

Theoretical Perspectives on Nigeria's Enforcement of the International Court of Justice's Verdict Over Bakassi Peninsula

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Abstract

Various theoretical explanations have been advanced with respect to why Nigeria ceded Bakassi peninsula to Cameroon after initial rejection of the verdict passed by the International Court of Justice (ICJ) on 10th October, 2002. The different arguments over the national interests that informed the ceding of the Bakassi peninsula to Cameroon, found expressions in the democratic-state theory, consequence theory, economic-aid theory, Deterrence theory, and the regime-type theory. Without prejudice to the postulations of the various theories, it is argued that though the identified variables all played out in Nigeria's enforcement of the international court of Justice's verdict, it seems to have been guided more by the consequence and the conspiracy theories.

Introduction

The Nigeria-Cameroon conflict over Bakassi Penninsula which lingered for more than 30 years originated from the colonial partitioning of Africa characterised by series of ambiguities and irregularities in attempts to define the territorial boundary between the two countries (Dakas, 1999; Akpan, 2009). Attempts to determine the actual boundary between the two nations had often caused diplomatic rows and violent crises especially in the oil-rich peninsula which at times resulted in the loss of lives and property of the citizens (Aminu, 1986; Jimi and Aminu, 1986). In 1982 for example, five Nigerian soldiers were killed at the border while the aborigines of Bakassi were severally attacked by the Cameroon Gendarmes (Vogt, 1986). In order to resolve the conflicts amicably, the two countries continually engaged in renewed discussions especially after the Maroua Declaration of 1975 signed by the then Head of State, Rtd. Gen. Yakubu Gowon which Cameroon believed, marked the ceding of Bakassi Penninsula to her (Dakas, 1999). However, mere discussions did not satisfy Cameroon's quest to be in control as the aborigines who are Nigerians continued to occupy the area. This seriously troubled Cameroon and eventually compelled the government to take the border dispute with Nigeria to the International Court of Justice (ICJ) on March 29, 1994. On 10th October 2002, the Court sitting at Hague gave its verdict to mark the end of the 8-year legal tussle in favour of Cameroon. The verdict required Nigeria to transfer possession and sovereignty over the territory to Cameroon without granting Self-Determination Rights to the Bakassi indigenes (Omoigui, 2002; Eke and Eke, 2007).

As a consequence, Nigeria lost 35 communities to Cameroon while the indigenes were displaced (Omoigui, 2002; Yusufu, 2003). This generated consternations in Nigeria and aroused vitriolic comments from scholars, journalists, and commentators who not only described it as an invaluable loss of territorial integrity to the nation, but also as being repugnant to natural justice, equity and good conscience against the Bakassi people. Because of the criticisms that trailed the judgement, Nigeria initially refused to withdraw its troops from the area and hesitated in transferring sovereignty to Cameroon; neither did the government openly reject the ruling (Mulu, 2004; Jibril, 2004). Instead, the Nigerian government called for an agreement that would provide peace with honour and considerations for the welfare and security of the Bakassi people (Eke and Eke, 2007). In view of this, the Green Tree Agreement which was reached in New York City obliged both countries to periodically and jointly assess the conditions of the affected Nigerian population in the area and provide them with adequate assistance to ameliorate their sufferings (Eke and Eke, 2007).

Meanwhile, the judgement opened avenues and opportunities to search for other diplomatic alternatives to address some extra-judicial issues that trailed the enforcement process especially as it affects the welfare and security of the Bakassi people. But amidst the controversies associated with ICJ's verdict, the Nigerian government went ahead to enforce the ruling even without ratification by the National Assembly, and did not border to explore other diplomatic measures.

The critical issue which has remained a puzzle to the researcher is why the Nigerian government despite her resolve not to cede an inch of the Bakassi Peninsula to Cameroon in the name of national interest later enforced the verdict, and evacuated the Bakassi people from their ancestral homeland against the popular opinions of Nigerians. It should be noted that whereas the National Assembly kicked against the enforcement of the verdict

because the Green Tree Agreement which facilitated the ceding was not ratified by the legislature as provided in Section 12(1) of the 1999 Constitution (Ameh, 2012); the Federal High Court ruled that the enforcement process should be delayed until all resettlement accommodations for the displaced Bakassians are properly put in place (Yusufu, 2003); while the Nigerian Bar Association (NBA) declared the ceding as illegal and unconstitutional (NBA, 2012). The Bakassi people on their part opposed being transferred to Cameroon and threatened to secede if Nigeria renounced its sovereignty over their subjects (Soni, 2012). Regardless of all these submissions, the Federal Government went ahead to enforce the ruling and formally transferred sovereignty over Bakassi Peninsula to Cameroon on 14th August, 2008. In this light, scholars have made several efforts to offer theoretical explanations on why Nigeria enforced the verdict despite earlier resolve not to part with Bakassi Peninsula. Hence, the central concern here is to critically review the various theoretical explanations proffered by different scholars as the theoretical basis for Nigeria's enforcement of the International Court of Justice's Verdict over Bakassi Peninsula. This study therefore examines the following theoretical viewpoints: democratic-state theory, consequence theory, economic aid theory, deterrence theory, regime-type theory, and conspiracy theory.

Democratic-State theorists Perspective

The democratic-state theorists advanced four main propositions anchored on the ethics and values of democracy as being responsible for Nigeria's decision to cede Bakassi peninsula to Cameroon. The democratic state propositions derived from the writings of Orji (2012), Dayo (2012), Gadzama (2008). They argued as follows: first, that the international democratic order, of which Nigeria and other African states have accepted, compelled the Nigerian government to pursue the international norms of peace and non-violent resolution of inter-state disputes (Orji, 2012); second, that a rejection of the ICJ ruling would have contradicted Nigeria's posture as a leading democratic nation and credibility as a vanguard of peace in Africa (Orji, 2012); third, that non-compliance could call into question Nigeria's acclaimed commitment to the rule of law, which is a vital condition for the superlative performance of democracy (Dayo, 2012); fourth, that non-compliance to the verdict and resorting to full scale war with Cameroon would further truncate Nigeria's nascent democracy given the propensity for military-takeover under the guise the civilians' incompetence to prosecute war (Dayo, 2012). These postulations sound very true to some extents but are not reflected in the realities of Nigeria's internal democracy. For instance, if there were objectivity in the argument for Nigeria's pursuit of "international norms of peace and non-violent resolution of inter-state dispute", "being a leading democratic nation and a vanguard of peace in Africa", "commitment to the rule of law", and "the survival of the nascent democracy against military takeover", there should have been more serious efforts to truncate the anomalies bedeviling the country's internal democracy. This is because it is only a functional internal democracy can project a reputable political image in the international community and not a pretended image-making process that undermines national interests. The nation's internal democratic process is still characterised by the vices which the democratic-state theorists contend that the government did not want the international community perceive about Nigeria; such vices include hostilities and violence, violation of the rule of law, and electoral malpractices. Hence, it is vital to note that a nation deficient of internal democracy cannot export or showcase it in the international community.

The Economic Aid Theorists Perspective

The economic aid theory argues that Nigeria ceded Bakassi peninsula to Cameroon because of other economic interests perceived to be higher and consequential for the country in the international community. As enunciated in the works of Akinyemi (2002), Egbo (2003), Fawole (2003), Akinterinwa (2007), Alli (2007), Agbu (2008), Eke (2009), and Aja (2009), Nigeria's economic interests largely revolve around (a) national economic recovery and diversified development (b) improved economic well-being of the Nigerian citizens (c) ensuring conducive economic conditions in Africa and the world to foster Nigeria's national self-reliance (d) promoting sustainable trade and investment (e) maintaining stable financial system and debt crisis management (f) job creation and poverty alleviation. In pursuing these national economic interests, the Nigerian government anchored their efforts on economic diplomacy defined as the management of international relations in such a manner as to give topmost priority to the economic objectives of a nation through the application of economic measures or instruments in negotiating and bargaining with other countries either to control, distribute, or redistribute scarce resources (Asobie, 2002; Ogwu, 2002; Eke, 2009). In this light, securing debt relief from the International Monetary Fund was seen as part of major efforts to achieve the identified economic interests which would be difficult if Nigeria were to flout the judgement of the ICJ. This is because most of the external creditors especially the Paris Club of France have significant roles and influence to wield in the debt relief debates and the world bodies. Thus, given the earlier declaration of the then president Olusegun Obasanjo that Nigeria needs to take the centre-globe and canvass her economic interests in the international community, attention was focused more on pleasing the structures, mechanisms, and institutions that allocate world resources. Consequently, such

institutions as the World Bank, IMF, the G-77, the creditor clubs (London and Paris), as well as multinational institutions like the UN, World Trade Organisation (WTO), and International Court of Justice (ICJ) became essential determinants of Nigeria's foreign policy in order to secure the debt relief which some believed would salvage the nation's economy from distress (Alli, 2007; Orji, 2012). The rationale for this presumed paradigm shift was to utilise the identified international structures, mechanisms, and institutions to advance Nigeria's national economic interests parcelled in the quest for equity, social justice, and national development (Eke, 2009). Hence, disobeying the judgment of the ICJ was therefore seen as obstacle to the diplomatic advances of the then President Olusegun Obasanjo and minister of finance, Ngozi Okonjo-Iweala for the debt relief of \$18 billion which would not augur well with the political economy of Nigeria (Onwuamaeze, 2012). Although the debt relief was eventually secured, no significant positive effects have been observed in the economic development of the country; besides, the foreign debt of the country has started rising again after the purported relief (Debt Management Office, 2014).

The Deterrence theorists Perspective

The deterrence theory postulated that Nigeria ceded Bakassi peninsula to Cameroon out of fear that the latter's military pact with France would give them undue strategic advantage if they go into confrontation. Within the context of international relations, deterrence means the possession and demonstration of military powers to discourage an actual or potential enemy from nursing any intent of aggression for fear of losing rather than gaining or prevailing in the pursuit of national interests (Karen, 1999). The deterrence theorists postulated that Nigeria was discouraged from going into confrontation with Cameroon because it was conscious of the fact that any aggressive action would be countered by a damaging reaction with the help of France. It is worthy of note that Nigeria's national security is under serious threats in the West African sub-region because it is surrounded by francophone countries that are politically loyal, economically subservient, and militarily linked with France, the former colonialist (Nwankwo, 2007; Shindi, 2007). Given Nigeria's international border dispute with each of the four neighbouring francophone countries (Benin Republic, Cameroun, Chad, and Niger Republic), it would not be difficult for France to mobilize the military alliances and supports of these countries against Nigeria as they did during the Nigerian Civil War (Biafran War) (Eke and Eke, 2007). This fear was manifested in the earlier struggle to outmanoeuvre opponents in which France dispatched 30 paratroopers armed with light machine guns, combat helicopters; as well as mounted surface to air missiles, surface-to-surface artillery pieces, battery and radar stations to monitor sea and air movement of Nigerian troops in South-Western Cameroon and Bakassi (Eke and Eke, 2007). This was a rapid mission to assist its former colony in the deepening crisis. France argued that it was deeply concerned about the tension surrounding the conflicting claims to Bakassi peninsula. This fear is further increased by porosity of the Gulf of Guinea which is only 750 kilometres away from Nigeria's shoreline, harbours our coastal waters stretching from the contiguous zone to the exclusive economic zone, but infested with high degree of piracy leading to notorious arms proliferation (Akinyemi, 2004). In order to douse the effects of these threats on national security, the Nigerian government was compelled to employ various foreign policy measures to ensure its safety. Part of these safety measures arguably includes Nigeria's foreign policy decisions to spearhead the formation of ECOWAS as well as promote good neighbourliness part of which is the decision to cede Bakassi peninsula to Cameroon instead of going to war (Ngang, 2007). The assertion of the deterrence theorists holds sway to the extent of France's support for Cameroon because Nigeria appears to have more power resources than the former. Nevertheless, even if France backs Cameroon, the regional strategic relevance of Nigeria to the western powers could have been advantageous for her to mobilize some international support as well.

The Regime-Type theorists Perspective

The regime-type theory shares the postulation that the government ceded Bakassi Peninsula to Cameroon due to the character of Nigeria's ruling elite during the Obasanjo administration most of whom perceived the ICJ ruling as the most civilized means of dealing with the Bakassi issue (Orji, 2012). In this line of argument, two types of regimes were identified: responsible regime and radical regime (Waltz, 1981). While the responsible regimes acknowledge the consequences of war and as such, seek peaceful resolution of conflicts through dialogue, negotiation, and legal means; a radical regime is bent on achieving its stated national interests by all possible means including war with little or no regards for stability in international peace and security (Waltz, 1981). The regime-type theorists therefore hold that Nigeria ceded Bakassi peninsula to Cameroon because the ruling elites have a sense of responsibility to maintain stability, peace, and security at both the domestic and international environments (Akinyemi, 2012). It was noted that even though the legal suite was filed in 1994, the radical military regime of late General Sani Abacha did not give way for peaceful resolution of the conflict; but in the

presence of responsible democratic regimes, it behoved on the ruling elites to uphold the verdict of ICJ as the most civilized approach to resolving the conflict (Dayo, 2012). This theoretical postulation goes further to explain why Olusegun Obasanjo who vehemently opposed Cameroon's claim over the Bakassi Peninsula as a military head of state eventually ceded the area as a civilian president. In a sense, as a Military Head of State in a radical regime, Olusegun Obasanjo was under serious obligation to protect the nation's territorial integrity against all odds; but he thought it was worthwhile to behave as a responsible regime of a civilised nation in contemporary period. Hence, though the National Assembly declined to implement the Green Tree Agreement under section 12 of the Constitution thereby depriving it of any force of law domestically, this does not in any way void the international obligation of a responsible regime to obey the verdict: first, under the ICJ judgement of October 2002; and second, under the Green Tree Agreement (Egede, 2008).

The Consequence theorists Perspective

The consequence theory postulated that Nigeria rescinded its decision to reject the verdict of ICJ and ceded Bakassi Peninsula to Cameroon because of the anticipated negative consequences in the international system. In line with this argument, first, it is contended that non-compliance with the verdict could incur the wrath of the UN Security Council. Under Article 94(2) of the UN Charter, if any party to a case fails to perform the obligation incumbent upon it under a judgment referred by the Court, the other party may have recourse to the Security Council (Dayo, 2012). If the Security Council deems it necessary, it may make recommendations or decide measures to be taken to give effect to the judgment. Under article 25 of the Charter, the members of the UN agreed to accept and carry out the decision of the Security Council; and still in chapter II of the Charter, the Security Council can impose sanctions, and where necessary, authorise enforcement against a State whose actions or omissions threaten or lead to breaches of international peace and security. Hence, in seeking the intervention of the Security Council, Cameroon could easily count on the support and influence of France which is a permanent member of the Council. Second, if Nigeria had failed to comply, it would have risked being shut out should it seek to invoke the jurisdiction of the court in subsequent cases, as no court would readily grant audience to a country that flouts the ICJ's orders (Dayo, 2012). Third, non-compliance on the part of Nigeria could undermine her contributions and impact at other international law bodies such as the International Criminal Court (ICC), and the International Criminal Tribunal (ICT) where Justice Adolphus Karibi-Whyte of Nigeria had once served as a Judge with respect to an issue that affected Yugoslavia. Fourth, non-compliance to the verdict could jeopardise the chances of Nigerian candidate for the judgeship of the Court where distinguished Nigerians like T.O. Elias, Daddy Onyeama, and Bola Ajibola had served meritoriously on the Court's Bench (Dayo, 2012). It is therefore notable that even though the National Assembly may decline to implement the Green Tree Agreement under section 12 of the Constitution thereby depriving it of any force of law domestically, this does not in any way void the international obligation of Nigeria, firstly, under the ICJ judgement of October 2002 and secondly, under the Green Tree Agreement. It is noted that the ICJ judgement imposed an international obligation upon Nigeria to comply with them as a member of the United Nations, and a party to the United Nations Charter as well as the Statute of the ICJ (an integral part of the Charter) (Egede, 2008). Under Article 94(1) of the UN Charter and article 59 of the Statute of the ICJ: "Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." In cases where a party to the case fails to perform its obligations under the judgement of the ICJ, the other party (in this case Cameroon) may have recourse to the Security Council which may, under the powers granted to it by article 94(2) of the Charter, impose sanctions on the recalcitrant State. In reality, no State has so far utilised the recourse to the Security Council to enforce the judgement of the ICJ, it is therefore not advisable for Nigeria to expose itself to the possibility of this happening (Egede, 2008). Nigeria would find it difficult to scale through the sanctions of the UN especially because three permanent members of the Security Council (the United States of America, United Kingdom and France) were amongst the witness-States to the Green Tree Agreement (Egede, 2008). Furthermore, under article 27 of the Vienna Convention on the Law of Treaties, a party to a treaty like the Green Tree Agreement, "may not invoke the provisions of its internal law as justification for its failure to perform a treaty". In essence, the fact that the National Assembly has failed to domesticate the Green Tree Agreement will not void Nigeria's international obligation under this treaty (Egede, 2008). In addition, it is pertinent to mention here Article 46 of the Vienna Convention on the Law of Treaties which states that a party to a treaty "may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance". The proviso to this article would not avail for Nigeria because, as mentioned earlier, the consent of President Obasanjo to the Green Tree Agreement without the ratification of the National Assembly is a valid

consent under the internal laws of Nigeria, as it presently stands (Egede, 2008). Thus, if Nigeria failed to heed these rules of international engagements, it could be returned to a pariah state and undermine the credibility of its candidature for a permanent member seat in an expanded/reformed UN Security Council (Dayo, 2012). Though the veracity of the consequence theorists' postulations is not in doubt, it is observable that where state-actors have obeyed the decisions of the ICJ were more or less on issues of secondary interests and issues that friendly relations supersede (Goldstein and Pevehouse, 2011). In other words, where a state has the power resources to beat the possible application of the reciprocity and collective response principles, the verdicts of the ICJ may be disobeyed especially if core interests are at stake (Goldstein and Pevehouse, 2011).

Conspiracy theorists Perspective

The conspiracy theory was first used in 1909 in "The American Historical Review". The major proponents include Pipes (1992), Goertzel (1994), Barkun (2003), Knight (2003), Walker (2013), West and Sanders (2003), Fenster (2008), Young (2010). The conspiracy theory is an explanatory proposition that accuses two or more persons, a group or an organisation of having caused or covered up through secret planning and deliberate action, an illegal or harmful event or situation (Goertzel, 1994; Knight, 2003). Sharing similar view, Barkun (2003) postulated that a conspiracy theory is a belief which explains an event as the result of a secret plot by exceptionally powerful and cunning conspirators to achieve a malevolent end. While expanding the details of the conspiracy theory, Young (2010), asserted "every real conspiracy has had at least four characteristic features: groups, not isolated individuals; illegal or sinister aims, not ones that would benefit society as a whole; orchestrated acts, not a series of spontaneous and haphazard ones; and secret planning, not public discussion". The views of these scholars suggests that in conspiracy, some groups are included while others are excluded in the secret Plan; as such, there is an ulterior motive unknown and not to be made known, to the general public and that is why public opinion won't be sought; also, the benefits of the plan won't reach all but the core plotters. The proponents contend that for conspiracy to be successful, there must be external enemies and internal agents to perfect the secret plan.

Eke and Eke (2007) adopted the conspiracy theory to explain the verdict of the International Court of Justice (ICJ) over Bakassi Peninsula and Nigeria's enforcement of the judgment. Eke and Eke (2007) explained the verdict as a neo-colonial conspiracy hatched to sustain the claimed superiority and influence of the western powers over their former colonies. In efforts to maintain their neo-colonial relevance in the region, France, Britain, Germany, and the United States of America backed reliance on colonial Anglo-German agreement reached in 1913 as the basis for Judgment in 2002 thereby ignoring the principles of effective occupation and ancestral heritage recognized in the UN Charter. The conspiracy did not end with the neo-colonial powers (external enemies), they also collaborated with the internal agents (some Nigerian political elites) who have vested international capitalist interests to protect. Thus, the neo-colonial powers and international capitalist elites conspired with the internal capitalist oriented political elites to dispossess the Bakassi people of their economic resources in their own common interests. Meanwhile, the argument of the conspiracy theorists is that: first, the western powers sought to maintain their claims of superiority over their former colonies; second, in order to perfect the intention, they collaborated with the national political elites on the platform of shared international capitalist interests to be protected in the course of exploiting the oil resources in the Bakassi Peninsula.

Conclusion

The theoretical expositions made so far highlighted the diverse explanatory viewpoints shared by scholars on why Nigeria enforced the verdict of the International Court of Justice. While the postulations of the democratic-state theory does not suffice because Nigeria cannot pretend to offer the values of democracy lacking in the nation's polity; the assertions of the economic aid theory is still deficient to the extent that the debt relief granted with the attendant benefits cannot be equated with the territorial loss and the resources therein. More so, the deterrence theorists was unable to give substantial explanations because Nigeria's military resources is not such that can easily be deterred by Cameroon and/or France. In terms of the regime-type theory, it should be noted that the regimes which ceded Bakassi peninsula to Cameroon, were not as responsible as argued, else the governments could have quickly and adequately responded to the plight of the displaced Bakassi people. Meanwhile, Nigeria's enforcement of the ICJ's verdict was propelled more by the implications and consequences of flouting the judgment; in order to avoid the anticipated consequences and explore the benefits, the actors that were directly involved, conspired and ceded the area without involving the affected population.

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