

MODERN LAW JOURNAL

VOLUME 1, MARCH 2008



**A Publication of the
DEPARTMENTS OF PUBLIC AND PRIVATE LAW
FACULTY OF LAW, UNIVERSITY OF UYO, UYO, AKWA IBOM STATE, NIGERIA**

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**Editor-in-Chief
Professor E. E. Essien**

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THE MONTEGO BAY CONVENTION OF THE LAW OF THE SEA FOR THE MARITIME BOUNDARY BETWEEN NIGERIA AND CAMEROON

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INTRODUCTION

Delimitation of maritime boundaries can be said to be a process whereby States establish their coastal boundaries as it relates with neighbouring States, subject to certain circumstances¹. Delimitation of maritime boundaries has for a long time now become a lively issue in the international community because of the agitation of states for their economic rights over specific areas of the sea. Following the entry into force of the United Nations Convention of the Law of the Sea, 1982² and its ratification by more than 80 States, more states are searching to define their maritime boundaries and its limits vis-à-vis other states.

This paper examines the application of the Montego Bay Convention of the Law of the Sea (i.e. UNCLOS III)³ for the maritime boundary between Cameroon and Nigeria, a case decided in 2003 by the ICJ⁴. Nigeria and Cameroon have been sharing, before now, an undefined maritime boundary in the areas surrounding the Bakassi Peninsula and adjoining waters with the Gulf of Guinea. This boundary became a subject of dispute when Cameroon in 1994 commenced a maritime delimitation action in the ICJ challenging the maritime boundaries of the aforementioned area.⁵

According to Article 15 of the Montego Bay Convention cited above, "Where the coasts of two States are opposite or adjacent to each other, neither of the States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial zones of each of the two States is measured.

The above provisions do not apply, however, where it is necessary for reason of historic title or other special circumstances to delimit the territorial sea of the two states in a way which is at variance herewith."

It is pertinent to say that Article 15 of UNCLOS III follows basically Article 12 of the Geneva Convention of Territorial Sea, 1958.⁶

The Sea may be divided into various Zones such as the: -

¹ Guided by several International laws e.g. Article 15, 74, 83, of UNCLOS III. States are countries

² Hereinafter called UNCLOS III OF 1982

³ Nigeria and Cameroon had both ratified the UNCLOS II of 1982 in 1986 and 1985 respectively Article 74 and Article 83 of UNCLOS III also contain similar provisions on the maritime boundary delimitation for both the Exclusive Economic Zone and the Continental Shelf of opposite/adjacent Coastal States.

⁴ The International Court of Justice delivered its judgment on this case on the 10th of October, 2002.

⁵ See verbatim facts in (2002) FWLR Pt. 133 p. 203

⁶ See Malcolm Shaw: International Law, 4th Ed Grotius Publishers, UK, 199 P. 439.

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(1) internal waters, (2) territorial sea and contiguous zones, (3) other zones in which States have special interests (i.e. the Exclusive Economic Zone and the Continental Shelf) and (4) The High Seas.⁷ However, it must be noted that the internal waters technically speaking is not part of the Sea⁸ A brief historical review of the delimitation of sea boundaries among States will therefore serve as a useful backdrop in this article.

DELIMITATION OF THE SEA BEFORE AND IN THE 1982 CONVENTION OF THE LAW OF THE SEA

The Sea was originally free to every State and no State was allowed to lay claims of sovereignty over the sea up to the first half of the Middle Ages.⁹ By the second half of the Middle Ages, some states had started laying claims to parts of the sea as being subject to their sovereignty e.g Sweden and Denmark claimed sovereignty over the Baltic and Great Britain over the Narrow Sea.¹⁰

These claims and counterclaims became a source of discord among States until Queen Elizabeth of England in 1580, while responding to a Briton¹¹ sailing on the Pacific Ocean in disregard of interdictions proclaimed that the Sea is the common property of mankind. This was followed up in 1609 by Grotius, a renowned Philosopher who in his short treatise "*Mare Liberium*"¹² postulated that since nobody can take possession of the Sea by occupation, then the Sea is *res communis* i.e. free to all nations.¹³

"*Mare Liberium*" met with great opposition, prominent among which was "*Mare Clausum*"¹⁴ propounded by John Selden who clearly stated that maritime powers could claim sovereignty over several portions of the Sea and even suggested that Grotius should be punished for writing "*Mare Liberium*".¹⁵ However, "*Mare Liberium*" prevailed and Britain also joined the vanguards for the freedom of the sea despite supporting "*Mare Clausum*".

Questions concerning the use of the sea for navigation and laying of submarine cables as well as claims to possession of wider areas of the sea by states for economic purposes especially in respect of fisheries, therefore became a matter of international concern from the latter half of the nineteenth century. This no doubt, began to have tremendous influence on the development of customary international law in the maritime area, one of such being that coastal states could claim such part of the sea from the coast, as

⁷ See M. Akerhurst: *Modern Introduction to International Law*, London, 1978 P. 161

⁸ M. Shaw: *Ibid* p. 393 and Article I of the UNCLOS III of 1982, which says internal waters, are part of the land ward side of territorial sea.

⁹ L. Oppenheim: *International Law: A Treatise*, 1966 p. 582

¹⁰ Oppenheim: *Ibid* p. 583

¹¹ Sir Francis Drake, in disregard of Interdictions by Spain.

¹² Meaning "Open Sea"

¹³ M. Shaw *Ibid* P. 390. See also Umozurike; *International Law*, 1999 p. 113

¹⁴ Meaning "Closed Sea"

¹⁵ See Open Heim *Ibid*

was necessary for their security or to the extent as they could exercise effective control.¹⁶

THE TERRITORIAL SEA

Article 2 of the Geneva Convention on Territorial Sea and Contiguous Zone, 1958 and Article 2 of the UNCLOS III of 1982, define the territorial sea of a coastal state as "the belt of sea adjacent to its coast". The term "territorial sea" is used interchangeably with territorial waters. Various theories have been postulated to determine the width of the territorial sea. There was a "Two-day sailing Theory", which was to the effect that the territorial sea was the extent a ship could sail in two days from the shores of the coastal state. The "Visual Range Theory", which was the extent the eyes could see from the shores of the coastal state and was considered approximately fourteen miles¹⁷. There was the "Canon Shot Theory" propounded by Cornelius Van Bynkeshock, which was to the effect that the width of the territorial sea was the range which a cannon shot, can achieve when fired from the shores of a coastal state. This, like the above two theories did not express the width of the territorial sea in definite terms as it was given a three miles approximate optimum range subject to the manufacture of heavier guns which could attain longer distance.

After the "Canon Shot Theory" came the "Three-Mile Theory", which gained considerable acceptance as it favoured developed states who had the technological know-how to exploit the vast open sea. This led to some developing states claiming as much as 200 miles distance for their territorial sea; yet others claimed between 4 and 12 miles territorial sea¹⁸. Nigeria claimed 12 miles in 1967 and increased it to 30 miles 1971¹⁹.

These conflicting claims made it very necessary for a uniform legal regime to be propounded by the international community on the delimitation of the territorial sea. However, the Hague Codification Conference of 1930, the First Geneva Convention on the Law of the Sea (UNCLOS I) and Second of 1960 (UNCLOS II) were unable to agree on the width of the territorial sea²⁰ and thus the discord raged on.

In the case of territorial sea boundaries between opposite or adjacent states, a negotiable agreement to that effect was a pre-requisite failing that section 12 of the 1958 Convention provided that neither of the States was entitled to extend its territorial sea beyond the median line equidistant from the nearest point of the baseline except this was dictated by historical title or other special circumstances. State practices on same were not consistent. Some states adopted the median line; others adopted the perpendicular line to the general

¹⁶ E. Essien, *Essays in International Law of the Sea*, Golden Educational Publishers, Uyo, 1994 p. 4

¹⁷ Oppenheim *Ibid* at p. 490

¹⁸ Umozurike, *Ibid*, p. 100;

¹⁹ Umozurike *Ibid* p. 101

²⁰ M Dixon, *textbook on International Law*

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direction of the coast and since they could not resolve their boundary disputes, the limit of the territorial sea remained uncertain.

However, the controversy as to the legal regime of the territorial sea was fairly resolved with the coming into being of the United Nations Convention on the Law of the Sea III, 1982 as per Article 3 of the Convention, which provides that the territorial sea of every State does not exceed a limit of 12 nautical miles measured from the baseline of its coast²¹. Within this area, the State exercises full sovereignty over its territorial seas, the subjacent, subsoil and the super adjacent air space only to the right of innocent passage of foreign ships and the protection of the marine environment.

It must be noted that the Coastal States have rights such as right of fishing, navigation and trade, mining, legislation making, on customs, sanitation, security, taxations etc examining criminal jurisdiction amongst others over the territorial zones. This full sovereignty is however subject only to the right of "innocent passage" for foreign ships and protection of the marine environment²²

THE EXCLUSIVE ECONOMIC ZONE²³

The UNCLOS III also established a new sea zone known as the "Exclusive Economic Zone" which gives states exclusive right in their enjoyment of economic resources prominent among which are hydrocarbons and marine fisheries within the breadth of which the territorial sea is measured. It is an intermediate area between the high sea and the territorial sea with a distinct regime of its own. UNCLOS II, many States had laid claims to several maritime zones. It was in 1945 that President Harry Truman of United States of America issued two proclamations relating to the E.E.Z. and announced that the United States will regulate fisheries in those areas of the high seas contiguous to its coast but that these zones would continue to be High Seas with no restrictions on navigation. This can be said to be the genesis of the Exclusive Economic Zone²⁴

Following the example of the United States, a number of other states also made similar claims to exclusive fishery zones in their territorial water. Some States even unilaterally extended their claim to an exorbitant and exaggerated 2000 nautical miles limit. This led to maritime claims escalating until the coming into existence of the 1982 UNCLOS III.

Indeed, the Truman Declaration did not specifically mention "Exclusive Economic Zone. As a matter of fact, the historical origin of EEZ is traceable to 1945, when during the preparations for UNCLOS III, the Kenyan Ambassador, Njenga advanced the concept for the first time at the Asian-African Legal

²¹ Baselines are defined as the low water mark around the coast of the State. See also Shaw Ibid 394

²² See Articles 29-32 of the 1982 Convention.

²³ Abbreviated to EE.Z

²⁴ E. Essien, Ibid p.21

Consultative Committee (AALCC) in Columbia, 1971²⁵ It indeed, was a compromise between the developed states (e.g. Japan, USA, USSR and Britain) which stuck to the traditional three miles territorial sea and the developing states (mostly, African and Latin American countries) some of which made exaggerated claims of up to 2000 nautical miles territorial sea that led to the agreement to make the territorial sea limit 12 nautical miles and the EEZ 200 nautical miles.

Thus, while the developing states obliged the developed states by agreeing to narrow down the territorial sea (12 nautical miles), the developed states in turn agree to the developing states exclusive exploitation of the 2000 nautical miles zone but to the understanding that the zone in excess of 12 nautical miles territorial sea is not within the coastal states sovereignty. Thus, fisheries together with some political cross-currents dictated the agreement on the EEZ and its limits.

THE CONTINENTAL SHELF

According to Article 76 of the UNCLOS III, the continental shelf of a coastal state comprises the seabed and subsoil the submarine areas that extend beyond its territorial sea, throughout the natural prolongation of its land territory to the outer edges of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance. Article 76(3) further describes the continental margin as comprising submerged prolongation of the land mass of the coastal state and consisting of the sea bed and sub-soil of the shelf, the slope and rise, but does not include the deep ocean floor in its oceanic ridges or the subsoil thereof. This area is rich in natural resources such as Oil, Petroleum, Coal, Gold, Uranium, a variety of sedentary fishes etc. Thus, some states claimed, before 1982 UNCLOS III, either exclusive jurisdiction and control or sovereign rights over the mineral and living resources of the seabed and sub-soil. Also Latin American states even extended their sovereignty over, not only the seabed and subsoil of the continental shelf, but also the superjacent waters and airspace above it.

The general recognition of the continental shelf principle represented the culmination of a trend which began in 1945-1951, when by a unilateral declaration, President Truman of USA issued two proclamations, one being that the United States regards the natural resources of the subsoil and the seabed of the continental shelf beneath the High Seas but contiguous to the coast of the United States as appertaining to the United States, subject to its jurisdiction and control.

There was no uniform method of delimiting the continental shelf and states like the United States of America adopted the depth criterion of 600 feet, and a distance criterion of 200 nautical miles. This created uncertainty over the

²⁵ Enefiok Essien, *Ibid* p. 24 and read further.

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exact position of international law in this area. Thus, the International Law Commission 1950 ensured that through out the two United Nations Geneva Conference of the Law of the Sea, foundation was laid for a peaceful delimitation of the continental shelf. This has finally been laid to rest by Article 76 of the UNCLOS III, which has clearly stated the limit of the continental shelf to be 200 nautical miles

CASE CONCERNING THE LAND AND MARITIME BOUNDARY BETWEEN THE CAMEROON AND NIGERIA²⁶

On 29th March 1994, the Government of the Republic of Cameroon instituted proceedings against Nigeria in respect of a dispute over the sovereignty of the Bakassi Peninsula and its adjoining waters within the Gulf of Guinea, which Cameroon claimed as being part of its territory. Cameroon maintained in its application that the delimitation of the land and maritime boundary between it and Nigeria²⁷ had remained a partial one and that despite many attempts to complete the delimitation, the two states have been unable to do so, and thus needed the intervention of the International Court of Justice²⁸ to so do, in order to avoid further incidents of clashes between the two states.

A further application was brought by Cameroon claiming sovereignty over a part of Lake Chad located nearby. It also asserted, and sought the declaration of the ICJ, that Nigeria had violated the fundamental principle of respect of frontiers inherited from colonization by using force against Cameroon and militarily occupying the Cameroonian Bakassi Peninsula and the above stated part of Lake Chad. It further stated that Nigeria was violating its obligations under international treaty law and customary law and thus urged the ICJ to proceed to prolong the course of the maritime boundary with Nigeria, up to the limit of the maritime zones of territorial sea, the Exclusive Economic Zone and the Continental Shelf of both countries. Cameroon further prayed that as a result of the repeated incursions of Nigerian troops and armed forces into Cameroonian territory and consequent grave incidents resulting in great damage on Cameroon, the ICJ should determine the amount of reparation due from Nigeria to them.²⁹

It is the case that, the Bakassi Peninsula and the disputed areas of Lake Chad contain very high deposits of petroleum and other mineral resources, which aroused Cameroon's keen interest in the maritime and land delimitation of the areas.

Cameroon contended that the Anglo-German Agreement of 11th March, 1913, which was signed between Great Britain and Germany (of which Cameroon was a colony) had fixed the course of the boundary between Cameroon and Nigeria, placing the Bakassi Peninsula on the German side of

²⁶ (2002) FWLR pt. 133 p. 202 or

²⁷ Both States are adjacent states that are located on the west coast of Africa and their land boundary extends to Lake Chad in North

²⁸ Hereinafter referred to as the 'ICJ'

²⁹ (2002) FWLR pt.133 p. 202

the boundary (later to be Cameroon's) and hence, when Cameroon and Nigeria acceded to independence, this boundary became that between the two countries (States), and are thus bound by the principle of "*uti possidetis*"³⁰ Cameroon further relied on the Yaounde II Declaration of 1971 and the Maroua Declaration of 1975 and contended that Nigeria was bound to respect the agreement with Cameroon in which the maritime boundary was extended on agreement, further, in favour of Cameroon and safely placed the disputed areas on Cameroonian territory.³¹ Cameroon pleaded for the equitable principle to be adopted in delimiting their maritime boundaries in such a way that will be beneficial to both states.

Starting with preliminary objections which included the ICJ's lack of jurisdiction to determine the case, but having such objections overruled by the ICJ, Nigeria on the other hand took a contrary position and contended that the Anglo-German Agreement of 1913 was defective and ineffective because title to the Calabar lands (of which Bakassi Peninsula was a part) lay with the Kings and Chiefs of Old Calabar and thus Great Britain did not have sovereignty over the area nor good title which it could have passed to Germany³². Nigeria also contended that the Anglo-German Agreement was defective on the grounds that contrary to the preamble to the General Act of the Conference of Berlin of 26th February 1885, it was not approved by the German Parliament and thus was abrogated as a result of Article 289 of the Treaty of Versailles of 1919.³³

It was also the contention of Nigeria that the Maroua Declaration of 1975 which General Gowon³⁴ had signed, further acceding to the sovereignty of Cameroon over the Bakassi Peninsula and the disputed area of Lake Chad by delineating the maritime boundary in favour of Cameroon, was invalid as it was never ratified by the Supreme Military Council of Nigeria according to international practice.³⁵

Nigeria had raised the fact that since Cameroon's maritime claim bordered on Equatorial Guinea waters and Equatorial Guinea was not a party to the case, such a claim was inadmissible. It further stated that under Article 74 and 83 of UNCLOS III, states are under an obligation to negotiate in good faith with a view to agreeing on an equitable delimitation of their respective boundaries, before rushing to the ICJ as Cameroon did. Nigeria stressed the need for states to respect existing rights to respect third party maritime claims. Nigeria had emphasized that the territorial waters of both states were divided by a median line boundary, the Rio Del Rey³⁶ beyond which the respective

³⁰ Respect for treaties and obligation to carry out its terms.

³¹ Cameroon also relied on various treaties between it and Nigeria to buttress its claims like Yaounde I Declaration, Franco-British Convention of 1906. The Franco-German Convention of 1908 e.t.c.

³² Nigeria relied on "*Nemo Dat Quod Non Habet*" – You cannot give what you do not have (legal maxim)

³³ In relation to the Treaty of Versailles, Nigeria indicated that Article 289 provided for "the revival of pre war bilateral treaties concluded by Germany on notification to Germany of the other party.

³⁴ Nigeria's Head of State as at then.

³⁵ Point 12 to point of the Admiralty Chart NO. 3433 annexed to the Maroua Declaration.

³⁶ An Island

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maritime zones of the parties are to be delimited, in accordance with the principle of equidistance³⁷ to the point where the line so drawn meets with the median line boundary with Equatorial Guinea.³⁸

Furthermore, it was the contention of Nigeria that since the disputed areas of Lake Chad were long occupied by Nigeria with effective administrative powers of Nigeria and manifestations of sovereignty without any protest by Cameroon, their areas should be adjudged Nigeria's territory against the earlier claims of Cameroon, thus denying its responsibility for reparations owed to Cameroon for previous military actions in the disputed area. Equatorial Guinea a bordering third party state intervened and made a written request to the ICJ asking that the Court should not delimit any maritime boundary between Cameroon and Nigeria in areas lying close to the coast of Equatorial Guinea but should limit the delimitation to the coast of the contending states.

It must be emphasized that Great Britain before 1913 had entered into a Treaty of Protection in 1884 with the Kings and Chiefs of Old Calabar in which Great Britain was under an obligation to protect old Calabar territories and the Calabar Chief and Kings were under an obligation not to enter into any business or political affiliations with any other foreign power without the knowledge of Great Britain. It was considered by Nigeria to be back stabbing when Great Britain ceded some parts of Old Calabar territory (including Bakassi Peninsula) to Germany without the knowledge and consent of the Kings and Chiefs of the Old Calabar region which it had agreed to protect.

The ICJ in its judgment dated the 10th of October 2002, held that the Kings and Chiefs of the Old Calabar territory were not regarded as states but as individual townships and were not a protectorate of Britain. Thus following the Anglo-German Agreement of 1913, the Bakassi Peninsula which was part of Great Britain territory was validly ceded to Germany, later to become part of Cameroon's territory. The ICJ heavily relied on the Anglo-Germany Agreement to determine the case considered herein.

The ICJ also held that the Maroua Declaration of 1975 and Yaounde II Declaration had agreed with Cameroon to further shift the maritime boundary between the two states, understanding Bakassi to be Cameroon's territory.³⁹ These Nigeria's alleged activities in the disputed areas⁴⁰ such as establishing schools, use of Nigerian flags, use of Nigerian passports, greater population of the people using Nigerian historical consolidation of title e.t.c were held not to be enough to displace Cameroon's title to the disputed areas especially based on the Anglo-Germany Agreement of 1913.

³⁷ This was denied from Article 15 of the UNCLOS III, which is now in focus

³⁸ See also page 286 of (2002) FWLR p. 33

³⁹ Page 366 of 2002 FWLR pt. 133 Cameroon V. Nigeria

⁴⁰ That is actions proving sovereignty over a territory.

The Court further held that since the Anglo-German Agreement of 1913 was valid, the territorial title to Bakassi Peninsula lay with Cameroon thus the boundary between the two states lay to the East and not Rio Del Rey as claimed by Nigeria. The Court also found the Maroua Declaration as being valid, despite the fact that the Nigerian Head of State had signed it but could not get it ratified by the Supreme Military Council of Nigeria⁴¹ and thus, there was an agreement to extend the delineation of its maritime boundary from point 12 to point G... (on the Admiralty Chart No. 343 annexed to the Declaration (Held 17) and in accordance to the maps filed by Cameroon at the ICJ.

The Court further held that neither of the states had proved damages (which is the basis of the reparations) or their imputability to the other party and thus the Court was unable to uphold either Cameroon's submission or Nigeria's counter-claims based on the incidents cited for which reparations were sought.

THE IMPLICATION OF ARTICLE 15 OF UNCLOS III ON CAMEROON V. NIGERIA HEREIN

The ICJ had in its judgment⁴² said that the Court's task is accordingly to determine, with effect from point G a single line of delimitation for coincident zones of jurisdiction within the restricted area in respect of which was to give its ruling in the above case. For this, it relied on the cases of *Delimitation of Maritime Boundary in the Gulf Marine Area, Canada V. United States of America*⁴³ *The Maritime Delimitation in the Area of between Greenland and Jan Mayer (Denmark V. Norway)*⁴⁴ and the *Maritime Delimitation and Territorial Questions between Qatar Bahran* (ICJ Report 2001) by asserting that the method of the equidistance/special circumstances rule applicable in the delimitation of the territorial sea of adjacent/opposite countries (i.e. first drawn for equidistance line, then considering whether there are factors calling for the shifting of that line in order to achieve an equitable result) also applies in delineating both the continental shelf and the exclusive economic zones of the states. This it must be emphasized happens when there is no agreement on delimitation of their maritime boundaries by the state. In this case, there was no agreement by the states on these portions of their boundaries. Article 74 and Article 83 of the UNCLOS III which guides the delimitation of line covering these zones of coincident jurisdictions, are to the effect that in the delimitation of the abovementioned zones, opposite or adjacent coasts shall be effected by agreement on the basis of international law based on Article 38 of the statute of ICJ and if there is no agreement, the matter is to be referred to the dispute settlement procedures set out in Articles 83 (2) and 72 (2) of the convention.

⁴¹ The Court relied on the international customary practice. Vienna Convention on the Law of Treaties that some treaties enter into force immediately after signature.

⁴² Held 19, p. 249

⁴³ ICJ Reports 1984 p. 327 par. 194

⁴⁴ ICJ Reports 1993, Judgment p. 6

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The Convention provides further that pending agreement on boundary delimitation of the EEZ and the continental shelf, the states concerned shall make every effort to enter into provisional arrangements so as not to jeopardize the final delimitation. They are expected to set aside the boundary dispute and jointly explore and develop the resources of the disputed area pending the final delimitation.

The Court had stated in its judgment that on the issue of maritime delimitation of the territorial sea, the Exclusive Economic Zone and the Continental Shelf, the requirements of Articles 15, 74 and 83(2) of UNCLOS III must be observed and such delimitation will be achieved by determining the median or equidistance line from the baseline from which the breadth of the territorial sea of each state is measured, and then considering whether there are special circumstances/relevant factors to be taken into account which may result in a deviation from such a line. The factor of historical title is specifically mentioned in Article I of UNCLOS III.⁴⁵

Cameroon had argued that the law of delimitation of boundaries is dominated by a fundamental principle that any delimitation must lead to an equitable solution and that since the adoption of the equidistance rule (according to Article 15) would lead to inequity, it proposed its own delimitation line based on the fact that if a strict equidistance line was drawn, it would be entitled to practically no exclusive economic zone or continental shelf. It also said that the relevant circumstances to be considered in line with Article 15 of UNCLOS III are: the overall situation of the Gulf of Guinea, where the continental shelves of Cameroon, Nigeria and Equatorial Guinea overlap, the concavity of Cameroon's coastline, the relative length of the coastline involved e.t.c.⁴⁶ relying further on several cases⁴⁷

Cameroon still relying on Article 15, 74 and 83 of UNCLOS III asked the ICJ to delimit the maritime areas appertaining respectively to Cameroon and Nigeria beyond point G, i.e. from point G, the equitable line follows the direction indicated by points G, H (coordinates 8° 21' 16" east 4° 17' north), I (7° 55' 40" east and 3° 46' north), J (7° 12' 08" east and 3° 12' 35" north), K (6° 45' 22" east and 3° 01' 05" north) and continues from K... to the outer limit of the maritime zones which international law places under the respective jurisdiction of the two parties.

Nigeria on the other hand, depended on the applicability and implication of Article 15 amongst other Articles,⁴⁸ and agreed that it is appropriate to determine a single maritime boundary based on this but contended that the delimitation should be first based on the principle of equidistance line, after

⁴⁵ This is in order to achieve an equitable solution.

⁴⁶ See page 389 of (2002) FWLR pt. 133

⁴⁷ North Continental Shelf Cases, ICJ Reports 1969, p. 4, The case concerning Delimitation of Maritime Boundary in the Gulf of Maritime Area, ICJ Reports 1984 p. 246, Jan Mayen Case, ICJ Reports 1993 e.t.c.

⁴⁸ Particularly Article 74 and 83 of UNCLOS III

which it could then be adjusted to take into account other relevant circumstances. It further contended that Cameroonians clamour for "equitable delimitation" will radically refashion the physical geography of the intervening state i.e. Gulf of Guinea and also affect oil licences already granted by Nigeria, a relevant fact which the Court had to take into consideration in delimitation according to Article 15, 74,83 of UNCLOS II⁴⁹

Based on these Provisions, Nigeria contended further that cases relied on by Cameroon only demonstrate the limitation of equity as nothing done in those cases can justify a radical departure from the methods, rules and legal principles of maritime delimitation as prescribed by Article 15, no matter how fanciful the "equitable" position may be.

The ICJ on its own part appreciated the Implication of Article 15, 74 and 83 of the UNCLOS III and stated that it could not accept the "equitable principle of delimitation" as canvassed by Cameroon and leaning on the North Sea Continental Shelf Cases earlier cited in this paper, stated that, "equity does not imply equality" and in a delimitation exercise, there can never be any question of completely refashioning nature. It however was strict in relying on Article 15 of UNCLOS III when it found that there were no circumstances existing that would make it necessary to adjust a single delimitation line based on the principle of equidistance. It further stated that that oil practice canvassed by Nigeria is not a factor to be taken into account in the maritime delimitation in the case herein examined.

The writer opines that Article 15 of UNCLOS III which was relied upon by the ICJ in delivering its judgment, was not fully explored and applied by the Court as expected. This belief of the writer is based on the later part of the Article 15, which stipulates that,

"..... the above provisions do not to apply where it is necessary by reason of historic title or other special circumstance to delimit the territorial sea of the two states in a way which is at variance herewith."

On the issue of historic title, it was clearly established by Nigeria that the Bakassi Peninsula vicinity is home to the Efiks and Ibibios who have for centuries fished in the Cross River Estuary and the adjoining coastal waters of the Atlantic Ocean with origins from the pre-colonial Kingdom of Calabar which embraced the peninsula.⁵⁰ This assertion was explicably illustrated by the fact that in the period of 1823-1884, no fewer than seventeen treaties were made between the British Government and the Kings and Chiefs of Old Calabar including Bakassi Peninsula solely as its protectorate. (This led to the signing of the General Act of Berlin Conference in which Article 6 stated that the European powers were enjoined not to take over or transfer the colony

⁴⁹ Offshore delimitation of resource deposits situated across national boundary. Vol. I Issue 02, March 2003, <http://www.gasandoil.com/ogel> p.5.

⁵⁰ See Asiwaju " The Bakassi Peninsula Crisis: An Alternative to War and Litigation in G. H. Blake, M. A. Prat, C.H. Schofield, Eds, *Boundaries and Energy: Problem and Prospects*, International Boundaries Research Unit, Kliver International 1998 p. 2521.

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without the Kings and Chiefs of Old Calabar being aware of same) and delimiting the maritime boundary of Nigeria and Cameroon based on the equidistance rule. This, to a great extent, was enough to have shaken the applicability of the 1913 Anglo-German Agreement in which Great Britain ceded to Germany, part of the disputed land which was originally for the Calabar region.⁵¹

It is also the case that the claim of Nigeria based on historical consolidation and affectivities was rejected by the Court when it held that invocation of historical consolidation cannot, in any event, vest title to Bakassi in Nigeria, where its "occupation" of the Peninsula is adverse to Cameroon's treaty title and where possession has been for a limited time. The Court failed to judge that the issue of "historic title" as required by the latter part of Article 15 of UNCLOS III even when Nigeria's claim to original and historical title were: (i) long occupation by Nigerian nation constituting a historical consolidation of title and original title of the Kings and Chiefs of Calabar. (ii) Effective Administration by Nigeria acting as sovereign and absence of protest. (iii) Manifestations of sovereignty by Nigeria together with the acquiescence by Cameroon in Nigeria's sovereignty over the Bakassi Peninsula; and (iv) Recognition of Nigeria's sovereignty by Cameroon⁵² had been adequately proved. Thus, the Court should have, relying on the provisions of Article 15, applied the historic title to the extent of delimiting the maritime boundary to result in the Bakassi Peninsula being in Nigeria territory solely on the basis of historic title as stated in the above Article 15.

Bakassi Peninsula was evidently not *Terra nulli* (land or water body not owned by any body) when Great Britain entered into a Treaty of Protection with the Kings and Chiefs of Old Calabar Kingdom in 1884. While this may not preclude Great Britain from acquiring a derivative root of title in line with the obiter in Western Sahara, Advisory Opinion⁵³ it prevents Great Britain from obtaining an original root of title.

It was surprising that the ICJ acknowledged and recognised in the earlier case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahran, treaties of protection signed between Great Britain and the Sheikdoms in Britain and Qatar but sought to distinguish the treaties of protections signed by Great Britain and the Kings/Chiefs of Calabar on the basis of entities with sovereignty under international law. The Court had dismissed the Treaty of 1884 of Protection signed between Great Britain and Kings/Chiefs of Calabar in which Great Britain was under an obligation to protect the Old Calabar territories, and stated that since the local rulers were not states, then the treaty was not an international treaty. thus Great Britain could cede part of the abovementioned disputed land to Germany under the

⁵¹ See Editorial Commentary of Cameroon V. Nigeria. (2002) FWLR pt. 133 page viii

⁵² See Editorial Commentary Ibid

⁵³ ICJ Reports 1975. p. 39 Para. 80

Anglo-German Agreement of 1813. The ICJ should have upheld the principle of *nemo dat quod non habet*.

The decision of the court is viewed by Nigerians to derode the history of Bakassi, and the Nigerian people and Government have expressed their displeasure to it as it endangers the future of the Bakassi people who owe allegiance to the Nigerian nation and are its citizens.⁵⁴ The point that both Yaounde II and Maroua Declaration of 1971 and 1975 were ratified declarations of maritime boundary between Nigeria and Cameroon were held by the ICJ to have purportedly given Bakassi to Cameroon, is worrisome. The writer opines that since there was no agreement between Nigeria and Cameroon to shift the equidistant line and vest title of Bakassi Peninsula in Cameroon as stipulated by Article 15 of UNCLOS III, the ICJ's judgment of this case could be taken to have disregarded some dictates of International Law of the Sea aforeanalysed.

On the "other special circumstances" clause of Article 15, the ICJ may not have considered the all important factor of "resources" as being a relevant factor to shift the equidistant line in such a way as to vest title over the Bakassi Peninsula in Nigeria. Central to this case was a contention raised by Nigeria stating that oil practice (concessions and wells) was a relevant factor in the establishment of delimitation of maritime boundaries. The Court had often rejected the argument that resources of the water be divided equitably rather than the shelf being equitably divided.⁵⁵ This trend, however, seemed to differ in an earlier decision of the Conciliation Commission in the Jan Mayen dispute⁵⁶ where the Commission recommended a joint user approach rather than a partitionary approach because the overlapping resource zone claims between Iceland and Norwegian controlled island of Jan Mayen .

It is, however, the opinion of the writer that in most maritime boundary delimitation cases bordering on the existence of natural resources, where the ICJ does not extend the equidistant line to equitably share the resources among the contending states, it should encourage for joint development of these resources.⁵⁷ While this joint development may take place, delimitation may also take place with the underlying co-operation of both states as such delimitation when it eventually occurs, is often more amicable, acceptable and beneficial to the states involved in the dispute. On the whole, the writer opines that the ICJ could have applied this latter part of Article 15 and considered "resources" to be a relevant factor which would have led to the

⁵⁴ See case concerning the Continental Shelf (Tunisia V. Libyan Arab Jamahiriya) ICJ Reports 1982 p. 3)
⁵⁵ See the Guardian of 22nd October, 2002 P.17, which describe the judgment as "a traversly ad cunning, if not brutal, reenactment of colonial injustices.

⁵⁶ (Ibid)

⁵⁷ See William T. Onrato, Apportionment of International Petroleum Deposit, 171 cl85 (1968) Hazd Fox, Joint Development of Offshore Oil and Gas 1990, International Boundaries Unit, 1999. (<http://www.gmat.unsw.edu.au/>), S.74 (3) and 83(3) of UNCLOS III could refer to joint development of natural resources when they exist in such areas. An example of this is the Saudi Arabia/Kuwait, Neutral Zone Partitioning. (www.gasandoil.com/ogee/samples/free/articles/article_36.htm.)

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adjustment of the equidistant delimiting line between Nigeria and Cameroon maintaining boundaries.

It is also the case that the *utis possidentis juris* principle canvassed by Nigeria was not fully considered by the ICJ. This phrase signifies that parties to a treaty are to retain their status quo ante in the default of any treaty stipulation. Thus the 1913 Anglo German Agreement afore analysed be so defective would have further strengthened the fact that Nigeria had retained the Bakassi disputed area in its territory upon Nigeria Independence. Furthermore, the ICJ seemed not to have given due consideration to the right to self determination by the Indigenes of the Bakassi Peninsula and related disputed area the Judgement went beyond land, maritime boundary and minerals therein contained. It greatly bordered on the right of a people to occupy and utilize their own land. It was clearly the case that the people of the Bakassi Peninsula law always function as a part of Nigeria and have a sense of belonging to the Republic of Nigeria.

CONCLUSION

The ICJ decision, in essence, preserved the Nigeria's offshore field as the implication of Article 15 equidistance rule in the delimitation of adjacent coastal states (i.e. Nigeria and Cameroon) favours Nigeria. This led to an official of the office of the former Nigerian President Olusegun Obasanjo quoted as saying that "taken in totality, the decision is actually no winner, no loser situation."⁵⁸

The Court's decision not to delimit in a manner affecting rights of third parry countries such as Equatorial Guinea, Sao Tome and Principe also preserved oil field which is now subject of agreements for joint development of natural resources between these countries and Nigeria.

However, Cameroon has successfully claimed and won title and possession of the Bakassi Peninsula, oil rich area largely inhabited by Nigerians of the Calabar descent. The Nigerian and Cameroonian governments are presently working on a peaceful way of executing the aforeanalysed judgment of the ICJ as Nigeria has continued to evacuate and resettle her citizens who were once residents of the Bakassi peninsula. These activities of both countries have however met with some opposition from the Bakassi residents and unknown persons as evidenced by the December 2007, killings of both countries soldiers and nationals who were on the peninsula to enforce the ICJ'S judgement. A vital lesson in this decision is that coastal states should, based on Article 15 of UNCLOS III and other relevant provisions, endeavour to negotiate to reach an agreement on the delimitation of maritime boundaries as the consequences of a judgment are unlikely to wholly favour any one party. Thus, where such maritime boundary disputes involve transboundary

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See M Peel & A. Goldman. "Nigeria seas material gain will defeat" Financial Times, October 17, 2002, p. 13

petroleum resources, joint development and utilization of the disputed areas by these states may be a more attractive prospect in the long term.

Finally, it is also opined by this writer that Courts should explain called "relevant factors" to include the general effect of the inhabitants of the disputed maritime area, historical consolidation of title, resources, peaceful co-existence etc. as are necessary for an occasional shift of the equidistant maritime land boundary between two adjacent/opposite coastal states, in order to ensure an effective and smooth applicability of the provisions of the UNCLOS III.⁵⁹

On the whole, it is commendable that Nigeria and Cameroon have presently constituted a Joint Boundary Resolution Commission in order to see to an amorous and convenient delimitation of both the land and maritime boundary based on both the recently determined case and on agreement between the two states which is fully supported by the provisions of the UNCLOS III, the Montego Bay Convention⁶⁰

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⁵⁹ Article 74 and 83 of UNICLOS III in the delimitation of maritime boundaries.

⁶⁰ The Network News of Nigerian Television Authority of 23rd October, 2007.