselves to not knowing the present because historical developments alone permit us to weigh and to evaluate in their respective relation the element of the present.”¹¹

The consequence of ignoring history would be disastrous. Any nation that ignored history certainly went adrift, because as Marwick rightly observed, “[a]s a man without memory and self knowledge is a man adrift, so a society without memory and self knowledge would be a society adrift”¹². In his *The New Nature of History*, Marwick re-emphasized the importance of history to human societies when he said, “[i]t is only through a sense of history that communities establish their identity, orientate themselves, understand their relationship to the past and to other communities and societies ... (thus), [w]ithout history (*knowledge of the past*), we and our communities would be utterly adrift on an endless and featureless sea of time.”¹³ History is indeed “a teacher of life”, teaching those who cared to learn, be he a king or subject, a nation or individual, rich or poor, so that he/she or it would not remain a child forever. For as the Greek Philosopher, Cicero, once said, “Not to know what took place before you were born is to remain forever a child”¹⁴. Evidence of a nation remaining a child would include political instability, discriminatory constitutional clauses, economic underdevelopment, religious strife and ethnic conflict, because the people of such a nation had either forgotten their history or they had at all not learned from the lesson of history (including histories of migration and

settlement, occupations, institutions, war, natural disasters, external influences, etc.). The discipline of history itself is a judge. No wonder, therefore, when a renowned German historian, Leopold Von Ranke said, “to history has been assigned the office of judging the past, of instructing the present for the benefit of future ages”¹⁵. Since history has been assigned such an important judicial and legal office and since history itself is “a series of accepted judgements”, the occupant of the office of *Court of History* must at all times be impartial, objective, uncompromising, incorruptible and fearless, because his ultimate aims are to uncover and preserve the truth and to do justice to all manner of people, living or dead, rich or poor, young or old, exalted or lowly in any human community. It is only the truth and justice that can heal national wounds, facilitate and sustain national conciliation; and not falsehood and media propaganda which can never bring sustainable peace. It is against this background that one goes to the *Court of History* to ask the controversial question: Did General Yakubu Gowon knowingly or unknowingly, by act of commission or omission cede Bakassi to Cameroon? We are now in the *Court of History* to interrogate the legal evidence and historical facts concerning Bakassi and General Gowon from 1884 to 1975, with a view to resolving the age-long controversy. *Fiat justitia* (may justice be done).

2. The Controversy:

In 1994, some Nigerian mass media including *African Concord* of March 7, 1994, reported that as part of Nigeria's strategy to defeat Biafra during the Civil War, Nigeria sought to close up the Gulf of Guinea through which Biafrans were using as platform to bring in weapons and other supplies and that the then Cameroonian President, Alhaji Ahmadu Ahidjo asked General Gowon for the Bakassi Peninsula in return for his country's cooperation with Nigeria, in blockading Biafra. The magazine further reported that Gowon, being eager to win the war, accepted the condition and that having desperately and gentlemanly accepted the Cameroonian conditionality, General Gowon and President Ahidjo met in Yaounde

in April 1971 and in May 1975 at Maroua to work out the agreement¹⁶. The 1975 agreement is popularly referred to as Maroua Declaration. In 2012, a former Nigerian Minister of Information, Walter Ofonagoro linked the alleged Gowon's ceding of Bakassi to Britain's advice to Gowon. Walter Ofonagoro, a Professor of History, authoritatively stated that, "obviously, Britain had encouraged Gowon to pledge Bakassi to Cameroon"¹⁷. Professor Ofonagoro concluded that the "Maroua Accord, therefore was only the honouring of the Civil War pact, and the reconfirmation of the pre-colonial Agreement between Britain and Germany"¹⁸.

Contrary to the media reports and scholars' opinions, General Gowon has consistently denied ever signing away Bakassi to Cameroon. In one of the interviews he granted the *The New* of March 21 1994, the Nigerian War Lord insisted that the Maroua Accord chiefly sought to restrain both Nigerian and Cameroon from exploring for minerals on the Peninsula. Gowon stated: "I never ceded any part of Nigeria to Cameroon as is being wrongly peddled in the press; and people... ought to know the truth"¹⁹. General Gowon's "truth" appears not to have convinced many Nigerians. Pertinent question is, what then was the "truth"? An objective answer to this question is important as it would help resolve the controversy thereby making Nigerians, including the generations yet unborn, to believe and have faith in the ICJ Judgement over ownership of Bakassi. The truth would be revealed if multi-causation approach is adopted in the explanation. Multi-causation approach rather than mono-causation would take certain compelling factors into consideration in reaching a conclusion(s). For the purpose of in-depth analysis that would unearth the truth, the study starts from 1884/1885 when the European Powers formulated rules that authorized and empowered them to begin to exert their official influence on African territories including Old Calabar, of which Bakassi was a part. What follows is a stage by stage account of how Bakassi was wished away to Cameroons.

3. The 1884 British Treaty with Old Calabar:

One of the consequences of the requests²⁰ made by the Kings and Chiefs of Old Calabar was the Anglo-Old Calabar Treaty concluded between Britain and the Kings and Chiefs of Old Calabar on 10th September, 1884, which was recognized by the Berlin Conference of 1884/1885. Lack of funds, delay on the part of the British, and resort to bribery on the part of Germany, combined to rob Britain of the opportunity of extending its jurisdiction to Cameroon in spite of the "offers repeatedly made by the native Chiefs in the Cameroon to place their territories under the English protection"²¹. On July 14, 1884, Germany occupied the Cameroons officially by raising German flag in several towns of the new protectorate. Consul Hewett had arrived Cameroon one week later to forestall the Germans there, but only to earn himself the title "Too Late" Hewett²². By this time, the Bakassi Peninsula was within the Old Calabar territory to be protected by the British.

The 1884 Treaty between Britain and Kings and Chiefs of Old Calabar is very relevant to our present study as it had influenced the World Court's judgement in the Cameroon v. Nigeria (2002) case over the ownership of Bakassi. It therefore deserves elaboration here. Articles I and II of the 1884 Treaty provided as follows: "Her Majesty, the Queen of Great Britain and Ireland, & C, in compliance with the requests of the Kings and chiefs, and people of Old Calabar, hereby undertakes to extend to them, and to the territory under their authority and jurisdiction, Her gracious favour and protection"²³. Article II stated: "The Kings and Chiefs of Old Calabar agree and promise to refrain from entering into any correspondence, agreement, or treaty with any foreign nation or power, except with the knowledge and sanction of her Britanic Majesty's Government"²⁴.

Taken together, the articles in the treaty set out the duties and obligations which the Kings and Chiefs and Britain had to uphold. On their part, the Kings, Chiefs and people of Old Calabar were forbidden to cede their territories to, or enter into treaties with other

foreign powers, namely France and Germany who were British rivals. In return for these and other treaty obligations, Britain on its part, very importantly, undertook to extend "her gracious favour and protection" to the Kings, Chiefs and people of Old Calabar, and to recognize the authority of the natural rulers over the territory under their jurisdiction. Therefore, to all intents and purposes, the 1884 Treaty was a treaty of protection.

The 1884 Treaty has had many implications not only on the Anglo-Old Calabar relations, but also on the Nigeria-Cameroon diplomatic intercourse over the years. For one, like the earlier treaties which Britain had concluded with the Kings and Chiefs of Old Calabar, the protection treaty created more problems than it sought to solve. Articles III and IV of the Treaty made the Consul the central figure in Old Calabar politics by stipulating that the Consul should adjudicate disputes between the Chiefs. The treaty encouraged the Consul to interfere in the internal political affairs of the Old Calabar unnecessarily. The British traders complained to the colonial office that Consul Hewett was undermining King Duke's authority by his interference, to the detriment of the safety of themselves and trade. Latham reported that in 1888, Consul Hewett fell out with Vice Consul Johnson to the extent that he rescinded some official notices which Johnson had issued, and which were viewed as "interfering too vigorously in local affairs".²⁵

According to Professor Afigbo, Old Calabar passed under full British control in April 1891 when Sir Claude MacDonald was appointed Commissioner and Consul-General to head the Oil Rivers Protectorate with headquarters at Calabar²⁶. With the magisterial power vested in him, the Consul-General became *de facto* ruler of the various groups in Old Calabar and therefore, a rival of the existing Kings and Chiefs. It appeared that the Consul-General's authority replaced that of the Kings and Chiefs of Old Calabar including Bakassi. Thus, it was the Kings and Chiefs of Old Calabar including Bakassi that unwittingly gave away their territory to Britain through their numerous requests for the British protection. Had the people of

Old Calabar not insisted on Britain protection, it is very certain that Old Calabar or part of it including Bakassi would have been colonized by either France or Germany. Perhaps, that would have been the arrangement until the outbreak of the First World War that brought about the mandate system and the division of German territories between Britain and France. By the 1884 Anglo-Old Calabar Treaty, the Kings and Chiefs of Old Calabar were tricked by the British to sign away their kingdoms as British Protectorates. The World Court held that that treaty was a treaty of protection.

4. **Anglo-German Agreement of 1893:**

The Germans had been seeking to take possession of the Bakassi Peninsula since 1893. In that year, the German merchants wanted to establish trading settlements on the Bakassi Peninsula proper, but they were prevented by the British to do so. This led to Anglo-German agreement of 14 April 1893 whereof Article 3 prevented the Germans from establishing any settlements on the Peninsula. After they had failed to achieve their aim of establishing settlement at Bakassi, the Germans made another request. In 1907, they requested for the frontier to be continued out to the sea at the point of reaching the month of Akwa Yafe, all the way to the middle of the Channel of the mouth of the Old Calabar River. This time around, Britain conceded to Germany perhaps because of Germany not being confrontational in its approach. Thus, "in exchange for not insisting on the impingement of the Calabar river channel, the British agreed to abrogate Article of the Old Anglo-German agreement of April 14, 1893 which had prevented the Germans from establishing trading settlement on the Bakassi Peninsula proper"²⁷.

5. **The Anglo-German Treaty, 1913**

The activities of rival agents (of Britain, France and Germany) who were determined to establish claims over villages in the hinterland of their coastal possessions, gave rise to the making of many treaties between the European powers especially after the

Berlin Conference of 1884-1885. For instance, the Germans were encroaching into the territory of the Royal Niger Company. As Arthur Cook had rightly observed, this rivalry situation seriously strained the relationship between Britain and Germany, so much that there was some talk of war 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 relation with Germany"²⁸. The two rival countries then began to enter into several treaties to delimit their boundaries. Accordingly,

On March 20, 1885, the English suggested 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. After some discussion this line was agreed upon, but the question as to the rights in hinterland north and east of the Cross River was still undecided²⁹.

As the boundary question was inconclusive, the frontiers of German Protectorate with Nigeria were agreed to by a series of treaties signed between Britain and Germany. In the far North and the Benue, the frontier of the protectorate of the Northern Nigeria with the protectorate of Cameroon was delimited by the joint Anglo-German Commission of 1893-1903 and 1909. In the coastal area (former Eastern Nigeria and Western Cameroon) the boundary was demarcated between 1903 and 1907, and agreements were signed in 1907 and 1913. Article XXI of the Anglo-German Treaty of 11 March 1913, delimited the Nigerian-Cameroon boundary as follows:

From 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 Akpayafe River as far as the 3-mile limit of territorial jurisdiction. For the purpose of defining this boundary, the navigable channel of the Akpayafe River shall be considered to lie wholly to the east of the navigable channel of the Cross and Calabar Rivers*³⁰.

Article XXII of the Treaty provided that "the 3-mile limit shall, as regards the mouth of the estuary, be taken as a line 3 nautical miles seaward of a line joining Sandy Point and Tom Shot Point".

6. **The Definition of Boundaries Proclamation of 1954**

The *Northern Region, Western Region and Eastern Region Definition of Boundaries Proclamation of 1954*, which was issued in pursuant to the Nigerian Constitution Order-in-Council of 1951, repeated the provisions of the Anglo-German Agreement of 11 March, 1913. Hence, "from the sea the boundary follows the navigable channel of the River Akpayafe, then follows the thalweg of the aforesaid River Akpayafe, upstream to its confluence with the Rivers Akpa-Korum and Eba"³¹. Thus, by Article XXI of the Anglo-German Treaty and Definition of Boundaries Proclamation of 1954, Britain had wished away Bakassi Peninsula to Germany without consulting with, or obtaining the consent of the Kings and Chiefs and people of Old Calabar. By this unilateral act, the British had breached the 1884 Treaty of Protection thereby violating the international law principle of *pacta sunt servanda*, which means agreement are binding on the parties that entered into them and must be kept.

It may be pertinent to ask: why did Britain cede the Nigerian territory of Bakassi to Germany? The answers to this question could

be found in British diplomatic history. First, as already stated, Britain desired to maintain friendly relations with Germany, particularly in Africa³². Second, Britain wanted German's support against France because "by this time the British had come to realize that France was the more dangerous rival... (and so) they were inclined to show favour to the less dangerous opponent"³³. Third, the British did not attach any economic value to the Bakassi Peninsula. By that time, Great Britain considered it as a "worthless zone of contention amounting to nothing but a strip of dismal swamp, peopled by a few miserable fisher-folk"³⁴. Had Britain known that Bakassi was/is very rich in mineral and aquatic resources, it is doubtful whether it would have generously ceded the Peninsula to Germany.

The effect of the 1913 Anglo-German Treaty can be briefly assessed. The Treaty unilaterally ceded the Nigerian territory to Bakassi to the Republic of Cameroon. Besides, it has been the major source of frosty relationship between Nigeria and Cameroon and the attendant crises, particularly in the Bakassi Peninsula. Furthermore, 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. The International Court of Justice almost solely relied upon the 1913 Anglo-German Treaty when it delivered its historic judgment on the *Cameroon v. Nigeria* case (2002). It held accordingly that:

*"The 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"*³⁵.

The World Court reached this judgment based on the 1913 Treaty and Maroua Declaration of 1975 without giving due regard to the 1884 Treaty, and in breach of the two oldest principles of

international law, namely *pacta sunt servanda* and *nemo dat quod non habet*. Nor did the Court 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 by not protesting against it, and in the negotiation instruments between Nigeria and Cameroon.³⁶

7. First and Second World Wars and Bakassi:

The First World War broke out in 1914 and ended in 1918. Britain invaded Cameroon in 1916, using Nigerian troops and carriers including indigenes of the present day Akwa Ibom and Cross River States. For allegedly starting the war, Germany was punished. As part of the punishment imposed on Germany by the European Powers through the Treaty of Versailles, all German possessions in the World including Africa, were divided among the European Powers, particularly Britain and France. The League of Nations was one of the international organizations created by the Treaty of Versailles to maintain world peace. The League created Mandate System placing the former German possessions in Africa under British and French mandates. To avoid conflict, the boundaries between the British and French mandated Cameroon were defined by the Franco-British Declaration of 10 July 1919. The boundaries definition was carried out by the British Secretary of State for the Colonies, Viscount Milner and the French Minister for the Colonies Henry Simon. The Milner-Simon Agreement placed Bakassi and the British Cameroon under British mandate. It should be noted that though this mandate was administered coterminous with Nigeria, it was not actually merged. It should also be noted emphatically, that the 1913 Anglo-German border agreement was retained. However, the Milner-Simon agreement had given back Bakassi to Britain that ceded to Germany in 1913. Was the Anglo-German Treaty of 1913 not breached or abrogated by the Milner-Simon agreement of 1919?

Sir Graeme Thompson replaced Sir Hugh Clifford as Governor of the Colony and Protectorate of Nigeria in 1926 and served until 1930. He, together with Paul Marchard, *Commissaire de la Republique Francaise au Cameroon* codified the 1919 Franco-British agreement by signing another agreement on December 29, 1929 and January 31, 1930. This agreement was ratified and incorporated in an exchange of Notes on 9 January 1931 between the French Ambassador and the British Foreign Minister in London. As in 1914, maps from 1930 showed Bakassi within British Cameroons and not in the colony and protectorate of Nigeria, without any protest by Nigerians, particularly the Old Calabar rulers and people.

Like the First World War, indigenes of Nigeria fought for the British during the Second World War, which lasted from 1939 to 1945. At the end of the War, the mandate granted Britain and France by the League of Nations over Southern and Northern Cameroons respectively, were replaced by the United Nations Trusteeship agreements. On December 13, 1946 the agreements were approved by the United Nations General Assembly of which Nigeria was a member. Importantly, these United Nations agreements re-ratified the existing borders as codified by the previous Anglo-German and Anglo-French agreements. As in the previous agreements, maps of Nigeria and Cameroon continued to show Bakassi in the Cameroons and not in Nigeria, without any protest by Nigerians.

8. Nigerian Eastern Regional Crisis and the Bakassi Question:

It was Britain that divided the British Cameroon into Northern Cameroons and Southern Cameroons on 2 August 1946. These two regions were now administered from colonial Nigeria. However, they were not part of colonial Nigeria. The detailed provisions describing the border separating the Northern and Southern Cameroons were spelt out in the 1946 Order-in-Council. Bakassi was in the Southern Cameroons sharing border with Eastern region, particularly Calabar Province. In order to avoid border

conflict, the British Secretary of State for the Colonies issued a legal order defining the border between Nigeria's Eastern Region and the Southern Cameroons in 1954. Maps of these regions had shown that Bakassi was in Southern Cameroon and not in Eastern Nigeria or Calabar Province and there was no protest by the government of Eastern Nigeria or by the rulers of Calabar Province against the inclusion of Bakassi in Southern Cameroon.

While Southern Cameroon including Bakassi was administered with Nigeria by the British, Dr. E. M. L. Endeley became President of the Cameroon National Federation in 1949. National Council for Nigeria and the Cameroons (NCNC) was the party in power in Eastern Region. Southern Cameroon joined the party. In May 1953, the Eastern House of Assembly was engulfed in crisis. The only Southern Cameroonian in the Eastern Executive Council named S. T. Muna was dismissed. Following the crisis, nine out of thirteen members from the Southern Cameroons opted for 'neutrality' claiming that they were not Nigerians but Cameroonians. They were however, elected on the platform of the National Council for Nigeria and the Cameroons (NCNC). The opting out of the Cameroonian politicians led to the name change of the party from National Council for Nigeria and the Cameroons to National Council of Nigerian citizens.

The Cameroonians politicians carried the bitterness to the 1953 London Constitutional Conference. At the Conference, the political leader of Southern Cameroon, Endeley, cited fear of "Nigerian domination" and requested for unconditional withdrawal of Southern Cameroons from the Eastern Region of Nigeria. He rather demanded for the transformation of his region into a separate region of its own in line with its UN trusteeship status. Great Britain granted the request and implemented the separation in 1954 making Southern Cameroons (including Bakassi Peninsula) a semi-autonomous quasi-region of Nigeria. Separate House of Assembly and Executive Council were established for Southern Cameroon with headquarters at Buea. Dr. Endeley was recognized as Leader of Government Business and not a Premier, mainly because Southern

Cameroons was not yet a full region³⁷. Nowa Omoigui³⁸ has noted importantly that “the Bakassi Peninsula which was part of Kamerun) Cameroon since 1913, as inherited in the League of Nations mandate after World War I, was also excused from co-administration with the Eastern region along with the rest of Southern Cameroons at that time. There is no evidence that anyone made an issue of the matter then” or even after regain in independence until after the overthrow of General Yakubu Gowon 1975.

Action Group (AG), a Yoruba dominated political party led by Chief Obafemi Owolowo, seemed to be happy over the political crisis in the Eastern House of Assembly and the subsequent opting out of the Southern Cameroonian politicians from the Igbo dominated NCNC. Dr. Endeley allied with the AG. However, in 1995 there was a split in Endeley's party and the AG could not help put the house together. Another Southern Cameroonian named John Ngu Foncha emerged as Endeley's rival on the platform of a new political party, Kamerun National Democratic Party (KNDP) whose chief aim was complete secession of Southern Cameroons from Nigeria. The party also sought unification with the Francophone Cameroon. The Leader of Government Business, Dr. Endeley, was accused of abandoning the separation and reunification he demanded for at the 1957 Constitutional Conference. He was also accused of seeking to reintegrate with Nigeria in disfavor of his former pro-unification stance. In January 1959, Southern Cameroon held election where Bakassi residents participated. Endeley was voted out of power and replaced by Foncha and his KNDP. Foncha was anti-Nigeria³⁹ just like E. T. Egbe whose pressure group, the Kamerun Society (KS) demanded for re-unification of the Southern Cameroons with the French Cameroons. This demand was carried to the 1959 London Constitutional Conference, which was held among other things, to discuss the political future of the Southern Cameroons.

9. **The 1958 Geneva Convention and Cameroon's Boundary Demand**

It would be recalled that the 1958 Geneva Convention on International Boundaries had fixed the boundary between Nigeria and Cameroon at the Rio del Rey which effectively included Bakassi in Nigeria's territory⁴⁰. Cameroon was reported to have been unhappy about the Geneva Treaty and was looking for an opportunity to reverse that treaty and to grab the disputed territory. It will be shown in this article that Cameroon grabbed the long awaited opportunity and therefore got the Bakassi Peninsula when General Gowon and Ahidjo negotiated the boundary in 1971-1975 and Gowon committed a technical error in marking the boundary lines.

10. **Willink Commission the Minority Question, 1958**

Willink Commission was set up on September 1958 to deal with the minority question in Nigeria. If the Nigerian politicians, particularly those of Eastern Region, were interested in Bakassi, they would have raised the issue of the Nigerian territory being ceded to Cameroon. Unfortunately, “no submission was made to the panel regarding the case of Bakassi Peninsula, considered then to be part of Southern Cameroon”⁴¹. Similarly, the minority's demands for creation of separate states or regions in Nigeria were swept under the carpet as the Political leader representing the major ethnic groups did not support the idea. Published on October 1958, the Willink Report recommended against the creation of new regions in Nigeria. In the resumed London Constitutional Conference, the Bakassi issue was again not mentioned. As noted earlier, the mid-1957 Constitutional Conference held to resolve issues preparatory to Nigeria's independence proposed for 1959, did not include Bakassi issue in its agenda.

Nigeria ignored the opportunity offered by Southern Cameroons for reunification with the Eastern Region of Nigeria. Nigeria still had the chance of demanding for removal of Bakassi after the 1959 elections. In those elections, Foncha's KNDP won

majority votes capturing 14 seats with 75,326 to the CPNC 12 seats with 58,069 votes. After the election, Foncha spoke the mind of the party and the people about the future of the Southern Cameroons and strongly needed the help from Nigeria when he declared thus:

As regards the political future of the Southern Cameroons the KNDP intends to redeem its promise to the electorate. Our people have mandated us through the polls to make secession, independence and reunification possible after a short period of a modified form of the UK Trusteeship agreement. *We can do no more than ask the rest of the Federation of Nigeria to assist us to achieve the aspiration of our people*, assuring Nigeria that the participation of Southern Cameroons in the Federation of Cameroons will mean the extension of their interests to the borders of French Equatorial Africa⁴².

Foncha's political declaration quoted above clearly shows that the Southern Cameroon needed Nigeria's assistance desperately to succeed in the face of mounting opposition from Endeley who severed Southern Cameroon from Nigeria in 1954. Nigeria should have seized the opportunity of Foncha's desperation for assistance to demand for excising the Bakassi Peninsula from Southern Cameroons to its pre-1913 territorial status in Old Calabar. Probably, Foncha and his party together with the traditional rulers would have had no option but to accept Nigeria's demand, at least in exchange for the anticipated assistance and good neighbourhood.

But Nigeria did not put up such territorial demand directly or indirectly at any forum, locally or internationally. It must be mentioned that throughout the political struggle in the Southern Cameroons, Nigeria participated directly or indirectly without raising any question about its ceded territory since 1913. While the NCNC was giving tacit support to the Southern Cameroons, the NPC supported the unification of the Northern Cameroon with Northern

Nigerian territory of Adamawa saying that, "we have been one and the same thing"⁴³. The UMBC/AG alliance wanted the territory to be independent from Adamawa or be an independent State under the absolute control of the Federal Government of Nigeria. Similarly, there is no evidence that the Nigerian political elite, particularly, the NCNC rejected the results of the 1961 plebiscite conducted in Southern Cameroon as done by the NPC in the case of the Northern Cameroons. They did not raise any issue about Bakassi as a territory of Nigeria before, during or after the plebiscite was conducted. A critical analysis of stage by stage events of the Southern Cameroon plebiscite compared with that of the Northern Cameroon plebiscite vis-à-vis the role played by the British government, UN, NCNC, NPC and Nigerian political parties shows that they did nothing to retrieve Bakassi from Cameroon to Nigeria⁴⁴.

11. *Exchange of Note, the Doctrine of Uti Possidetis and the Bakassi Question:*

The Exchange of Note and the doctrine of *Uti Possidetis* are another evidence implicating Nigeria on the Bakassi question. Nigeria's first Prime Minister, Alhaji Tafawa Balewa knowingly or unknowingly, directly or indirectly admitted that the Bakassi Peninsula was not part of Nigeria but integral part of Cameroon when he signed the *Exchange of Notes*⁴⁵ with Nigeria's former colonial master, the Great Britain. The Exchange of Notes states *inter alia* that:

...it is the understanding of the United Kingdom of Great Britain and Ireland that the Government of the Federation of Nigeria agrees to the following provisions: (i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall, henceforth, in so far as such instrument may be held to have application to Nigeria, be assumed by the Government of the Federation

of Nigeria...

The 1960 *Exchange of Note* is akin to the *uti possidetis* principle adopted by the Organization of African Unity (OAU). *Uti possidetis* is a Latin maxim in international law developed in South America by the European colonialists. According to the *Black's Law Dictionary*, *uti possidetis* means "the doctrine that colonial administrative boundaries will become international boundaries when a political subdivision or colony achieves independence."⁴⁶ It is a land law doctrine meaning as you possess, so shall you possess". It is a degree of the Praetor that the ownership of property in question should remain in the person in possession."⁴⁷ The OAU was formed by the independent States of Africa in 1963. The OAU was the first indigenous regional governmental international organizations that provided a common forum for deliberation of affairs of African State. It sought, *inter alia*, to speak with one voice against colonialism and new-colonialism by the Western Powers as well as against apartheid in South Africa; and to foster peace, unity and integration among African countries. The OAU had a Charter as its establishing legal instrument that guided the activities of member States. As a founding member, Nigeria had ratified the Charter since 1963. The Charter contained thirty three Articles. Article III, paragraph 3 of the Charter conveyed the principle of *uti posseditis* as binding on member States when it stated: "...respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."⁴⁸ Nigeria and other member States of the OAU (now African Union) are bound by this Article as far as boundaries inherited from their colonial masters are concerned.

Besides, Nigeria had ratified the July 1964 Cairo Declaration of the OAU that has committed African States to the inviolability of colonial borders created by the European Powers in Africa. The Cairo Declaration as conveyed by AHG/RES/16(1) "solemnly declares that all Member States pledge themselves to respect the border existing on their achievement of national independence." By ratifying the Cairo Declaration, Nigeria had, by implication confirmed its commitment to the Nigeria-Cameroon colonial border

including the transaction of the 1913 Anglo-Germany Treaty that ceded Bakassi. Nigeria's ratification of the Cairo Declaration had further confirmed its avowed commitments in the 1960 Exchange of Note with the United Kingdom and the 1962 Diplomatic Note 570 with Cameroon approving the results of the 1961 plebiscites in the Northern and Southern Cameroons.

In spite of these commitments on colonial boundaries, a number of border incidents were recorded in 1965, particularly in two Nigeria-Cameroon border villages of Boudan and Danare near the present Ikom Local Government Area in Cross River State of Nigeria. To stop the incident, a joint Nigeria-Cameroon boundary demarcation team was set up and sent to the area. The reason for the boundary incidents was that though, as confirmed in 1960, that the area was well demarcated by the colonial administration based on the 1913 Anglo-German Treaty, the beacons were too far apart. The job of the team, therefore, was to place inter-visible beacons along the old 1913 Anglo-German boundary. Unfortunately, the fixing of inter-visible beacons was suspended due to the first military coup d'état that took place in January 1966. The exercise was not resumed until after the civil war in 1970. As argued elsewhere by the present author⁴⁹, rather than taking radical actions that would have resolved once and for all the colonial boundary problems, Nigeria under Prime Minister Abubakar Tafawa Balewa declared that "these boundaries (with their problems) should be respected and in the interest of peace, must remain the recognized boundaries until such a time the people concerned decide on their own free will to merge into one unit" and that "Nigeria recognizes all the existing boundaries in Africa"⁵⁰. This implies that Balewa's government was strongly in favour of *uti posseditis juris*, being the principle of boundary maintenance. This principle was been followed by successive Nigerian governments.

12. Joint Committee of Experts Meeting and Agreements Between Nigeria and Cameroons:

In October 1970, a joint meeting of the Committee of Experts from Nigeria and Cameroons was held. The meeting ended with no

agreement on how to define the “navigable channel of the Akpa Yafe River up to where it joins the Calabar estuary. Evidently, there was no consensus amongst the Nigerian boundaries experts: while some said a compromise should be reached with Cameroons so that negotiations would move on, others objected to any compromise that would give any part of Nigerian territory to Cameroons. It has been reported that those who sought compromise were the higher authority at the Federal Surveys. Omoigui sadly lamented that, “unfortunately, though the Head of Boundaries... did not have the support of higher authority at Federal Surveys who felt that a compromise should be reached with Cameroons to allow negotiations proceed. This internal technical disagreement within the Federal Surveys which cost Nigeria several miles of maritime territory in the estuary and beyond did not come to the attention of General Gowon until it was too late”⁵¹. This is a revelation that should be taken seriously. For one, it shows that Gowon was not having an issue with Bakassi but the Maritime territory bordering Cameroon.

In April 1971, a summit meeting was held between the Nigeria Head of State, General Gowon and his Cameroon counterpart, Alhaji Ahmadu Ahidjo in Yaounde. Perhaps, due to the internal technical disagreement with the Federal Surveys, the Head of Boundaries did not attend the 1971 Summit meeting. Obviously, the internal disagreement, the absence of the Head of Boundaries at such an important meeting and more importantly, the compromise position taken by the higher authority at the Federal Surveys had caused General Gowon to commit a technical error while negotiating the boundary with the Cameroonians. At this meeting, Gowon and Ahidjo agreed to define the navigable channel of the Akpa Yafe River up to point 12.

Baye agrees with Omoigui⁵² that it was during the summit that Ahidjo asked his survey experts to stop arguing and requested Gowon to draw the line where he wanted it, and Gowon turned to his own technical experts for guidance. The 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 the 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 criss-crossed 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 channel⁵³. Were the technical experts and boundary negotiators whom Gowon had relied so professionally inexperienced such that they could not guide the Nigerian Head of State properly?

In June 1971 (i.e. two months after the drawing of the line), the Joint Boundary Commission again met in Lagos. The Nigerian team was led by Chief R. O. Coker while Mr. Ngo led the Cameroonian team. They extended the already faulty Gowon-Ahidjo “compromise line” outwards to the sea in what became known as the Coke-Ngo Line. A few weeks later, following the signing of the Coker-Ngo Line, Gowon discovered what had transpired: He had been misdirected to commit a technical error. He therefore looked for an opportunity to correct the mistake by all possible diplomatic means. In May 1972, the Joint Boundary Commission met, followed in August 1972 by a Summit meeting at Garoua. At the two meetings, General Gowon tried repeatedly to get President Ahidjo to agree to the reversal and renegotiation of the Gowon-Ahidjo/Coker-Ngo Line. Unfortunately, President Ahidjo did not accept General Gowon's renegotiation moves. Ahidjo had finally grappled what his country lost through the 1958 Geneva Convention on International boundaries and would not let go the Nigerian territory Gowon's mistake had pushed to Cameroons.

In 1974, Cameroon constructed an oil rig near the disputed maritime channel near the Bakassi Peninsula. Reportedly, the construction of the oil rig was done in the full view of the Nigerian Naval boats going to and from Calabar. Neither the Naval officers nor any government officials bothered to investigate the nationality of the rig. No one reported to the Nigerian authorities. This information was, however, brought belatedly to the Heads of State Summit meeting held in Kano in 1974 when the construction of the rig had

reached an advanced stage of completion. In a very fierce argument, Gowon tried unsuccessfully to get Ahidjo to remove the rig. Undoubtedly, President Ahidjo wanted to use the oil rig to stake a maritime boundary westwards towards Nigeria in the outer sea. A compromise was reached as the Cameroonian President refused to yield to Gowon's pressure. The compromise involved a "tiny kink" being made along the maritime boundary to accommodate the oil rig. "An oil rig was erected offshore by the Ahidjo government in 1974, and later in June 1975 in a highly reluctant compromise to accommodate the rig, Gowon conceded to a tiny part of Nigerian Maritime territory to Cameroon"⁵⁴.

However, the line was then course-corrected and extended southwest to point G along the original angle as if the rig was not there at all. In other words, the rig was hidden to Cameroonians' advantage. Pertinent questions are: (i) why was the rig hidden? (ii) why did Gowon compromise again? As shown above, in 1971 Gowon committed a technical error that led to 3-mile compromise line. (iii) Having known fully that Cameroon constructed the oil rig on Nigerian territory, why didn't Gowon forcefully remove it therefrom as diplomacy had failed? All the Gowon government did was to place an arrow at point G end making a vector to prevent Ahidjo from constructing more rigs across the boundary that was not yet marked. That did not in fact prevent Cameroon from encroaching further into Nigerian territory. Another meeting was held between the two Heads of State at the Border town of Maroua on 29th 31st May 1975. This three-day meeting gave rise to a bilateral agreement popularly termed "Maroua Declaration" of June 1, 1975. At the conclusion of the meeting, Gowon and Ahidjo who represented their countries as Heads of State, agreed to a new boundary defined as follows:

The boundary line runs West along a line parallel to and three miles from the straight line joining Tom Shot Point and Sandy Point up to a Point A longitude 08°24', East and latitude 04°31'20' North, along a straight line

to a Point A1 long 08°26'32 Lat 04°24'20 one kilometer East of Buoy No. 2. From Point B the boundary runs through a Point C log. 08°23'4'E Lat 08°23'25 North one kilometer East of Buoy No.1 to a Point D (Long 80°22' 41E), Lat 04°200" where it intersects (Lat 04°20). From Point D it runs South West to a Point F (Long 08°2'19E) of fairway Buoy, from where it runs further South, parallel to the Meridian 08°25' to a Point G (long. 08°22', Lat 04°18" 17'N) on the Admiralty Chart No. 3433⁵⁵.

Just a month after this reluctant compromise, Gowon was overthrown in a military coup d'état on July 29 1975. Consequently, the new regime decided to question the 1971 and 1975 Gowon-Ahidjo Maritime agreements "either without really understanding the issues or by acting mischievously"⁵⁶. In no time the country got the impression that Gowon had given away the Bakassi peninsula to Cameroon to compensate for President Ahidjo's neutrality during the Nigerian Civil War, an unfortunate and totally false notion which persists in many quarters to this day"⁵⁷. Thus, the origins of the false story of Gowon's ceding of Bakassi could be traced to Nigerian military politics in the post-civil war period.

Summary/Conclusions

This article has made many revelations. The central argument in the article is that Bakassi had been ceded to Cameroon more than one century before General Gowon was born. Negotiations for the ceding of Bakassi started in 1884/1885 when the *General Act of the Berlin Conference*, a legal instrument, authorized the European powers to carve out and take possession of African territories as their own. Even if General Gowon did not sign any treaty with his Cameroonian counterpart, the World Court would have still ceded Bakassi to Cameroon based on the 1884 Anglo-Old Calabar Treaty,

the 1885 *General Act of the Berlin Conference*, the 1913 Anglo-German Treaty and independent Nigeria's acquiescence of these international agreements. Through the Exchange of Note, the *uti posseditis* doctrine, OAU Charter, Cairo Declaration and Prime Minister Balewa's pronouncements, the independent Nigeria had since 1st October 1960 inherited, freely, all the international boundary treaties signed by Great Britain with other European Powers in Africa. Such treaties include the Anglo-French and Anglo-German Treaties concerning Nigerian boundaries with Niger, Chad, Dahomey (now Benin Republic) and Cameroon including Bakassi.

The Gowon's bilateral agreements with President Ahidjo appear to be more on the maritime territory bordering Cameroon than that concerning Bakassi *stricto sensu*. It is further revealed that it was not General Gowon that compromised but some technical experts in the Nigerian Boundary Commission in Lagos that compromised a tiny Nigerian territory Cameroons during the 1970 boundary negotiation. Gowon was mistaken to build his negotiation on the faulty compromised line. Gowon was not and is not a boundary expert. Therefore, the blame emanating from the technical error in cutting Nigerian maritime territory into the Cameroonian territory should go to the Nigerian boundary experts who misguided Gowon when he drew the line on the map. When Gowon realized the mistake, he did everything diplomatically to impress upon President Ahidjo to allow renegotiation of the boundary so as to correct the error, but President Ahidjo adamantly refused to go back to negotiation table.

Endnotes

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