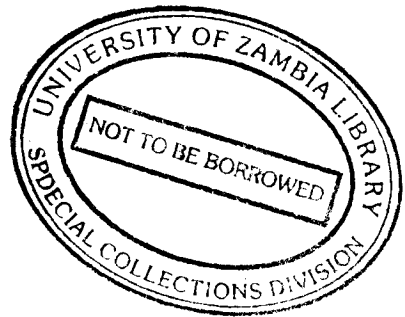


**BORDER DISPUTE SETTLEMENTS IN AFRICA AND
THEIR IMPACT ON HUMAN RIGHTS OF INDIGENOUS
OCCUPANTS OF DISPUTED TERRITORIES**

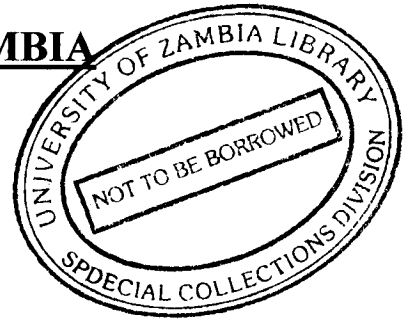


**BY
KATELE MUTINTA KALUMBA**

**A PAPER SUBMITTED TO THE UNIVERSITY OF ZAMBIA IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF LLB
DEGREE.**

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



I recommend that this dissertation prepared under my supervision by **KATELE MUTINTA KALUMBA** entitled

***BORDER DISPUTE SETTLEMENTS IN AFRICA AND THEIR IMPACT
ON HUMAN RIGHTS OF INDIGENOUS OCCUPANTS OF DISPUTED
TERRITORIES***

be accepted for examination. I have checked it and I am satisfied that it fulfils the requirements pertaining to the format as laid down in the regulations governing obligatory essays.

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SUPERVISOR

A handwritten date "16/3/07" written in black ink over a horizontal dotted line.

DATE

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DECLARATION

I Katele Mutinta Kalumba solemnly declare that this work represents my own ideas and is not a production of any other work produced or submitted by any person to The University of Zambia or any other institution.

DEDICATION

To God Almighty with Whom all things are possible. To my parents, your wisdom is priceless. I thank God for you.

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Firstly, I wish to thank my Heavenly Father for Blessing me with the knowledge, perseverance and strength which has pulled me through my academic struggle.

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Thank you and God bless.

ABSTRACT

Africa has, within its vast territory, seen many disputes over boundaries between states. These disputes in Africa usually emanate from conflict between states, which arises, in some cases, from division between different ethnic groups, and more often than not, from different interests with regard to the land which forms the subject of the dispute. Africa has witnessed a large number of these disputes culminate in war between states, which carry on for years, with resolution seeming impossible or far-fetched. Examples of such are the long-running war between Eritrea and Ethiopia, Nigeria and Cameroon, just to name a few. This is why border disputes are sensitive issues which must be handled with utmost delicacy.

Border disputes usually centre on, and are often presented as claims to territory, over which there lays uncertainty as to which state has sovereign title, the said territory being situated in a border area. The disputes that arise are often due to imprecision or lack of a frontier line between disputant states. Depending on the circumstances of a particular case, settlement may take the form of interpretation of a border treaty, *delimitation* (i.e. the agreed description of the common boundary on paper), *demarcation* (i.e. laying more precise alignment on the ground, by means of detailed survey and emplacement of beacons) or indeed all of the aforementionedⁱ. The methods of *reaching* settlement may be through *negotiation* between heads of state, *mediation* by an appointed head of state, *arbitration* by an international tribunal or *judicial settlement* by an international court such as the International Court of Justice (ICJ)ⁱⁱ.

Border dispute settlement involves states, as parties to the case, trying to put to rest a dispute in a manner that is to the common benefit of the states involved. However, the dispute appears more complex when territories under dispute, are populated with occupants who are indigenous to the said territory. There exists the question of possible human rights implications created for these occupants due to the outcome of the dispute settlements for the state parties. An example of such a scenario can be found in the dispute over the Lake Mweru-Lake Tanganyika border between Zambia and the Democratic Republic of Congo (DRC). The border area is inhabited by the Bwile people who exist both on the Zambian and the Congolese side of the border. Another such example is the case of the dispute between Nigeria and Cameroon over the Bakassi Peninsula. The peninsula is home to the Efike and Ambazonian people although the territory, by an ICJ ruling was awarded to Cameroon.

This directed research investigates the existence possible human rights implications for the indigenous occupants of the disputed territories, as a result of the border dispute settlement reached by the state parties.

ENDNOTES

ⁱ Anyangwe C. *African Border Disputes and their Settlement by international Judicial Process* (2003) 28 *SAYIL* 35

ⁱⁱ *ibid*

CHAPTER ONE

HUMAN RIGHTS OF “INDIGENOUS OCCUPANTS” OF DISPUTED TERRITORIES: AN OVERVIEW

1.1 INTRODUCTION

The settlement of border disputes in Africa is an issue that has generated quite a lot of political and legal debate. A wide body of research has focused on the sources of the border disputes and the methods developed to settle them. This essay is premised on the implications for human rights of ‘indigenous occupants’ of the disputed territories.

Upon trying to establish a definition of ‘indigenous occupants’, an overview of the human rights instruments designed to protect indigenous occupants is taken, and human rights implication of border dispute settlements shall be addressed, taking a close look at the right to nationality.

1.2 WHO ARE 'INDIGENOUS OCCUPANTS'?

The word 'indigenous' has the following dictionary definitions : 'existing naturally in a particular country, region or environment', 'native', 'aboriginal', 'home-grown', 'inborn' and 'inherent'ⁱ. However in defining the term 'indigenous occupants' there may be need to go beyond piecing together dictionary definitions of the words 'indigenous' and 'occupants' and look into the background of a term that has a certain degree of political significance.

The term widely used in the context of human rights debate is 'indigenous peoples' although this term has been used interchangeably with 'indigenous occupants' in this essay. This shall be explained in the next paragraph. Organisations such as the United Nations (UN) and the International Labour Organisation (ILO) envisage the term's political significance in the promotion of rights of 'indigenous peoples'ⁱⁱ. Such recognition led to the formulation of instruments such as the Draft United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention concerning Indigenous and Tribal peoples in Independent Countries. In cognisance of the fact that there is no standard or fixed definition for the term 'indigenous peoples', the aforementioned organisations have employed certain criteria in categorizing such people which include: *historical continuity or association* with a given region, or parts of a region, and who *formerly or currently inhabit* the region; maintenance of at least in part *distinct linguistic, cultural and social or organisational characteristics*, which in turn

differentiate them in some degree from the surrounding populations and dominant culture of the nation-stateⁱⁱⁱ.

Whether or not the terms ‘indigenous peoples’ and ‘indigenous occupants’ can be used interchangeably may depend on the context within which they are used. In this paper ‘indigenous occupants’ is merely used as an analogy to ‘indigenous peoples’, the preference for the noun ‘occupants’, a means to denote “*occupying* an area of territorial dispute” and to distinguish these people from occupants of the same disputed territories who cannot be termed ‘indigenous peoples’ of that area. In itself, the term ‘indigenous occupants’ can be thought of as some type of idiom for purposes of this essay.

1.3 PROTECTION OF HUMAN RIGHTS OF INDIGENOUS OCCUPANTS

As mentioned in the paragraph above, the rights of indigenous peoples have been given a considerable amount of importance on the world agenda. Apart from the protection of the Universal Declaration of Human Rights (UDHR), other significant instruments, specifically designed for indigenous peoples include: the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the ILO Conventions on Indigenous and Tribal Peoples and the Draft United Nations declaration on the rights of indigenous peoples. These declarations are not legally binding on states but provide persuasive moral force^{iv} and, in the context of this chapter, can provide an adequate guideline on human rights implications of border dispute settlements. We shall look at the *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people.

The states' obligations are expressly stated in Articles 1, 4, 6, 7 and 8. Some of the provisions worth noting are the following:

“Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.”

“Article 4

...

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except

where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.

Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.”

These provisions may provide a framework within which a state's duty towards the indigenous occupants of a disputed territory may be ascertained. This is also in light of the fact that human rights issues amount to claims against a state.^v

The rights of indigenous occupants would fall under the following provisions:

“Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own

religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.”

The Right to Nationality(Art.15 of the UDHR)

It may be argued that border dispute settlements have significant implications for the right to nationality of indigenous occupants . This can be supported by evidence of indigeneity as a key factor in determining one’s claim to protection of the right to nationality. This evidence is to be found in some of the independence constitutions in Africa.

Persons born before independence in former colonies could not have been citizens of their now- independent countries *before independence*. This argument was asserted in the case of *Lewanika & Others v Chiluba*^{vi}. It was averred: “*There were thus no persons known as citizens of Zambia prior to 24th October, 1964*(Zambia’s Independence). *Zambian citizenship came with the grant of independence and it is the legal instruments of that time which made provision for the very first time for citizenship of Zambia*”^{vii}. In countries such as Zambia and Nigeria, being former British colonies, the indigenous people were either British subjects or ‘British protected persons’ (in terms of the British Nationality Act)^{viii}. However, the argument based on indigeneity as a basis for citizenship is subject to challenge . In the *Lewanika* case, it was pointed out that the citizenship provisions in the *Zambian Constitution 1964* (a schedule to the *Zambia Independence Order 1964*), “*made no suggestion that being native or indigenous or of any particular race would be part of the definition or criteria [for citizenship]*”^{ix}. The citizenship provisions were contained in sections 3,4,5 and 6 in chapter 2 of that constitution. For purposes of this discussion we shall focus on section 3 which reads as follows:

“3.(1) Every person who, *having been born in the former Protectorate of Northern Rhodesia*, is on 23rd October, 1964 *a British protected person* shall become a citizen of Zambia on 24th October, 1964.

(2) Every person who, *having been born outside the former Protectorate of Northern Rhodesia*, is on 23rd October, 1964 *a British protected person* shall, *if his father becomes or would but for his death have become, a citizen of Zambia* in accordance with the

provisions of subsection (1) of this section, become a citizen of Zambia on 24th October, 1964.”

This constitution was preceded by the Northern Rhodesian Order in Council 1963 which defined occupants as either belonging or not belonging to Northern Rhodesia^x. From the wording of the provisions for “citizenship” of Northern Rhodesia, it can be deduced that one was deemed a ‘British protected person’ by virtue of having been born in Northern Rhodesia (now Zambia) or having been born of parents who qualify to be ‘British protected persons. Although this does not exclusively define ‘native’ or ‘indigenous’ Northern Rhodesians, it can be argued that it was broad enough to include them.

Similar provisions for citizenship were contained in chapter 2 of the 1960 Constitution of the Federation of Nigeria. Section 7 reads as follows (my emphasis)^{xi}:

“....

(1) Every person who, *having been born in the former Colony or Protectorate of Nigeria*, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or a British protected person *shall become a citizen of Nigeria on the first day of October, 1960:*

Provided that a person *shall not become a citizen of Nigeria* by virtue of this subsection *if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Nigeria.*

(2) Every person who, *having been born outside the former Colony and Protectorate of Nigeria*, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or British protected person shall, *if his father was born in the former Colony or Protectorate* and was a citizen of the United Kingdom and Colonies or a British protected person on the thirtieth day of September, 1960...*become a citizen of Nigeria on the first day of October, 1960.*”

The citizenship provisions in the 1960 Constitution of Nigeria were clearly broad enough to include the indigenous occupants of the Former Protectorate.

The Independence Constitutions of Kenya and Malawi have provisions almost identical to that of Nigeria and Zambia. Chapter 1 of the 1963 Constitution of Kenya deals with citizenship. Section 1(1) reads as follows (my emphasis)^{xii}:

“ ...

(1) Every person who, *having been born in Kenya*, is on 11th December 1963 a citizen of the United Kingdom and Colonies or a British protected person *shall become a citizen of Kenya on 12th December 1963*:

Provided that a person *shall not become a citizen of Kenya* by virtue of this subsection if *neither of his parents was born in Kenya.*”

Citizenship is also dealt with in chapter 1 of the 1964 Constitution of Malawi . s1(1) reads as follows(my emphasis)^{xiii}:

“ ...

(1) Every person who, *having been born in the former Nyasaland Protectorate*, is on 5th July 1964 a citizen of the United Kingdom and Colonies or a British protected person *shall become a citizen of Malawi on 6th July 1964*:

Provided that a person *shall not become a citizen of Malawi* by virtue of this subsection if *neither of his parents was born in the former Nyasaland Protectorate.*”

The 1964 Constitution of the Congo (Leopoldville, now Democratic Republic of Congo), contains a section on nationality. The first paragraph of Article 6 reads as follows (my emphasis)^{xiv}:

“**Art.6** There shall be a single Congolese nationality.

It shall be granted, as from June 30, 1960, to *anyone, one of whose forefathers was a member of a tribe or of a part of a tribe established on Congolese territory before October 18, 1908.*”

This Constitution is quite unique in comparison to the other constitutions that have just been discussed. Firstly, instead of denoting parentage by using the words ‘parents’ or ‘grandparents’, the word ‘forefathers’ is used. This appears to place more emphasis on indigeneity as the grantee must be born of a Congolese *ancestry*. Secondly, the section

says that nationality shall be granted to *anyone* who meets this requirement and is silent on whether the grantee must have actually been born there. There appears a clear requirement for indigeneity which is evident from the qualification that the grantee's forefather must have been a member *of a tribe* or of a part of one *established on Congolese territory*.

In light of the foregoing, indigeneity can be considered a key factor in determining one's claim in regard to the right to nationality.

1.4 CONCLUSION

There is ample evidence for the assertion that human rights implications do exist for indigenous occupants of disputed territories. Further evidence in support of this argument shall be expounded in the next chapter as two case studies are discussed.

1.5 ENDNOTES

ⁱ Webster's Reference Library Concise Edition Dictionary and Thesaurus 2005 Geddes & Grosset.

ⁱⁱ I. Brownlie, Treaties and Indigenous Peoples Clarendon Press Oxford 1992 p.56.

ⁱⁱⁱ Wikipedia, the free encyclopaedia "Indigenous Peoples"

http://en.wikipedia.org/wiki/Indigenous_peoples

^{iv} Leaflet No 2: "Indigenous peoples, the UN and Human Rights" http://216.239.59.104/search?q=cache:TgAYH-QNoAoJ:www.sdnxbd.org/sdi/international_days/Indigenous-people/2004/indigenous_people/document/

^v C. Anyangwe, Introduction to Human Rights and International Humanitarian Law UNZA press 2004 p23.

^{vi} SCZ judgment no.14 of 1998

<http://www.zamlii.ac.zm/media/news/viewnews.cgi?category=2&id=1166188621>

^{vii} *ibid*

^{viii} *For details see* Clive Parry, *Nationality and Citizenship Laws of the Commonwealth and the Republic of Ireland, 1957.*

^{ix} <http://www.zamlii.ac.zm/media/news/viewnews.cgi?category=2&id=1166188621>

^x *ibid*

^{xi} A.Peaslee *Constitutions of Nations Vol.1- Africa* Martinus Nijhoff 1965 ,p.597

^{xii} *ibid* at 257

^{xiii} at 476

^{xiv} at 104

CHAPTER TWO

CASE STUDY: THE NIGERIA-CAMEROON & THE ZAMBIA-ZAIRE (NOW DRC) BORDER DISPUTES

2.1 INTRODUCTION

This chapter aims at providing a factual basis for the arguments highlighted in the previous chapter. A case study of the Nigeria-Cameroon border dispute shall be taken, looking briefly at the background and the ICJ ruling on the matter. A similar study will be made of the Zambia-Zaire border dispute and the efforts at dispute resolution that ensued in that matter.

An analysis of these cases shall be made in order to understand the human rights implications of the indigenous occupants of the disputed territory, namely the Bakassi Peninsula (Nigeria-Cameroon, see fig 1) and the Lake Tanganyika-Lake Mweru boundary (Zambia-Zaire, see annex 1).

2.2 THE NIGERIA-CAMEROON BORDER DISPUTE (BAKASSI PENINSULA).

2.2.1 Background

The Bakassi Peninsula, situated at the extreme eastern end of the Gulf of Guinea (see fig.1), has been a major source of tension between Nigeria and Cameroon for many years. This territorial dispute over the peninsula and another area around Lake Chad, erupted in a series of armed clashes between 1981 and 1990, prompting Cameroon to take the matter to the International Court of Justice (ICJ) on the 29th of March of 1994.ⁱ The Court ruled in favor of Cameroon, declaring her sovereignty over the Peninsula.ⁱⁱ

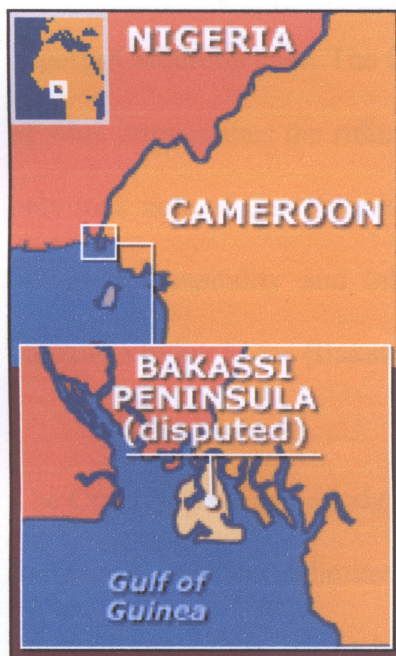


Fig.1 Bakassi Peninsula

The area has a population of about 300 000 peopleⁱⁱⁱ. These consist of the Efike people who claim to have founded a kingdom there in the 13th century and incorporated it within

the political framework of the Kingdom of Old Calabar.^{iv} This has been one of the bases for contention by the Nigerian government in this dispute.^v The area, however, is also occupied by the Ambazonians (Southern Cameroonians) who had been administering the territory jointly with the Nigerians, whose maps recognize the Peninsula as part of Ambazonian territory^{vi}.

Apart from the existence of inhabitants, there are a number of underlying issues regarding the dispute. Among them is the existence of commercially viable oil deposits, strategic positioning for Nigerian naval bases and rich fisheries.^{vii}

The facts relating to the historical background of the dispute were before the Court in the Nigeria-Cameroon case. The Court, however, in its findings, did not address the question of what implications the ruling would have for the inhabitants of the Bakassi. The Court only took note of Cameroon's declaration over the inhabitants: "faithful to its traditional policy of hospitality and tolerance, Cameroon will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area"^{viii}.

The Court in passing its judgment relied heavily on the colonial treaties that were indeed the instruments of delimitation. The Court relied on these instruments in order to ascertain the course of the boundary which was fixed by these instruments. The Court clearly placed this task as paramount and did not even mention the inhabitants in passing.

2.3 THE ZAMBIA-ZAIRE (NOW DRC) BORDER DISPUTE

2.3.1 Background

Zambia's formal northern frontier boundary was established by the Anglo-Belgian Treaty of 12th May 1894 (see annex 2). Dispute arose between Zambia and DRC over the boundary between Lake Tanganyika and Lake Mweru (see annex 1). This dispute, which began before independence of Zambia and DRC, remained unresolved by the time independence of the said countries was attained. The dispute arose from the failure of the former colonial powers (Great Britain and Belgium) to agree on the interpretation of the provision in the 1894 Treaty that delimits the area of dispute^{ix}. After a series of reports were received by the Zambian government, concerning Zambians being detained by Congolese authorities around the disputed area, investigations by a Zambian team were carried out in the said area and it was discovered that the Congolese flag had been hoisted on what appeared to be Zambian territory. After lengthy discussions between the heads of the two states, it was agreed that a joint committee of experts visit the area to ascertain the boundary as depicted in the 1894 Treaty. A series of meetings ensued, based on reports compiled by the joint team of experts. Proposals were made by the two heads of state and eventually a delimitation treaty was signed in 1989. To date, there has been no demarcation of the area^x.

2.3.2 The dispute resolution process

The problem.

Zambia, through a Standing Committee of officials visited the boundary area between Lake Tanganyika and Lake Mweru in 1977 to establish clearly where the boundary line passed to form the straight line between the two countries. Several attempts were made to resolve the boundary dispute but the Standing Committee did not succeed until the establishment of the Joint Technical Committee of Experts (JTCE) in August 1982.^{xi}

The JTCE was agreed upon and established by the two heads of state at Gbadolite, Zaire (now Democratic Republic of Congo). This committee met 16 times (8 in Zambia, 8 in DRC).

According to the JTCE report of 14th May, 1987, there was no dispute between the two state parties on the basis of the boundary between Zambia and Zaire. The boundary resulted from the Agreement concluded on 12th May, 1894 between Great Britain and the Independent State of Congo (Zaire, now DRC). Unfortunately, this Agreement could not be implemented because the former colonial powers failed to agree on the interpretation of Article 1 (b) of the Agreement. The Article provided as follows:

*“The frontier between the Independent Congo State and the British sphere to the north of the Zambezi shall follow **a line running direct from the extremity of Cape Akalunga on Lake Tanganyika, situated at the Northern most point of Cameron Bay at about 8° 15’***

South Latitude, to the right bank of the River Luapula, where this river issues from Lake Moero (Mweru). This line shall be drawn directly to the entrance of the river into the Lake, being, deflected toward the South of the Lake, so as to give the island of Kilwa to Great Britain. It shall then follow the “thalweg” of the Luapula up to its issue from Lake Bangwelo (Bangweulu). Thence it shall run southwards along the meridian of longitude of the point where the river leaves the lake to the watershed between the Congo and Zambezi, which it shall follow until it reaches the Portuguese frontier.”

The JTCE had the following terms of reference^{xii}:

- (a) To interpret the treaty of 12th May 1894 to the benefit of the two countries;
- (b) To study the course of the boundary in any area where it may be necessary and make proposals for the approval of the two governments;
- (c) To cause demarcation of the boundary, if need be through construction of boundary beacons, which will be described in a protocol to be submitted to the two governments for ratification.

In carrying out their work, the JTCE followed three major guidelines namely: applicability of the 1894 treaty on the ground, the existence of human settlement in the disputed area and the existence of natural features such as rivers, mountains and watersheds^{xiii}.

After the third session in Likasi, Zaire from 5th to 10th December, 1983, the JTCE compiled a report based on observations made by the experts in the disputed area.

In drawing comparison between the 1894 treaty and what had been observed during the survey, the team noted the following^{xiv}:

1. The Treaty could not be implemented to the extent of the non-existence on the ground of the starting point (Cape Akalunga, see Article 1(b)) on Lake Tanganyika.
2. Literal interpretation of the Treaty would be unrealistic as the Treaty did not appear to take into account the existence of population at Pweto whose access to Lake Mweru would be prevented by a straight border line connecting the two lakes from the mouth of Luvua River on Lake Mweru.
3. The distance between the two lakes and inaccessibility due to natural obstacles made the straight line connecting the two lakes difficult to determine.

Human settlements.

The JTCE did not adequately investigate into the existence of human settlements along the disputed area. This was done after their third meeting in Likasi, Zaire from 5th to 10th December, 1983, when the JTCE established a Joint Sub-Committee with following terms of reference, inter alia:

“...to ascertain the existence of human settlements which justify deviation from a straight line, locate them in relation to this line and determine the period of their establishment.”^{xv}

The Joint Sub-Committee carried out a survey by observing the disputed area from air (via helicopter) and from the ground. They carried out an assessment of enclaves and the

islands along the disputed area. Villages were found with old houses and huts mostly along the shore area, with existence of plantation of cassava, mango and banana^{xvi}.

The Delimitation Treaty.

The delegations from the two states (Zambia and Zaire) agreed on the boundary being a straight line (median line) from the equidistant point between Capes Pungu and Cape Kipimbi on Lake Tanganyika to the mouth of River Luvua on Lake Mweru (see Annex 1) “as the boundary intended according to the Treaty of 1894”^{xvii}. The Joint Sub-Committee, taking into account the existing human settlement and the “principle of equality”, adopted a boundary on which the area which goes to Zaire (below the median line) is equal in size to the area which goes to Zambia (above the median line)^{xviii}. After the seventh meeting in Lubumbashi, from 4th to 18th February, 1985, the agreed boundary was described based on the “median line of Lake Tanganyika to main beacon XXVIII on Panta meridian” (see annex 3). This agreed boundary was described in Article 1 of the Delimitation Treaty (see Annex 3).

It may be implied from the wording of the preamble of the Delimitation Treaty that the existence of human settlements, (a factor that was one of the bases for non-applicability of the 1894 Treaty) was taken into account when drafting the treaty:

*“...Aware of the Treaty relating to the spheres of influence of Great Britain and the Independent State of Congo in East and Central Africa signed at Brussels on 12th May, 1894, between Great Britain and Belgium...Considering **difficulties of application of the said Treaty** by the colonial powers on the area between Lakes Tanganyika and Mweru...”*

Inadequacies in addressing human rights of inhabitants of disputed area.

The reports of the JTCE, despite acknowledgement of human settlement and the need to establish a boundary which caters for this factor, there appears to have been no inquiry into the question of nationality of the inhabitants. There appears no inquiry was made into whether the boundary will have people who are *Zambian* and believe they are in *Zambian* territory, on the *Congolese* side and vice-versa. There appears no inquiry into what the views of the people would be should such a situation occur.

2.4 HUMAN RIGHTS IMPLICATIONS FOR THE INDIGENOUS OCCUPANTS

2.4.1 *The Right to Nationality*

This right is enshrined in article 15 of the Universal Declaration of Human Rights.

“...Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality...”

After the ICJ ruling, 33 villages in the far north east of Nigeria were traded for 1 Cameroonian village. This left a lot of Nigerian inhabitants with the option of either becoming Cameroonian or becoming foreigners in their own home. A lot of the inhabitants were pro-Nigerian and did not want to lose their identity.^{xix}

Although people of these villages were not necessarily deprived or denied the right to change their nationality, enjoying their nationality in their own home meant they became foreigners which did not appeal to them, thereby encumbering their right to their nationality. These were the same consequences faced by the people of Bakassi Peninsula which was awarded to Cameroon.^{xx}

The question of nationality was not adequately addressed in the Zambia-DRC dispute settlement process.

The importance of the question of nationality can be illustrated from the following excerpt taken from *Manual of Public International Law*:^{xxi}

“In so far as rights under international law are regarded as the rights of states, rather than individuals, there would normally be no other state which would have legal standing to question under international law, the way in which a state treats its own nationals. By virtue of its jurisdiction over its nationals, a state may exercise civil or criminal jurisdiction over them, impose taxes on them, order them to enter its military forces, and subject them to a wide variety of commands.”^{xxii}

The indigenous occupants of the Bakassi Peninsula expressed disfavor with being subject to Cameroonian rule, due to inter alia, an allegedly unfavorable human rights record^{xxiii}. It is due to such factors that nationality must be adequately addressed in border dispute settlements. Due to the jurisdiction of a state over its nationals, nationality can have varying implications for individual human rights.

2.4.2 The Right to own Property

This right is enshrined in Article 17 of the UDHR.

“...Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.”

For the Nigerians whose villages were exchanged, their right to property may have been encumbered, as Nigerians, who moved, with the desire to maintain their identity, were not compensated by their government for forfeiting their land rights^{xxiv}.

2.4.3 Right to life, liberty, security of person and freedom of movement

In 1973, Zambian geologists were arrested for prospecting for minerals in the disputed area between Zambia and DRC^{xxv}. This entails implications for the rights enshrined in Articles 3 and 13(1) of the UDHR.

“...Article 3

Everyone has the right to life, liberty and security of person.

“...Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

CONCLUSION

In expounding on the human rights implications in the context of instruments of international law, the adequacy of border dispute settlements inasmuch as they create implications for human rights of indigenous occupants of disputed territories is also subject to question. A critical analysis in this regard shall be made in the next chapter.

ENDNOTES

ⁱ Wikipedia, the free encyclopedia “Bakassi” <http://en.wikipedia.org/wiki/Bakassi>

ⁱⁱ Press release on ICJ ruling: Land & Maritime Boundary between Cameroon & Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening) Summary of the Judgment of 10 October 2002 http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-26bis_cn_20021010.htm

ⁱⁱⁱ “CAMEROON-NIGERIA: Bakassi inhabitants opt for independence ahead of Nigerian pullout” http://www.irinnews.org/report.asp?ReportID=55020&SelectRegion=West_Africa&SelectCountry=CAMEROON-NIGERIA

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ix Project proposal for the Demarcation of the Zambia-DRC boundary from Lake Tanganyika to Lake Mweru, - Project statement.

x ibid

xi Report of the Special Joint Committee of Experts on the Zambia-Zaire Boundary Problem, submitted to Their Excellencies the Presidents of the Republics of Zambia and Zaire, 14th May 1987.

xii ibid

xiii ibid

xiv ibid, see “Examination of the Treaty of 1894”

xv ibid

xvi ibid

xvii ibid

xviii ibid

xix “CAMEROON-NIGERIA: Bakassi inhabitants opt for independence ahead of Nigerian pullout”

http://www.irinnews.org/report.asp?ReportID=55020&SelectRegion=West_Africa&SelectCountry=CAMEROON-NIGERIA

xx Wikipedia, the free encyclopedia “Bakassi” <http://en.wikipedia.org/wiki/Bakassi>

xxi M. Svensen 1968 Macmillan & co.

xxii ibid at p356

xxiii Borzello, Anna. *BBC News*. "My Home is Another Country". January 19, 2004. <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/3401407.stm>.

xxiv “CAMEROON-NIGERIA: Bakassi inhabitants opt for independence ahead of Nigerian pullout”

http://www.irinnews.org/report.asp?ReportID=55020&SelectRegion=West_Africa&SelectCountry=CAMEROON-NIGERIA

xxv Kunda R, “LLB dissertation, UNZA, Lusaka, 1982 Africa’s Boundery Problems with Special reference to the Boarder Disputes between Zambia and Zaire.”

CHAPTER THREE

BORDER DISPUTE SETTLEMENTS AS A MEANS TO AN END: SIGNIFICANCE OF THE QUESTION OF HUMAN RIGHTS OF INDIGENOUS OCCUPANTS

3.1 INTRODUCTION

In the first chapter we addressed the question of what implications existed for the human rights of indigenous occupants.

This chapter aims at tackling the question of human rights implications for indigenous occupants, in the context of what border disputes settlements seek to achieve, and some of the issues that underlie the border disputes and their subsequent settlement. The previous chapter looked at two case studies (Nigeria-Cameroon and Zambia-Zaire) and the human rights implications of dispute settlement for the indigenous occupants of the disputed territories. A critical analysis shall now be made of how the existence of these implications impact on border dispute settlements as a means to an end.

3.2 DOES THE EXISTENCE OF IMPLICATIONS FOR INDIGENOUS PEOPLES' HUMAN RIGHTS DEFEAT THE PURPOSE (OF THE SETTLEMENT)?

In the previous chapter the author expounded on the human rights implications for indigenous occupants of disputed territories. It may be argued that human rights implications for any action or decision may be easy to ascertain due to the wide scope of rights contained in international human rights instruments which form the basis for a lot of national constitutions. It is for this reason that methods of administration of justice, such as the investigative methods used by the police and the provision in legal systems for death sentence, can be said to be caught in the paradoxical bind of balancing the respect of human rights and the promotion of justice. In this regard, the ICJ ruling in the Nigeria-Cameroon case can be said to have serious human rights implications for the inhabitants of Bakassi Peninsula.

3.2.1 The ICJ ruling in the Nigeria-Cameroon case

The promotion of justice forms the core rationale or justification for human rights violation in administering justice. In this regard, it may be important to address the question of what the ICJ, a channel for dispute settlement, sought to achieve in making the 'controversial' ruling. More precisely, it may be important to ask whether the rise of human rights implications as a result of the ruling defeats the purpose of the ruling as a form of dispute settlement.

First of all, it is important to note that the ICJ does not have compulsory jurisdiction on all states.ⁱ Cases come before the ICJ by referral through a

compromis (special agreement) between two or more states, by a treaty provision committing disputes arising under the treaty to the court, or by the parties' statements of compulsory jurisdiction.ⁱⁱ In the Nigeria-Cameroon case, a *compromis* was entered into by the Parties, thereby giving their consent to have their dispute adjudicated upon by the ICJ. The boundaries of the issues are also given by the Parties in the *compromis*ⁱⁱⁱ and therefore the Court cannot be said to impose anything unfavorable on the Parties, but merely employing its rules of procedure to arrive at a fair decision taking into account the submissions of both Parties.

Article 38 of the Statute of the International Court of Justice (Statute) lists the sources of law to be used when deciding cases in accordance with international law. The treaties interpreted by the Court in the Nigeria-Cameroon case fall well within the realm of sources of law to be relied on by the Court.^{iv}

It may be argued that the choice of the settlement, namely a judicial settlement, may have been inappropriate if the Parties had a wide range of issues to address apart from the delimitation and demarcation of boundaries. A non judicial channel of settlement such as an international arbitration tribunal, mediation or negotiation between State Parties may involve more flexible rules and may allow more room for reason and equitable measures in settling a dispute.^v

Judicial settlement, on the other hand, is more entrenched in well established legal principles and rules of international law. As such there may be less freedom to reason outside existing law with this form of border dispute settlement.^{vi}

In the *Nigeria-Cameroon* case, the Court's decision centered mainly on the interpretation of relevant treaties pertaining to the land in dispute. Nigeria relied heavily on the Treaty of Protection signed on 10th September 1884 between Great Britain and the Kings and Chiefs of Old Calabar. Cameroon relied on the Anglo-German Agreement of 11th March 1913 which fixed the course of the boundary between the Parties in the area of the Bakassi Peninsula.

Nigeria also advanced "three distinct but interrelated bases of title over the Bakassi Peninsula" namely: *historical consolidation* of title, *peaceful possession* and *acquiescence* by Cameroon. The Court held that historical consolidation of title cannot replace modes of acquisition of title recognized by international law. The Court also found that there had been no manifest acquiescence by Cameroon to the relinquishment of their pre-existing title in favour of Nigeria.

In light of the foregoing, it can be strongly argued that the ICJ, as a 'means to an end', fulfilled its purpose in as much as it is a dispute settlement mechanism designed to operate within the confines of applicable rules of international law. Moreover, it must be noted that the ICJ operates according to the task brought before it and in this case, its task was to 'specify definitively' the course of the boundary as fixed by the relevant instruments (treaties).^{vii}

Lastly, it must be noted that in the Nigeria-Cameroon border dispute, as with most border disputes, there existed other underlying issues that presumably gave rise to the conflict, and not necessarily inclusive of the issue of inhabitants. In a press statement by the

Nigerian embassy in United States of America, it was asserted: "For Nigeria, it is not a matter of oil or natural resources on land or in coastal waters; it is a matter of welfare and well-being of her people on their land."^{viii}

A close look into the background to this border dispute will reveal that it *really is* "a matter of oil or natural resources on land or in coastal waters". By the time the matter was referred to the ICJ, there were already US, Swiss and French oil companies eyeing the deposits and keenly awaiting the decision of the International Court of Justice along with Nigeria and Cameroon.^{ix} Other issues are the strategic position of the Bakassi. After the ruling, Nigerian naval officers told Reuters that the loss of Bakassi would cause severe strategic problems for the Nigerian Navy: "If we lose Bakassi, we lose our eastern access to the Atlantic. Our naval ships cannot move freely to southern Africa, for instance, without Cameroon's approval, one officer said."^x

From the foregoing, it can be strongly argued that the Nigerian government, in the dispute, was not fighting for the Efike but for oil and access to waterways, thereby rendering the ICJ ruling fair in as far as the Parties to the case are concerned; the parties being Nigeria and Cameroon and not the inhabitants of the disputed territory. Can it therefore be said that the ruling, by virtue of its human rights implications for the Efike, failed as a 'means to end'?

3.2.2 The Zambia-Zaire border dispute

As mentioned in the previous chapter, a Joint Technical Committee of Experts (JTCE) was appointed by the Heads of both state parties to the dispute with a specific mandate (see chapter two).

According to the problem statement mentioned in the project proposal for the demarcation of the disputed boundary, the mandate of the JTCE was “*to forestall a potential conflict which has characterized such disputes elsewhere in Africa, such as between Ethiopia and Eritrea, Nigeria and Cameroon*”. Clearly national security was high on the agenda, at least from the Zambian side. Conflict that could escalate to war was to be avoided at all costs.

Among the inhabitants of the disputed area are the Bwile, whose paramount chief is Chief Mpweto. People of this tribe are found on both sides of the boundary as Chief Mpweto’s palace is on the Congolese side of the border, and the chiefdom extends to the Zambian side^{xi}. This state of affairs has existed before the border issue as well as both states’ independence and so clearly it is quite difficult to categorize the Bwile in terms of nationality. This scenario presents a challenge to the argument for the rights of indigenous occupants, based on the right to citizenship. This scenario also exists for the Efike people of the Bakassi Peninsula, who are actually found on both sides of Nigeria-Cameroon border.

3.3 WHY THE HUMAN RIGHTS QUESTION IS SIGNIFICANT

The aforementioned arguments presented appear to answer the question presented in the title of this chapter in the negative. Based on these arguments, implications for human rights of indigenous occupants does not necessarily defeat the purpose of dispute settlements as a means to an end. There are, however, strong arguments that may also challenge this school of thought, answering the question in the affirmative.

The ICJ is one of the organs of the United Nations Organisation that exists in order to facilitate the protection of human rights world wide. It can therefore be argued that the ICJ in its interpretation and application of the law should be mindful of the spirit of the UN Charter and the furtherance of the protection of human rights. In this regard, it may be argued that the ICJ, in its ruling in the Nigeria-Cameroon case, did not take the question of human rights into consideration by not placing emphasis on the inhabitants of the Bakassi as a deciding factor.

A dispute in the ordinary sense of the word takes place between two or more parties in disagreement. Can a dispute therefore be said to be 'settled' when one of the parties to the dispute is still aggrieved after the 'settlement'? In the case of border disputes, the parties involved are states represented by their governments. It may be argued therefore, that parties affected by the dispute, such as the inhabitants of a disputed area, do not play a role in the settlement of disputes and cannot be said to be 'party' to the disputes. Can this still be said to be true when one looks at the aspect of war or rebellion by a people, such as the indigenous occupants of a disputed territory? The reaction by the people of Bakassi after the ICJ ruling in the Nigeria-Cameroon case can provide an adequate

answer to this question. Bakassi's inhabitants openly rejected the idea of being transferred to Cameroon and threatened to seek independence if Nigeria renounces sovereignty. This secession was announced on 9th July 2006, as the “Democratic Republic of Bakassi”. Some of the parties involved in this decision are groups of militants including the **Southern Cameroons Peoples Organisation (SCAPO)**, **Bakassi Movement for Self Determination (BAMOSD)**, and the **Movement for the Emancipation of the Niger Delta (MEND)**^{xii}. In view of this scenario, can the Nigeria-Cameroon border dispute, despite being ruled upon by the ICJ, said to be ‘settled’? In the event that national security is a major concern, this scenario clearly defeats the purpose of the settlement.

There are two categorizations for border disputes, namely ‘dormant’ disputes and ‘open’ disputes^{xiii}. ‘Dormant’ disputes would describe the Zambia-DRC scenario; the parties are in disagreement over the boundary but this does not manifest itself in clashes, military presence and civil war. The clashes and military presence in the Bakassi peninsula before the ICJ ruling, signify an ‘open’ dispute. The main reason the Zambia-DRC border is still not demarcated, despite state parties having signed the Delimitation treaty in 1989, is lack of agreement by Zambian government officials of the administrations that followed Dr. Kenneth Kaunda’s administration, hence the matter being subject of debate in Parliament. This can be attributed to the fact that the ‘Nsele Treaty’ of 1989 was created under a one-party constitution that existed in Zambia at the time. As only the state was involved in the negotiating process, it may argued, that the views of the general Zambian populace were not well catered for.

3.4 CONCLUSION

Upon a close study of the arguments in this chapter, one may clearly see that the answer to the question presented in the title to this chapter cannot be one-sided at all. However, While each argument is open to challenge, the question is not so much of what significance the human rights question is to border dispute settlements, but to *what degree* is this question significant. A certain degree clearly does exist and may pave way for suggestions that may give rise to relevant policy decisions over the issue of border dispute settlement in Africa.

ENDNOTES

ⁱ “Territorial Disputes at the International Court of Justice”, Brian Taylor Sumner <http://www.law.duke.edu/journals/dlj/articles/dlj53p1779.htm>

ⁱⁱ *ibid*

ⁱⁱⁱ *ibid*

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^v A Munkman *Adjudication and adjustment – International judicial decision and the settlement of territorial and boundary disputes* 1972 *BYIL*

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^x *ibid*

^{xi} Musambachime M, “MA Thesis Winsconsin, 1976, The Growth and Disintegration of the Nkuba Shila Kingdom, 1740.

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^{xiii} C Anyangwe “*African Border Disputes and their Settlement by International Judicial Process*” (2003) 28 *SAYIL* 30

CHAPTER FOUR

CONCLUSION

4.1 Summary

Border disputes have implications for many different aspects of state business, inter alia: relations between states, national security and enhancement of economies through integration or trade between states. More often than not, territories which are subject to dispute are occupied by people who are indigenous to that land. In the context of border disputes, this is another ‘aspect of state business’ that is affected by border disputes. This essay has placed emphasis on the implications that emanate from the *settlement* of border disputes, on the human rights of the inhabitants of disputed territories.

In the first chapter, the existence of human rights implications for indigenous occupants of disputed territories was expounded. The right to nationality is discussed as a factor which may be partly protected by indigeneity. However, the said notion may be challenged by the question of how exactly one interprets ‘indigeneity’. This stems from the fact that disputed borders in Africa are artificial creations of colonial masters and therefore the ‘indigenous occupants’ of the disputed areas usually have no real affiliation to any of the state parties to the dispute. This was observed particularly in the case studies, namely, disputes over the Nigeria-Cameroon border and the Zambia-DRC border.

The second chapter focuses on the two aforementioned case studies, giving an account of the background to each dispute, and other essential aspects such as the indigenous occupants of the disputed territory and their origins.

Human rights implications for indigenous occupants can be outlined in terms of human rights instruments such as the *Universal Declaration of Human Rights* (UDHR), *UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* and the *ILO Conventions on Indigenous and Tribal Peoples* and the *Draft United Nations declaration on the rights of indigenous peoples*.

The third chapter proceeded on the premise that it has been accepted that human rights implications do exist for indigenous occupants of disputed territories. The question posed in this chapter is whether these implications impact significantly or defeat the purpose of border dispute settlements in which these implications exist. Arguments that the implications do not defeat the purpose as well as counter-arguments in the context of the ICJ ruling in the Nigeria-Cameroon case and the Zambia-DRC border conflict have been explored.

The question of what exactly would entail indigeneity is addressed as the case studies are explored. Indigeneity may be described with regard to the land in question and with regard to cultural or ethnic affiliation to the *claimants* of the land in question. This distinction is an effort to challenge the "ethnic nation" argument, which is a category of justification for drawing a border in a specific place because of a common language,

religion, kinship, or other cultural characteristic that defines the group of people living in a particular territoryⁱ.

It was concluded that the question was more of the degree of significance of these implications than whether there was any significance at all.

4.2 Analysis

It is important to note that the two case studies looked at in this chapter are quite distinguishable.

In the Nigeria-Cameroon case, the inhabitants of the Bakassi Peninsula are mainly made up of two groups of people (the Ambazonians and the Efike) who, though not ethnically tied, are both opposed to rule by French Cameroon. Both have also expressed the desire for self-determinationⁱⁱ.

In the Zambia-DRC case on the other hand, the main inhabitants of the area around the Lake Tanganyika-Lake Mweru boundary, the Ba Bwile, are one tribe under Paramount Chief Mpweto who are found on both sides of the border and move freely and whose movements and settlement appear to be determined by fishing periods, existence of medical and educational facilities and employment. There does not exist any apparent desire for self-determination as with the Bakassians.

Therefore, determining significance of human rights implications for dispute settlements should be done on a case-by-case approach, examining closely the particular

circumstances of each case. This is because the different circumstances of each case, may help ascertain the degree of significance of human rights implications for border dispute settlements.

It must be remembered that 'significance' in this discussion relates to border dispute settlements as a 'means to an end'. Therefore in determining the question of the place of human rights of indigenous occupants in border dispute settlements, there is relevance inasmuch as the implications do exist, though in some cases it may be hard to determine how the purpose of a settlement as a 'means to an end' is defeated by the existence of these implications.

Human rights implications have long existed side by side with the administration or execution of justice. Examples can be found in various stages of law enforcement: Investigation of a crime, arrest and detention of a suspect and punishment such as death sentenceⁱⁱⁱ. The law relating to these aspects of law enforcement is usually protected, in democratic states, by limitation clauses in the Constitutions of these states. The rights of indigenous occupants of disputed territories may also be limited, in some cases by rules of international law and settlements, however unfavourable to the occupants, may be justified as a means to an end.

4.3 Policy Questions and recommendations

What has been discussed in this essay is an African issue. The focus of this essay is on border disputes in Africa and therefore any policy issues must be decided in the context of African legal systems and political frameworks.

It may be essential for states to create within their national budgets, provision for instances of border disputes, where they are found to be responsible for the indigenous occupants of dispute areas, which result in need to evacuate indigenous occupants from disputed areas. Such a mechanism was needed in the Nigeria-Cameroon case. Despite the abrupt handover of people's homes in the exchange of villages between Nigeria and Cameroon, no compensation was awarded to those evacuated.^{iv} There may also be need for securing of funds by states for other related expenses such those incurred by the Joint Technical Committee of Experts in the Zambia-Zaire border dispute (see chapter two).

Interests of people with regard to human rights should be dealt with in a democratic matter. In the current Zambian constitution, the President has absolute power with regard to international agreements^v. One may question how this affects the safety of interests regarding human rights, where the international agreement signed is made in furtherance of a border dispute settlement.

It is when the internal policies of states cater well for the rights of indigenous peoples, that an integrated system of arbitration and adjudication can be created. It may be

necessary to have African courts mindful of particular circumstances surrounding an African case of a border dispute when making awards.

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ⁱ B. Sumner “*Territorial Disputes at the International Court of Justice*”
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ⁱⁱ “CAMEROON-NIGERIA: Bakassi inhabitants opt for independence ahead of Nigerian pullout”
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see also generally “Let My People Go, Prof. Anyangwe's Argues Southern Cameroons case in Banjul”

http://www.postwatchmagazine.com/2005/06/let_my_people_g.html#more

ⁱⁱⁱ See generally *S v Makwanyane* 1995 (3) SA 391 (CC)

^{iv} Borzello, Anna. *BBC News*. "My Home is Another Country". January 19, 2004.
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^v Article 44(2) d

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COMMISSION SPECIALE ZAMBIA-ZAIRE
CARTE DU TRACE FRONTALIER
(DU LAC TANGANYIKA A LA BORNE PRINCIPALE XXVIII)

Echelle 1:500 000

ZAMBIA-ZAIRE SPECIAL JOINT COMMITTEE
MAP ON THE BOUNDARY LINE
(FROM LAKE TANGANYIKA TO MAIN BEACON XXVIII)

SCALE 1:500,000

APPENDICE I

LEGENDE / LEGEND

Roads / routes	—
Frontiers / frontiers	—
Coast / littoral	—
Moors / marais	—
Limite d'Etat / international boundary	—
Chai-rou de 2000 / 2000	—
Limite(s) / moors	—
FRONTIERE ADDITIONNELLE	—
MOORS BOUNDARY	—



COMPILATION OF DATA OBTAINED FROM THE BEST AVAILABLE SOURCE AND SATELLITE SURVEY OF 1968

COMPILATION OF DATA OBTAINED FROM THE BEST AVAILABLE SOURCE AND SATELLITE SURVEY OF 1968

TREATY SERIES. No. 15.

1894.

ANNEX 2

AGREEMENT

BETWEEN

GREAT BRITAIN AND HIS MAJESTY
KING LEOPOLD II, SOVEREIGN OF THE
INDEPENDENT STATE OF THE CONGO.

RELATING TO THE

SPHERES OF INFLUENCE OF GREAT
BRITAIN AND THE INDEPENDENT STATE
OF THE CONGO IN EAST AND CENTRAL
AFRICA.

Signed at Brussels, May 12, 1894.

*Presented to both Houses of Parliament by Command of Her Majesty,
May 1894.*

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AGREEMENT BETWEEN GREAT BRITAIN AND
HIS MAJESTY KING LEOPOLD II, SOVEREIGN
OF THE INDEPENDENT STATE OF
THE CONGO, RELATING TO THE SPHERES
OF INFLUENCE OF GREAT BRITAIN AND
THE INDEPENDENT STATE OF THE CONGO
IN EAST AND CENTRAL AFRICA.

Signed at Brussels, May 12, 1894.

The Undersigned, the Honourable Sir Francis Richard Plunkett, a Knight, Grand Cross of the Most Distinguished Order of St. Michael and St. George, Her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the King of the Belgians, on behalf of the British Government, and M. van Boven, Officer of the Order of Leopold, Grand Cross of the Orders of St. Gregory the Great, of Christ of Portugal, and of the African Redemption, &c., Secretary of State of the Interior of the Independent State of the Congo, on behalf of the Government of the Independent State of the Congo, duly authorized by their respective Governments, have agreed as follows:

His Majesty the King of the Belgians, Sovereign of the Independent State of the Congo, having recognized the British sphere of influence, as laid down in the Anglo-German Agreement of the 1st July, 1890, Great Britain undertakes to give to His Majesty a lease of territories in the western basin of the Nile, under the conditions specified in the following Articles:—

ARTICLE I.

(a. It is agreed that the sphere of influence of the Independent Congo State shall be limited to the north of the German sphere in East Africa by a frontier following the 30th meridian east of Greenwich up to its intersection by the watershed between the Nile and the Congo, and thence following this watershed in a northerly and north-westerly direction.

(c) The frontier between the Independent Congo State and the British sphere to the north of the Zambesi shall follow a line running direct from the extremity of Cape Akalunga on Lake Tanganyika, situated at the northernmost point of Cameron Bay at about $8^{\circ} 15'$ south latitude, to the right bank of the River Luapula, where this river issues from Lake Albert. The line shall then be drawn directly to the entrance of the river into the lake, being, however, deflected towards the south of the lake so as to give the island of Kilwa to Great Britain. It shall then follow the "thalweg" of the Luapula up to its issue from Lake Bangweulu. Thence it shall run southwards along the meridian of longitude of the point where the river leaves the lake to the watershed between the Congo and Zambesi, which it shall follow until it reaches the Portuguese frontier.

ARTICLE II.

Great Britain grants a lease to His Majesty King Leopold II, Sovereign of the Independent Congo State, of the territories hereinafter defined, to be by him occupied and administered on the conditions and for the period of time hereafter laid down.

The territories shall be bounded by a line starting from a point situated on the west shore of Lake Albert, immediately to the south of Malugi, to the nearest point of the frontier defined in paragraph (a) of the preceding Article. Thence it shall follow the watershed between the Congo and the Nile up to the 25th meridian east of Greenwich, and that meridian up to its intersection by the 10th parallel north, whence it shall run along that parallel directly to a point to be determined to the north of Pashodie. Thence it shall follow the "thalweg" of the Nile southward to Lake Albert, and the western shore of Lake Albert to the point above indicated south of Malugi.

This lease shall remain in force during the reign of His Majesty Leopold II, Sovereign of the Independent Congo State.

Nevertheless, at the expiration of His Majesty's reign, it shall remain fully in force as far as concerns all the portion of the territories above mentioned situated to the west of the 30th meridian east of Greenwich, as well as a strip of 25 kilom. in breadth, to be delimited by common consent, stretching from the watershed between the Nile and the Congo up to the western shore of Lake Albert, and including the port of Malugi.

This extended lease shall be continued so long as the Congo territories as an Independent State or as a Belgian Colony remain under the sovereignty of His Majesty and His Majesty's successors.

Throughout the continuance of a lease there shall be used a special flag in the leased territories.

ARTICLE III.

The Independent Congo State grants under lease to Great Britain, to be administered when occupied under the conditions

and for the period hereafter determined, a strip of territory 25 kilom. in breadth, extending from the most northerly port on Lake Tanganika, which is included in it, to the most southerly point of Lake Albert Edward.

This lease will have similar duration to that which applies to the territories to the west of the 30th meridian east of Greenwich.

ARTICLE IV.

His Majesty King Leopold II, Sovereign of the Independent Congo State, recognizes that he neither has nor seeks to acquire any political rights in the territories ceded to him under lease in the Nile Basin other than those which are in conformity with the present Agreement.

Similarly, Great Britain recognizes that she neither has, nor seeks to acquire, any political rights in the strip of territory granted to her on lease between Lake Tanganika and Lake Albert Edward other than those which are in conformity with the present Agreement.

ARTICLE V.

The Independent Congo State authorizes the construction through its territories by Great Britain, or by any Company duly authorized by the British Government, of a line of telegraph connecting the British territories in South Africa with the British sphere of influence on the Nile. The Government of the Congo State shall have facilities for connecting this line with its own telegraphic system.

This authorization shall not confer on Great Britain or any Company, person or persons, delegated to construct the telegraph line, any rights of police or administration within the territory of the Congo State.

ARTICLE VI.

In the territories under lease in this Agreement the subjects of each of the Contracting Parties shall reciprocally enjoy equal rights and immunities, and shall not be subjected to any differential treatment of any kind.

In witness whereof the Undersigned have signed the present Agreement, and have affixed thereto the seal of their arms.

Done in duplicate at Brussels, this 12th day of May, 1894.

(L.S.)

(L.S.)

FRANCIS RICHARD PLUNKETT
EDM. VAN EETVELDE

No. 1.

*Sir F. Plunkett to M. van Etvelde.**British Legation, Brussels,**May 12, 1894.*

M. le Secrétaire d'Etat,

The Earl of Kimberley, in authorizing me to sign the Agreement of this day's date for a lease of certain territories in the British sphere of influence in East Africa to His Majesty King Leopold II, has directed me to record the assurance that the parties to the Agreement do not ignore the claims of Turkey and Egypt in the basin of the Upper Nile.

I avail, &c.

(Signed)

F. R. PLUNKETT.

No. 2.

M. van Etvelde to Sir F. Plunkett.

Sir,

Brussels, May 12, 1894.

IN signing, on behalf of His Majesty Leopold II, the Agreement of this day's date, for a lease of certain territories in the British sphere of influence in East Africa, I reciprocate the assurance that the parties to the Agreement do not ignore the claims of Turkey and Egypt in the basin of the Upper Nile.

I avail, &c.

(Signed)

EDM. VAN ETVELDE.

No. 3.

M. van Etvelde to Sir F. Plunkett.

M. le Ministre,

Brussels, le 12 Mai, 1894.

AU cours des pourparlers auxquels a donné lieu la Convention de ce jour entre l'Etat Indépendant du Congo et la Grande-Bretagne, j'ai eu l'occasion de déclarer à votre Excellence que l'Etat du Congo s'engage à autoriser, le cas échéant, les recrutements de soldats que les Agents dûment commissionnés à cet effet par les autorités Britanniques désirent effectuer dans les territoires situés entre le 30^e méridien et le Lac Albert.

J'ai l'honneur de confirmer cet engagement, et je saisis, &c.

(Signé)

EDM. VAN ETVELDE.

(Translation.)

M. le Ministre,

Brussels, May 12-1894.

IN the course of the discussions to which the Convention of to-day between the Independent State of the Congo and Great

Britain has given rise, I have had occasion to declare to you that the State of the Congo engages to authorize, in case of need, such recruitment of soldiers as the Agents, duly commissioned for that purpose by the British authorities may wish to effect in the territories situated between the 30th meridian and Lake Albert.

I have the honour to confirm this engagement, and I seize, &c.

(Signed) EDM. VAN BELVÉLDE.

No. 4.

Sir R. Plunkett to M. van Belvede.

M. le Secrétaire d'Etat,
British Legation, Brussels,
 May 12, 1894.

In accordance with the wish which you have expressed, I have to convey to your Excellency the assurance, on the part of the Earl of Kimberley, that his Lordship will be ready to recommend to Her Majesty's Secretary of State for the Colonies that facilities shall be given, so far as it may be found to be practicable, for recruitment, under suitable conditions, in the British Colonies on the West Coast of Africa, to facilitate the prompt and complete occupation by His Majesty King Leopold II of the territories in the western basin of the Nile comprised in the lease contained in the Agreement of this day's date.

I avail, &c.

(Signed) F. R. PLUNKETT.



with the median line. From there, it should follow the median line up to its intersection with the Kamusenga River.

From this point it should follow the course of the Kamusenga River up to its confluence with the Kaboto River. From this point it should follow a straight line up to the source of a tributary east of the Mabulanga River. From this point it should progress in a straight line up to its confluence with the Kafwa (Kavua) River and unnamed seasonal water course.

It should then follow the course of the Kafwa (Kavua) River up to its intersection with the median line.

From there, the boundary line should follow a straight line up to its intersection with Choma (Tshoma) River.

From this point it should follow the course of Choma (Tshoma) River up to its confluence with the Musungwishi (Musongoshi) River.

It should follow the Musungwishi (Musongoshi) River up to its intersection with the median line.

From this point, the boundary should follow the median line up to its intersection with the Luchinda (Lunkinda) River whose water course it should follow up to its mouth on Lake Nyeru.

From there, it will follow a straight line up to its second intersection with the median of Lake Nyeru at $8^{\circ}54'$ South Latitude and from this point it will follow the old median on Lake Nyeru.



From this point to the entrance of River Luapula into the lake, the boundary shall conform to the description contained in the Treaty of 1894. The boundary will then follow the course of the Luapula River up to its point of intersection with the Panta meridian at main beacon XXVIII.

ARTICLE II

Within six months of the entry into force of this present Treaty the High Contracting Parties shall establish a Joint Delimitation Commission to demarcate the boundary between their respective territories in conformity with the description contained in Article I.

ARTICLE III

When the border is constituted by a river course, the median line of such river course shall form the demarcation line between the two states.

Where the river course breaks into several branches the boundary shall be the median of the main branch.

The islands on any river course which constitutes a border shall be identified by the Joint Delimitation Commission and shall be shared equitably by the High Contracting Parties.

ARTICLE IV

The navigable parts of river Luapula shall be open for navigation to both states. The High Contracting Parties shall ensure the maintenance of such navigable parts according to the modalities to be determined by common agreement.

ARTICLE V

The boundary between main beacons XXVIII and I on one hand and main beacons I and 46 on the other hand and also the section between main beacon XXVIII and the point of departure of Tanta meridian on Lake Bangweulu shall conform to the description contained in the Treaty of 1894.

ARTICLE VI

This present Treaty modifies the Treaty of 1894 in relation to the section between Lake Tanganyika and main beacon XXVIII.

ARTICLE VII

The present Treaty shall be ratified in conformity with the constitutional procedures of each High Contracting Party and shall enter into force on exchange of instruments of ratification.

The image shows two handwritten signatures in black ink. The signature on the left is a long, flowing cursive line that starts with a series of loops and ends with a long horizontal stroke. The signature on the right is shorter and more compact, consisting of several sharp, overlapping strokes.