LEGALITY OF CLAIMS OF TITLE OVER THE SOUTHERN CAMEROONS

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Abstract

This paper examines the legality of the claims of title over the Southern Cameroons and bordering territories of the Federal Republic of Nigeria based on the Judgment of the International Court of Justice (ICJ) dated 10 December 2002 obtained on the alleged application of the principle of Uti Possidetis Juris and Effectivité; that is, historic consolidation of title, acquiescence, and recognition.

This paper will demonstrate that based on the law and the facts which were presented to the Court, the judgment arrived at was fundamentally flawed due to an erroneous application of the principle of (utis possidetis juris) and Effectivité in favour of Cameroon's claim of tittle over the Bakassi Peninsula.

The paper will demonstrate that the unresolved residual nationality issue which was acknowledged in the ICJ Judgment makes the implementation of the judgment impossible as a matter of law.

Article 59 of the Statute of the ICJ states, "The decision of the Court has no binding force except between the parties and in respect of thar particular case."

Keywords: Act, Bakassi, Border, Boundary, Cairo, Effectivité, Independence, Title, Reunification, Union.

Introduction [1]

On 29 March 1994, Cameroon filed an application instituting proceedings against Nigeria with respect to sovereignty over the Bakassi Peninsular. Cameroun requested the Court to determine the course of the maritime boundary and its alleged frontier with Nigeria in so far

[1] This paper is an amended version of the original which was published in In Search of Elusive Soul of Justice (2023) by the author, Chief Charles Taku, Buma Kor Publishers Ltd P.O Box 727 Yaoundé at pages 145-176 info@bumakorbooks.com

as the alleged frontier had not been established in 1975. Cameroon accused Nigeria of aggression due to the occupation of the Peninsula by Nigerian forces of alleged Cameroon localities and urged the Court to declare its sovereignty over the area by virtue of international law which it alleged, Nigeria had violated, in particular, the fundamental principle of respect for frontiers inherited from colonisation (utis possidetis juris) and the rules of conventional and customary international law. Cameroon urged the ICJ to prolong the course of its maritime boundary with Nigeria up to the limit of Maritime zone which international law placed under their respective jurisdictions.

This paper demonstrates that although against Nigeria, this case was a veiled attempt by Cameroon to legitimise the annexation and colonisation of the Southern Cameroons through the judgment of the International Court of Justice.

The ICJ delivered its judgment on the merits dated 10 December 2002. In its judgment, the Court determined the course of the boundary between Cameroon and Nigeria from north to south as follows:

- In the Lake Chad area, the Court decided that the boundary was delimited by the Thomson-Marchand Declaration of 1929-1930, as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931 (between Great Britain and France) ; it found that the boundary started in the Lake from the Cameroon-Nigeria-Chad tripoint (whose co-ordinates it defined) and followed a straight line to the mouth of the River Ebeji as it was in 1931 (whose coordinates it also defined) and thence ran in a straight line to the point where the river today divided into two branches.
- Between Lake Chad and the Bakassi Peninsula, the Court confirmed that the boundary was delimited by the following instruments
    - from the point where the River Ebeji bifurcated as far as Tamnyar Peak, by the Thomson-Marchand Declaration of 1929-1930 (paras. 2-60), as incorporated in the Henderson-Fleuriau Exchange of Notes of 1931;
    - from Tamnyar Peak to pillar 64 referred to in Article XII of the Anglo- German Agreement of 12 April 1913, by the British Order in Council of 2 August 1946;
    - from pillar 64 to the Bakassi Peninsula, by the Anglo-German Agreements of 11 March and 12 April 1913.

- The Court examined point by point seventeen sectors of the land boundary and specified for each one how the above-mentioned instruments were to be interpreted.
- In Bakassi, the Court decided that the boundary was delimited by the Anglo-German Agreement of 11 March 1913 (Arts. XVIII-XX) and that sovereignty over the Bakassi Peninsula lay with Cameroon. It decided that in that area the boundary followed the *thalweg* of the River Akpakorum (Akwayafe), dividing the Mangrove Islands near Ikang in the way shown on map TSGS 2240, as far as a straight line joining Bakassi Point and King Point.
- As regards the maritime boundary, the Court, having established that it had jurisdiction to address that aspect of the case — which Nigeria had disputed, fixed the course of the boundary between the two States' maritime areas.

The Court requested Nigeria to expeditiously and without condition, withdraw its administration and military or police forces from the area of Lake Chad falling within Cameroonian sovereignty and from the Bakassi Peninsula. The Court also requested Cameroon to expeditiously and without condition withdraw any administration or military or police forces which might be present along the land boundary from Lake Chad to the Bakassi Peninsula on territories which, pursuant to the Judgment, fell within the sovereignty of Nigeria.

The latter had the same obligation in regard to territories in that area which fell within the sovereignty of Cameroon. The Court took note of Cameroon's undertaking, given at the hearings, to "continue to afford protection to Nigerians living in the [Bakassi] peninsula and in the Lake Chad area". Finally, the Court rejected Cameroon's submissions regarding the State responsibility of Nigeria, as well as Nigeria's counterclaims.[2]

This paper examines the implications of this judgment on the internationally protected rights of the Southern Cameroons and neighboring Nigerian citizens. The ICJ judgment expressly mentioned the protection of Nigerian nationals who are residing on the territory of Bakassi Peninsula which was claimed by Cameroon but left the measures of protection at

[2] International Court of Justice- C our Internationale de Justice, Land and Maritime Boundary Between Cameroon and Nigeria (Equatorial Guinea Intervening) https://www.icj.org

the discretion of the Republic of Cameroon. The protective measures proposed and accepted by the ICJ tantamount to a violation of international law. The violation has wider implications for the validity and legitimacy of the entire judgment.

A. The Nigerian Nationality Question.

The Nigeria nationality issue, concerning a population of 3,000,000 Nigerian citizens residing in the Bakassi Peninsula, came up before the Court and the ICJ decided by a vote of fifteen to one in paragraph 317 of the Judgment and in the disposition of the Judgment in paragraph (C) as follows:

> "Takes note of the commitment undertaken by the Republic of Cameroon at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area".

The evidence which Nigeria provided about the origins of the indigenous people of Bakassi Peninsula about their Bakassi ancestry and ancestral land rights spanning over several centuries, established their distinctive cultural heritage and way of life. This was enough to qualify them as indigenous people subject to the protection of international human rights laws. The decision by the ICJ which placed their protection under an alleged faithfulness of Cameroun to its alleged 'traditional policy of hospitality and tolerance' was a blatant violation of the Declaration on the Rights of Indigenous persons guaranteed by United Nations Resolution 61/295 of 29 June 2006[3] which states inter alia

[3] Article 9 Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. www.ohchr.org › en › indigenous-peoples UN Declaration on the Rights of Indigenous Peoples | OHCHR

> Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.
> Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
> Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
> Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The exceedingly brutal and bestial policy of systematic violations of the internationally protected human rights of the inhabitants of Bakassi Peninsula and the Southern Cameroons by Cameroun Gendarmes, was a key factor in the deployment of Nigerian forces to the Peninsula to provide protection to the people.

This judgment tacitly makes these 3000,000 Nigerians citizens of Cameroun. The ICJ judgments makes them persons who were born in Cameroon and therefore, by virtue of the Articles 1 and 10 of the Cameroun nationality code, Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code, they are automatically Camero**u**n nationals, although they were characterised as Nigerian citizens and placed at the pleasure of Cameroun based on Cameroun's alleged faithfulness to its 'traditional policy of hospitality and tolerance'.

Law no. 1968-LF-3 of 11 June 1968 states,

> Section 1.
>
> Cameroon nationality attaches at birth, as the nationality of origin, by operation of law.
>
> Section 10.
>
> A new-born child found in Cameroon will be presumed prima facie to have been born in Cameroon.

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The evidence of the alleged policy of faithfulness to Cameroun's 'traditional policy of hospitality and tolerance' was not presented to the Court to support or justify its decision placing the protection of 3000, 000 persons living in their ancestral homes in the hands of a foreign sovereign. No mechanism was put in place for the enforcement of the decision or pledge. It was a political decision which placed the lives of millions in potential harm. The ICJ did not put the interests of Bakassi indigenes and Southern Cameroons nationals at the centre of its judgment. It placed economic interests at the centre of the judgment.

An implication of the decision is that, under the Cameroon Nationality Code and pursuant to the ICJ Judgment, the 3,000,000 people in the ICJ-attributed territory, would automatically be classified as citizens of the Southern Cameroons because the contested land which was given to Cameroon as part of the territory of the Southern Cameroons is also the ancestral lands of the affected population. In consequence of the ICJ judgment and the provision of article 1 and 10 of the nationality code of Cameroun, they are deemed Southern Cameroonians by birth within the national territory of UN Trust Territory of the Southern Cameroons.

Cameroon declined their nationality of the Southern Cameroons by alleging before the ICJ that they are Nigerian citizens whom it pledged to protect pursuant to its alleged faithfulness to its traditional policy of hospitality and tolerance. The ICJ did not decide the issue of nationality which arose as a consequence of its judgment. The ICJ did not consider the question of nationality of the indigenous peoples living on their ancestral lands. The ICJ identified the issue, but failed to make a determination and merely noted the pledge by Cameroon, leaving the indigenous owners at the mercy of unspecified 'traditional policy of hospitality and tolerance' of Cameroon, negating the violence and hostility in the area which was significantly discussed in the case. This was not a criterion for the determination of nationality. The nationality of the indigenous population should have been considered in the judgment and their rights under international law ascertained. This includes their right to choose their nationality. This was not done.

The only factor by which Cameroon alleged that they are of Nigerian nationality was their historical and cultural affinity with bordering communities in Nigeria. But then the affected population has the same historical and cultural affinity with the population of the UN Trust territory of the Southern Cameroons which is the ancestral land. In this case, the indigenous people of Bakassi and the Southern Cameroons are protected by international law as such. The continuing violence in the Bakassi Peninsula against indigenes asserting their rights to self-determination and in the Southern Cameroons territory is due to the failure of the ICJ to determine sovereign rights of the people and the nationality question, making the affected populations potentially stateless persons.

B. The Implications for Judgment on the Southern Cameroons.

It is necessary to verify the international instruments on which the claim by the Republic of Cameroun to the territory of the Southern Cameroons was alleged or based.

On 2 March 1962, the UN Secretariat circulated a note verbale from the Permanent Representative of Great Britain and Northern Ireland titled 'The Future of the Trust Territory of the Cameroons under UK Administration'.

The Note Verbale which was dated 27 February 1962, communicated an exchange of notes between the Ambassador of Great Britain in Yaoundé Cameroon dated 27 September 1961 and the President of Cameroun Ahmadou Ahidjo. The note verbale and the exchange of notes are set out hereunder.

a) Note verbale dated 27 February 1962 from the Permanent Representative of Great Britain and Northern Ireland to the United Nations, addressed to the Secretary-General to inform him that in accordance with General Assembly resolution 1608 (XV) OF 21 April 1961, the trusteeship exercised in the Southern Cameroons by the Government of the United Kingdom of Great Britain and Northern Ireland under the Trusteeship of 13 December 1946 terminated at midnight on 30 September 1961. A copy of the Exchange of Notes between Her Majesty's Ambassador at Yaoundé and the President of the Cameroun Republic recording the time and date of the termination of the UK trusteeship in the Southern Cameroons is attached. In accordance with the above resolution of the General Assembly the trusteeship exercised in the Northern Cameroons by the Government of the United. Kingdom of Great Britain and Northern Ireland, terminated on

1 June196l upon the Northern Cameroon's Joining the Federation of Nigeria as a separate province of the Northern Region of Nigeria. A copy of Command Paper No. 1567 containing the text of the Exchange of Letters between the high Commissioner for the United Kingdom in the Federation of Nigeria to the Prine Minister of the Federation of Nigeria concerning the incorporation of the Northern Cameroons into the Federation is also attached" hereto for information.:/

b) Exchange of notes between Her Majesty's Ambassador and His Excellency, Mr. Ahmadou Ahidjo, President of the Republic of Cameroun at Yaoundé on the termination of the trusteeship over the Southern Cameroons.

British Embassy, YAOUNDE. 27 September 1961

Sir, On the instructions of my Government and In compliance with resolution 1608 (XV) of the General Assembly of the United Nations, dated 21 April 1961]., providing that the trusteeship exercised by the United Kingdom in the Southern Cameroons under the Trusteeship Agreement of I, December 1946 shall be terminated on I October 196I upon the Southern Cameroons Joining the Republic of Cameroun, I have the honour to inform you that this trusteeship will cease to be exercised in the Southern Cameroons at midnight on 30 September 196L, as this Territory will Join the Republic of Cameroun at 00.00 hours on 1 October I95I. I have the honour to be,

Signed) C.E. KING Her Majesty's Ambassador

The exchange notes between the Ambassador of Great Britain and the President of Cameroon on 27 September 1961 did not associate or involve the Southern Cameroons over which the trusteeship was being terminated. Res 1608(XV) which Great Britain purported to have fulfilled stated in its article 5:

Article 5. "Invites the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroun to initiate urgent discussions with a view to finalizing, before 1 October 1961,

> the arrangements by which the agreed and declared policies of the parties concerned will be implemented".[4]

Great Britain failed in its Note Verbale to the United Nations Secretary-General to provide information about the General Assembly's crucial requirement that

"the arrangements by which the agreed and declared policies of the parties concerned will be implemented' and which the UNGA Resolution requested *'the Administering Authority, the Government of the Southern Cameroons and the Republic of Cameroon'* were mandated to *'initiate urgent discussions with a view to finalising before 1 October 1961'.*

Great Britain did not cite *"the arrangements by which the agreed and declared policies of the parties concerned will be implemented'* in the exchange of notes with the President of the Republic of Cameroun on 27 September 1961. Great Britain did not notify the Southern Cameroons of its surreptitious conspiratorial facilitation of the annexation and colonialisation of the Southern Cameroons in violation of UNGA Resolution 1608 **(XV**)-(5) and the UN Charter. It took Great Britain until 27 February 1962 to notify the Secretary-General of the United Nations about the unlawful actions it undertook since 27 September 1961 and 30 September 1961 to end the trusteeship and illegally hand over the Southern Cameroons to the Republic of Cameroon and by so doing, endorsing the annexation of the territory by the Republic of Cameroon.

A Royal Proclamation was gazetted in the London Gazette on 28 September 1961 in which the end to United Kingdom administration of the Southern Cameroons was to become effective on 1 October 1961. The Royal Proclamation did not specifically mention United Nations General Assembly Resolution 1608 (XV) and did not contain a clause or statement

[4] UNGA Res 1608 (XV). The future of the Trust Territory of the Cameroons under United Kingdom administration, digitallibrary.un.org › record › 206162The future of the Trust Territory of the Cameroons under ..

on the status of the Southern Cameroons. It did not mention reunification or independence by joining and did not allege a hand over of sovereignty of the Southern Cameroons to the Republic of Cameroon. The deliberately vague Royal Proclamation was carefully drafted to conceal the actions which Great Britain undertook to facilitate and then endorse the annexation of the Southern Cameroons by the Republic of Cameroon which had occurred on 1 September 1961. The purported termination of the trusteeship administration at midnight on 30 September 1961 when the territory was already annexed with the support of her Majesty's government on 1 September 1961 establishes the central role which Great Britain played in the annexation and colonisation of the Southern Cameroons.

Great Britain in its note verbale on the Southern Cameroons to the Secretary-General of the United Nations on 27 February 1962, stated the following about the Northern British Cameroons,

> In accordance with the above resolution of the General Assembly the trusteeship exercised in the Northern Cameroons by the Government of the United. Kingdom of Great Britain and Northern Ireland, terminated on 1 June196l upon the Northern Cameroon's Joining the Federation of Nigeria as a separate province of the Northern Region of Nigeria. A copy of Command Paper No. 1567 containing the text of the Exchange of Letters between the high Commissioner for the United Kingdom in the Federation of Nigeria to the Prime Minister of the Federation of Nigeria concerning the incorporation of the Northern Cameroons into the Federation is also attached" hereto for information.

The notification about the Northern Cameroons provided essential information about the implementation of the UNGA Res.1608 (XV) suggesting effective compliance with the UN resolution. This detail is missing the situation of the Southern Cameroons.

The registration was made during the pendency of the case No. 48, concerning the Northern Cameroons (Cameroon v. United Kingdom) which was instituted on May 30, 1961. Judgment in the case was delivered on 2 December 1963. The Republic of Cameroon initiated the case on 29 May 1961, a day after the Exchange of Notes between the UK and Nigeria incorporating British Northern Cameroons into the Federal Republic of Nigeria.

Not only did Great Britain not provide any information from an urgent meeting which the UN General Assembly requested between Great Britain, the Government of the Southern

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Cameroons and the Republic of Cameroon on "*the arrangements by which the agreed and declared policies of the parties concerned will be implemented" none is registered in the UN Secretariat Records pursuant to* Article 103 of the UN Charter. Consequently, there is no record of "the arrangements by which the agreed and declared policies of the parties concerned will be implemented" to justify the fulfilment of Resolution 1608 9XV)-(5) for it to be cited as legal and legitimate basis of a union between the Southern Cameroons and the Republic of Cameroon pursuant to Article 102 of the UN charter.

The "Exchange of letters constituting an agreement about the incorporation of the Northern Cameroons into the Federation of Nigeria, signed in Lagos on 29 May 1961" contained specified terms on which the incorporation and the status of the territory within the Federal Republic of Nigeria were agreed upon pursuant to UNGA Resolution 1608 (XV). That concerning the Southern Cameroons contain nothing despite the mandated orders of the General Assembly in Resolution 1608 (XV)-(5).

Compliance with UNGA Resolution 1608 (XV)-(5) was a predicate for the realisation of the external self-determination of the Southern Cameroons under Article 76 (b) of the UN Charter. It was impermissible for alleged reunification, annexation, an alleged Exchange of Notes between the UK and the Republic of Cameroon, and/or a Royal Proclamation to alter or change the internationally recognized status of Southern Cameroons by any other means whatsoever. The implementation of UNGA Resolution 1608(XV)-(5) did not take place, therefore the achievement of independence by joining the Republic of Cameroon did not occur on 1 October 1961.

In view of the actions of Great Britain, its contributory responsibility for the genocidal war which the Republic of Cameroun declared and is ongoing in the Southern is firmly established. Writing on the Southern Cameroons question, Maria kertzmerick in Jan Ludert et al., writes:

> "In terms of the relevance of the Trusteeship Council, the Cameroonian example demonstrates that since administering countries which were colonial powers elsewhere, owed accountability and transparency to the body, the Trusteeship Council broke with the tradition of colonial administration

> at least in technical perspective. However, the colonial habitus still was very present as the analysis showed. Thus simultaneously the Trusteeship Council's institutional design manifested existing global power symmetries, and despite progressive elements, could not accompany complete decolonisation for Cameroon as shown in the legacies of violent conflicts today. With regard to conflict management and violence, it became clear that the Trusteeship Council did not have the resources to deal with and avoid the escalation of conflicts and even contributed to the deteriorated situation for local actors. The Cameroonian case shows that violence in internationalized situations need to be understood social dynamic to finally get why 'A colonial war in a UN Trusteeship" could happen. This quote not only exemplifies the irritation raised by the local population it also shows the material consequences clearly'. [5]

The forgoing explains - why the decolonisation of the Southern Cameroons was aborted and the seeds of armed conflict and the ongoing genocidal war which was declared by the Republic of Cameroun were planted.

C. The territorial claim by Cameroun.

On 29 March 1994, the Republic of Cameroon initiated proceedings at the International Court of Justice against Nigeria claiming sovereignty over the Bakassi Peninsula and requested the delimitation of its land and maritime borders with Nigeria. Equatorial Guinea intervened in the case.[6]

Upon ascertaining that the procedural requirement for compulsory jurisdiction under Article 36 of the ICJ statute was met, the ICJ accepted compulsory jurisdiction over the case. Judgment in the matter was given on 10 October 2002. Cameroon prevailed on the Bakassi territorial claim by successfully invoking the principle of Uti Possidetis Juris, the Cairo resolution by the Heads of State and Governments of the Organisation of African Unity (17-21 July 1964) and the AU Constitutive ACT Article 4(b).

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[5] Jan Ludert et al., (2023) The United Nations Trusteeship System, Legacies, Continuities, and Change, P 108, Global Institutions Routledge Taylor & Francis Group 4 Park Square, Milton Park, Abingdon Oxon OX 14 4 RN and Routledge 605 Third Avenue, New York, NY 10158

[6] Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria) and (Equatorial Guinea Intervening)-Judgment 10 October 2022.

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The principle of Uti Possidetis Juris was endorsed at the Conference of Heads of State and Governments of the Organisation of African Unity (OAU) in Cairo Egypt from 17 to 21 July1964 (the Cairo Resolution) as the principle by which border conflicts between member states would be settled. African leaders pledged by that resolution to respect colonial borders inherited at independence as the crystallised and frozen international borders of OAU member states. The Cairo Resolution was subsequently incorporated into Article 4 (b) African Union (AU) Constitutive Act.

In its pleadings and submissions before the International Court of Justice (ICJ), the Republic of Cameroon alleged that by occupying the Bakassi Peninsula, Nigeria was in violation of its obligations under international law, particularly, the principle of Uti Possidetis Juris which was enshrined in the OAU Cairo Resolution (1964) and Article 4(b) of the AU Constitutive ACT.

During the hearing of the case, the Republic of Cameroon which achieved independence on January 1,1960, presented conclusive evidence that the contested Bakassi Peninsula was part of the territory of the Southern Cameroons but went on to submit that the critical date on which its borders crystallized and were frozen was 1 October 1961 a date it alleged to have attained re-unification with the Southern Cameroons.

The Southern Cameroons was a UN trust territory which was administered under Article 76 (b) of the Charter of the United Nations. The UN Fourth Committee of the UNGA on 9 March 1959 recommended that the fate of the Southern Cameroons would be decided by a UN supervised plebiscite in which the people of the territory would express a choice of independence by joining either the independent Republic of Cameroon or independent Federal Republic of Nigeria. This recommendation was adopted by the General Assembly of the UN at its 829th meeting on 16 October 1959. On 11 February 1961 the Southern Cameroons voted to achieve independence by joining the independent Republic of Cameroon.

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The Republic of Cameroon alleged but did not prove that its alleged reunification with the Southern Cameroons on 1 October 1961, fulfilled the critical date requirement on which its borders crystallised and were frozen.

The Independence of a country and the date on which it was achieved with its inherited colonial borders are requirements for compliance with the principle of Uti Possidetis Juris, the Organisation of African Unity (OAU) Cairo Resolution (1964) and the African Union (AU) Constitutive ACT Article 4(b). Alleged reunification or annexation are not requirements under the principle and the African Union Constitutive Act.

Alleged reunification and the date it allegedly occurred, cannot displace and replace the requirement of the date of achieving independence, as the critical date for the crystallisation and freezing of colonial borders under OAU Cairo Resolution (1964), the AU Constitutive ACT Article 4(b) and the principle of Utis Possidetis Juris.

The Republic of Cameroon achieved independence on 1 January 1960. As a matter of factand law, January 1, 1960 is the terminal and exclusionary critical date on which the inherited colonial borders of the Republic of Cameroon crystallised and were frozen pursuant to the principle of Uti Possidetis Juris, the Cairo Resolution (July 1964) and Article 4(b) of the AU Constitutive ACT. The Republic of Cameroon did not produce a valid enforceable treaty which extended its internationally recognized borders beyond those which crystalized and were frozen at independence on January 1,1960 to include the Southern Cameroon.

For the above reason, the mandatory requirements of the OUA Cairo Resolution (1964), Article 4(b) of the AU Constitutive ACT and the Principle of Uti Possidetis Juris requiring the date of independence as the critical date for the establishment of the international borders of African states were not established in the case. As a result, the decision of the ICJ in which it awarded title over the Southern Cameroons territory of Bakassi to the Republic of Cameroon based on an alleged reunification on 1 October 1961 was impermissibly flawed and was not legally justified.

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D. Crystallisation of boundaries at Independence

The Cairo Resolution (17-21 July 1964) and the AU Constitutive ACT Article 4(b).

A. Organisation of African Unity (OAU) Cairo Resolution (1964)

The assembly of Heads of State and Government meeting in the First Ordinary Session in Cairo, UAR, from 17 to 21 July 1964.

i. AHG/RES.16(1): Recalling further that all member states have pledged, under Article IV of the Charter of African Unity, to respect scrupulously all principles laid down in paragraph 3 of Article III of the Charter of the Organization of African Unity:

ii. SOLEMNLY REAFFIRMS the strict respect by members of the Organisation for the principles laid down in paragraph 3 of Article III of the Charter of the Organisation of African Unity,

iii. SOLEMNLY DECLARES that all Member States pledge themselves to respect the borders existing on their achievement of national independence.

B. Constitutive Act of the African Union

Article 4

Principles

The Union shall function with the follow principles:

4(b) respect of borders existing on achievement of independence.

C. Submission.

The colonial boundary of the Republic of Cameroon was crystalised on 1 January 1960 the day on which it achieved independence from France and subsequently became a member of the UN on 20 September 1960. On May 25, 1963, the Republic of Cameroon became a founding member of the OAU.

The Republic of Cameroon participated in the Conference of Heads of State and Governments of the OAU in Cairo from the 17-21 July 1964. The Republic of Cameroon voted for the Cairo OAU Resolution which endorsed the principle of Uti Possidetis Juris by which all Member States pledged themselves to respect the borders existing on their achievement of national independence. Subsequently, the African Union (AU) Constitutive ACT required state members of the AU to pledge the respect of borders existing on

achieving of independence. Article 4(b) of the AU Constituent ACT is binding on the Republic of Cameroon and Nigeria who are state members of the AU.

The date of the independence of the Republic of Cameroon on January 1, 1960 is an essential factor in the crystallisation and the freezing of its colonial borders, transforming and giving it an international character in international law. It is the critical date required for the fulfilment of the principles enunciated by the OAU Cairo Resolution (July 1964) and Article 4(b) of the AU Constitutive ACT. It transformed the territory within the colonial borders from an object to a subject of international law.

The Republic of Cameroon endorsed and pledged to respect the resolutions and provision of the UN and OAU and AU multilateral treaties. These multilateral treaties defined, endorsed and froze its borders on the critical date of 1 January 1960, the date on which it achieved independence. The internationally recognized borders of the Republic of Cameroon crystallised and were frozen on 1 January 1960 prior to 1 October 1961 when the United Nations set aside as the date on which the Southern Cameroons was to achieve its independence by joining the already independent Republic of Cameroon under conditions established by United Nations General Assembly (UNGA) Resolution 1608 (XV).

The conditions established in UNGA Resolution 1608 (XV) were not fulfilled as explained in this paper, therefore independence by joining did not occur as a matter of fact and law on 1 October 1961. The date of 1 October 1961, therefore could not legally and factually constitute the date on which the independence of the Republic of Cameroon occurred. It could not, under international law, be said to be the critical date on which the borders of the Republic of Cameroon were frozen. It could therefore not have been relied on to make a finding of the fulfilment of the treaty requirements of the OAU Cairo Resolution (1964), Article 4(b) of the AU Constitutive ACT, and the principle of Uti Possidetis Juris. There was no legal basis on which the ICJ interpreted the OAU Cairo Resolution, the AU Constitutive ACT Article 4(b), and the principle of Uti Possidetis Juris to find 1 October 1961 or any other date than 1 January 1960, to be the date on which the Republic of Cameroon achieved independence.

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Reunification was not on the ballot. It was not contemplated because it had no legal basis under the UN Charter, in particular, the UN trusteeship treaty system. The legal basis of a reunification was irredeemably eviscerated by the extinction of German colonial possessions and territories after the First World War, by the Treaty of Versailles in its Article 119. By the operation of the said treaty, Germany was dispossessed of German Kamerun which were divided and administered by France and Great Britain as League of Nations Mandated territories.

French Cameroun and British Cameroons were transformed to United Nations Trust Territories and administered under Article 76 (b) of the UN Charter for their… *"progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement".*

Reunification which was alleged by the Republic of Cameroon and relied on by the ICJ did not derive its legality and legitimacy from international law, the UN multilateral treaty regime; in particular, United Nations General Assembly (UNGA) Resolutions, the UN Charter and the option of independence by joining which was voted for by the people of the Southern Cameroons in the UN Supervised plebiscite

By virtue of Article 31(1) of the Vienna Convention on the Law of Treaties, "*a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light and context of its object and purpose"*. The OAU Cairo Resolution and the AU Constitutive ACT on which the Republic of Cameroon based its claim to title over part of the territory of the Southern Cameroons, and which it alleged established the international character of its border was supposed to be interpreted in good faith and in accordance with the ordinary meaning of the wording of the treaties. If the provision of Article 31(1) of the Vienna Convention was complied with by the ICJ, there would have been no misinterpretation and misapplication of the OAU Cairo Resolution, the

AU Constitutive ACT, and the principles of international law in the determination of the colonial borders of the Republic of Cameroon.

The date of independence of the Republic of Cameroon is a fact of international public notoriety within the international multilateral treaty regime of the United Nations, OAU and the AU from which the critical date on which its borders were frozen and given an international character are conspicuously available. The date of the alleged reunification by the Southern Cameroon was not envisaged by the OAU and the AU multilateral treaty.

E. **The submissions of the Republic of Cameroun.**

Lawyers for the Republic of Cameroon, in particular, Professor Peter Ntarmark and Professor Malcom Shaw on 18 February 2002, submitted that the claim of the Republic of Cameroon for title over the contested territory was based on '*historic consolidation of title, acquiescence, recognition and the principle of Uti Possidetis Juris'*.

Professor Peter Ntamark submitted that the principle Uti Possidetis Juris was endorsed by African Heads of State and Governments during the OAU Conference on 21 July 1964, and applicable to colonial boundaries which were inherited at independence, crystallised or were frozen on the critical date of the independence of each state.

Counsel submitted that the critical date on which the borders of the Republic of Cameroon were frozen at independence which "the parties stated is 1 October 1961, the date of the reunification between the Southern Cameroons and the Republic of Cameroon", emphasising that "whatever were the rights of the parties then, these are still their rights now.**''** He further relied on the principle of Effectivité by which the Republic of Cameroon allegedly exercised its right of title resulting from ownership of its territory from the critical date of 1 October 1961 to the time of the conflict.

Professor Malcom Shaw analysed the period before the plebiscite and the independence with Nigeria in 1960 and after independence. He submitted that Nigeria was aware of the constitutional developments affecting British Cameroon, as a result, recognised the international boundaries of the Republic of Cameroon.

LEGALITY OF CLAIMS OF TITLE OVER THE SOUTHERN CAMEROONS

In its Judgment, the ICJ reasoned:

> Paragraph. 210, that, "Bakassi is said to have formed part of the area of the British Cameroons termed Southern Cameroons. This territorial definition is said to have been repeated in the trusteeship agreements which succeeded the mandates system after the Second World War….. Cameroon produces documentary evidence, British Orders-in-Council and maps which, it claims, evidence that Bakassi is consistently placed within the British Cameroons throughout this period….Cameroon points out that the map attached to the Report of the United Nations Plebiscite Commissioner shows that the Bakassi Peninsula formed part of the Victoria South-West plebiscite district…. This would show that the peninsula was recognized by the United Nations as being a part of the Southern Cameroons."
>
> Paragraph 213 that, "It is true that the Southern Cameroons Plebiscite Order-in-Council, 1960 makes no mention of any polling station bearing the name of a Bakassi village. Nor, however, does the Order-in-Council specifically exclude Bakassi from its scope. The Order simply refers to the Southern Cameroons as a whole. But at that time, it was already clearly established that Bakassi formed part of the Southern Cameroons under British trusteeship."

It is obvious from the evidence presented and the submissions of the parties that the alleged date of reunification of Southern Cameroons and the Republic of Cameroon was not proved. It was obvious that the said reunification, even if it occurred, did not (and could not) fulfil the requirements of the critical date and the terminal crystallisation of the frozen borders of the Republic of Cameroon.

The submission of the Republic of Cameroon about the alleged "reunification" of the Southern Cameroons and the Republic of Cameroon had no legal or factual basis. The claim of "reunification" was not based on facts and the law arising from United Nations General Assembly Resolutions and on international law. The outcome of United Nations Plebiscite which was organised on 11 February 1961 in the Southern Cameroons was "independence by joining" the independent Republic of Cameroon and not reunification which was not an option.

United Nations General Assembly Resolution 1608 (XV) of 21 April 1961 required the United Nations Trust Administering Authority, Great Britain, the Republic of Cameroon, Southern Cameroons to organize talks for the purpose of elaborating the terms by which

independence by joining the Republic of Cameroon would occur on 1 October 1961. This was not synonymous to reunification.

The historical record establishes the bad faith of the Republic of Cameroon.

Two weeks after the plebiscite on 11 February 1961, President Ahmadou Ahidjo of the Republic of Cameroon granted an interview on 24 February 1961 at the Tiko Airport in the Southern Cameroons to the official newspaper of the Republic of Cameroon *L'unité*, in which he misrepresented the purpose of the conference which was mandated by UNGA Resolution 1606 (XV) with the Administering Authority, Great Britain, the Southern Cameroons and the Republic of Cameroon to work out the terms by which independence by joining was to be achieved by stating that the conference was to discuss the terms of reunification. Again, not only was reunification not an option in the plebiscite, it had no legal basis. The Republic of Cameroon one year before, achieved independence as a United Nations Trust Territory.

In L'Unité no. 32 of 24/2/1961, the President was asked:

QUESTION: Mr. President, Southern Cameroons under British tutelage has just decided, as you have just declared, as you have just said, in favour of reunification. Can you tell us how and within what time frame this reunification will become effective?

> ANSWER: Regarding the reunification, as you know, even before the plebiscite, several contacts were taken between Prime Minister Mr. Foncha and his collaborators and the collaborators of the Republic of Cameroon. We have agreed to make *contacts after the plebiscite*…….After these contacts we also agreed to organize a conference which would bring together the representatives of the Republic of Cameroon, those of Southern Cameroons, the Administrative authorities, that is England, to examine together several issues, in particular the lifting of the trusteeship, and the modalities of the transfer of the sovereignty by the trust administering authority on the Southern Cameroon to the authorities of the Republic of Cameroon.

The reunification conference envisaged by President Ahmadou Ahidjo was illegal. It would have violated international law and the United Nation Charter. Reunification on a fallacious basis of a *German Kamerun* colony, would have been a repudiation of the legality of the very existence of the Republic of Cameroon and of its independence as a UN trust territory

on January 1, 1960. Reunification was therefore impossible as a matter of international treaty law, German colonies haven been outlawed by the treaty of Versailles (1918) Article 119.

Despite the bad faith and misrepresentation about reunification being the purpose and objective of the conference which was decided by UNGA Resolution 1608(XV) to work out the terms and conditions of independence by joining, Ahidjo in his interview to the press on 24 February 1961, nevertheless, expressed the necessity and significance of a conference with the participation of the UK, Southern Cameroons and the Republic of Cameroon. By proposing a conference for the parties to determine the terms and conditions of "reunification", Ahmadou Ahidjo attested to the fact that the Republic of Cameroon did not consider the result of the plebiscite per se terminal and conclusive for the realisation of "reunification".

The UN General Assembly did not consider the plebiscite vote in favour of independence by joining the independent Republic of Cameroon conclusive; the reason for UNGA Resolution 1608(XV) with a mandate for the Trust Administering Authority, The Republic of Cameroon and the Southern Cameroons to work out the conditions, terms and mechanism for its implementation. The outcome of the plebiscite vote was an expression of an intent to achieve independence by joining pursuant to Article 76(b) of the UN Charter.

The erga omnes obligations of the international community towards the fulfilment by the Southern Cameroons of its external rights of self-determination was aborted by the non-compliance with UNGA Resolution 1608(XV) and the annexation of the territory prior to 1 October 1961. President Ahmadou Ahidjo amended the Constitution of the Republic of Cameroon to annex and incorporate the Southern Cameroons as a reunified part of the Republic of Cameroon.

The imposition of reunification through the adjustments of the Constitution of the Republic of Cameroon to annex and colonise the Southern Cameroons amounted to a repudiation of independence by joining, which was the option chosen by the Southern Cameroons during

the plebiscite. It was an evisceration of Resolution 1608 (XV) which was a predicate to the implementation of independence by joining.

Compliance with UNGA Resolution 1608 (XV) had the significance of an obligation and condition subsequent to any measure taken to terminate the trust by virtue of Article 102 of the UN Charter re-emphasized by UN General Assembly on 14 December 1946 [Resolution 97 (I)] as modified by resolutions 364 B (IV), 482 (V) and 33/141 A, adopted by the General Assembly on 1 December 1949, 12 December 1950 and 18 December 1978, to establish the rules for the application of Article 102 of the Charter.

In an unprecedented violation of the UN Charter, the Trusteeship Agreement, UNGA Resolutions, International Law and Customary International Law, no treaty of Union was negotiated and entered into by the parties mandated by the UNGA Resolution.

The UN Resolution calling on Southern Cameroons, Republic of Cameroon, Great Britain, - to jointly organize a meeting to discuss and agree on the terms of the “independence by joining” before 1st October 1961, was never complied with. Thus the perspective and opinion of the stakeholders as well as a significant procedural mandate on the terms of “independence by joining” was never available for the General Assembly to make an informed decision concerning the termination of the trust.

In the result, no treaty of union was produced and registered at the UN with the Secretary-General of the UN pursuant to article 102 of the UN Charter to which reference could validly be made concerning compliance with the specific terms of the Trusteeship Agreement then and now pursuant to the UN Charter.

There was therefore no legal instrument available to the General Assembly to legally sustain a motion for the termination of the trust over the Southern Cameroons in conformity with article 76 (b) of the UN Charter. The UN General Assembly resolution terminating the UN Trust over Southern Cameroons proceeded therefore on the basis of misrepresentations made by the Administering Authority.

These misrepresentations were not a substitute in international law for a specific procedure, condition subsequent and legal instrument requested by the UN General Assembly which was the sole legal basis on which a proper and legally acceptable and valid decision terminating the trust would have been founded.

In relying on the misrepresentations of the administering power only, without ascertaining whether the mission assigned on all the parties concerned was carried out and its outcome to terminate the trust, the UN General Assembly acted in fundamental breach of its Charter responsibility under Art.76 (b) of the UN Charter, as well as its own Resolution.

Treaties, according to Martin Dixon and Robert McCorquodale, offer states a deliberate method by which to create binding international law and that the United Nations and the International Law Commission have created significant multilateral treaties.[7] Being a multilateral treaty, the provisions of the UN Charter are binding on states parties. The case of the Southern Cameroons is one of the breaches of international obligations. For this purpose, under the mandatory provision of Articles 102 and 103 of the UN Charter, the purported union of the Republic of Cameroon with Southern Cameroons cannot be invoked before any UN Organ. It should never have been invoked before the Trusteeship Council as the basis for the termination of the Trust over the Southern Cameroons and before the ICJ in deciding the case over Bakassi Peninsula and the international borders of the Republic of Cameroon.

E. THE CAMEROON CONCEPT OF RE-UNIFICATION

At the root of Cameroon's success in the Bakassi case was its reliance on a certain idea of "re-unification" to deceive the ICJ about the date on which its boundaries crystalized under the principle of utis possidetis juris. The Bakassi peninsula, the subject of the ICJ dispute, is an integral part of the former British Southern Cameroons, as the evidence produced in

[7] Martin Dixon & Robert McCorquodale, Cases and Materials on International Law, Blackstone Press Ltd 3rd Edition p 24

Court showed. The Republic of Cameroon had no evidence whatsoever and had to rely on Southern Cameroons documents. The Republic of Cameroon laid claim to the Bakassi peninsula on the allegation without proof, that it had re-unified with the British Southern Cameroons on 1 October 1961 and thereby extended its territory to cover Bakassi.

It is important to expose the fraud on which the ICJ was deceived by exploring the concept of Cameroon's "re-unification" and to see if "re-unification" is at all a concept related to the principle of utis possidetis juris. It has already been sufficiently shown that re-unification is alien to the concept of uti possidetis juris; it has no basis in international law.

The Southern Cameroons and French Cameroon (the two countries alleged by the Republic of Cameroon to have re-unified) were two United Nations Trust Territories, each with a distinct and separate mandate. From the moment they emerged as two separate entities from the dismemberment of German Kamerun, they acquired international personalities and went their separate ways. Each had its own international boundaries and was governed under separate mandates under the League of Nations and subsequently the UN system. As *separate territories*, with their own representatives and administering authorities, they had never at any time in their past been governed as one entity. Under German Kamerun, they did not exist at all. In fact, they emerged only from the dismemberment of German Kamerun, which incidentally extended to parts of Chad, Central African Republic, the Congo etc.

French Cameroon, the UN Trust Territory under French Administration, gained its independence from France on 1 January 1960 and inherited no other territory but the territory of French Cameroon. British Southern Cameroons, the southern part of the Cameroons under UK Administration, was supposed to achieve its own independence on 1 October 1961 as voted by the UNGA in Res. 1608(XV) of 21 April 1961. Unfortunately, the independence never materialised due to its annexation by French Cameroon through the conspiracy of the Administering Authority. At no time in their separate existence did the paths of French Cameroon and English Cameroon cross! They were developing parallel to

each other. They shared nothing in common that could remotely evoke memories of a common life together. There was no German Kamerun imprint on them!

Given that these two territories had never enjoyed any common life together, had mutually exclusive boundaries, spoke different languages, had different Administering Authorities, had different colonial heritages; had different legal systems, different educational systems, different political systems, different cultures and mentalities, the question arises to understand what was meant by the Republic of Cameroon when it invoked "re-unification" as the basis for the crystallisation of its boundaries. Can there be a re-unification of entities that had never been unified before? And we cannot talk of the "re-unification" of the people of German Kamerun, because this was business between two countries, not of their citizens. Unifying a people is different from unifying two countries. The latter case is strictly governed by international law, while the unification of peoples is not so governed. And who assigned that mission of "re-unifying" the people under the dismembered German Kamerun to French Cameroon? There was simply nothing nostalgic about German Kamerun. The citizens of the two countries hardly saw or knew German Kamerun. Under German Kamerun, there was hardly anything that brought the citizens together to have some memory of a common life together. They did not even consider Germany as their colonial master! What was there to remember about having been colonized by Germany that could give rise to a desire for the people under that colonial rule to wish to "re-unify"? British declassified papers contain revealing evidence about the extent to which the people of the Southern Cameroons hated the French Cameroon system, to the extent that there were fears that they would burn or destroy the ballot papers for the Plebiscite vote.

If for some reason Britain and France were to come together, can that be referred to as "re-unification" because their citizens were once part of one Roman Empire? Would a union between India and Bangladesh or Pakistan be called re-unification, or even a union between the two Congos?

There were no two Cameroons under German Kamerun. The name Cameroon alone could not give rise to a concept of re-unification because the two Cameroons had never enjoyed

any life together and had nothing in common. The idea of “re-unification” was not that of going back to some common German experience or life they had! They were as opposed to each other as Britain and France who governed them.

The alleged re-unification of the two Cameroons is not like the re-unification of the two Germanies or the two Koreas. No. The two Germanies emerged from a forceful partition of one legal country, which had the same language, culture, educational system, law, and so on. They could re-unify because they were going back to their common German heritage and systems.

German Kamerun had ceased to exist under international law as an entity. It was formally dismembered by Article 119 of the Versailles Treaty. New countries were created from it and assigned to new masters and different destinies. These countries inherited new systems and cultures under France and Britain. “Re-unification” was simply an impossibility by any stretch of the imagination. How could anyone be trying to “re-unify” Southern Cameroons with its British heritage and French Cameroon with its French heritage which had absolutely nothing in common?

There could be no question of trying to re-unify German Kamerun or parts of it. Such an attempt would amount to an affront to the international system and international law under which German Kamerun had been extinguished.

The only possible sense in which Cameroon’s concept of “re-unification” can be understood is in the sense that French Cameroon was posing as the illegal successor state to a dismembered and unlawful German Kamerun. Even though the Republic of Cameroon emerged from the formal dismemberment of German Kamerun by the Versailles Treaty, it was purporting to give itself the powers and mission to revive German Kamerun! Only on this basis could it invoke the non-legal concept of “Re-unification”, an affront to the international system which gave birth to French Cameroon itself! The effrontery was so brazen that it was able to deceive the International Court of Justice with it. Curiously, French Cameroon’s fraud ended with the Southern Cameroons. It did not attempt to lay

claim to other parts of German Kamerun that were in Chad, Central African Republic, the Congo, etc.

If French Cameroon alleged re-unification, what instruments did it produce to prove it? Was there any evidence of a treaty of union between French Cameroon and the Southern Cameroons it purported to have "re-unified" with? Under which treaty or international instruments was this "re-unification" found? What did Cameroon present to the court to prove that the Cameroon before the court was the product of "re-unification" between the Southern Cameroons and French Cameroon? In fact, absolutely no evidence was produced. The ICJ began consideration of the case on the fallacious presumption that there was only one Cameroon and that the Bakassi peninsular must either belong to Nigeria or to that Cameroon. The facts reveal that this presumption was completely wrong and if the court had only interpreted the principle of Uti possidetis juris correctly, it would have found out that Cameroon had no boundary with Nigeria at Bakassi.

Supposing that a re-unification occurred but could not be proven, how then could it be distinguished from covert annexation? Was there any instrument showing the adjustment of boundaries under Article 102(1) of the UN Charter between the countries allegedly "re-unified"? In other words, what was the legal proof that Cameroon's territory acquired at its independence on 1 January 1960 had changed?

To all intents and purposes, this was a deceitful scheme not only to fool the ICJ but also to illegally annex the Southern Cameroons. Cameroon's re-unification claim is a fraudulent claim on the territory of the Southern Cameroons. Re-unification is simply another word for French Cameroon imperialism and expansionism, a crime in international law; it was an attempt to impose its French-inherited systems on English Cameroon, but not to "re-unify" anything because there was nothing to re-unify.

The international legal system demonstrated its limitations in the Bakassi case by rejecting the interpleader of the Southern Cameroons to intervene in the case. The Southern Cameroons, in pursuance of its rejection of French Cameroon annexation and imperialism,

had petitioned the ICJ to intervene in the case, but it was denied! And this was not a case that could be rightfully decided without also hearing from the Southern Cameroons with which Cameroon claimed to have "re-unified". It claimed re-unification but could not tender the smallest proof for it to the court. The colonial masters, posing as makers of international law, had effectively conspired to refuse access to the ICJ to former Trust Territories, a terrible injustice as evidenced in this case. The unfortunate result is that annexed territories like the Southern Cameroons are securely excluded from the fraud occurring over their own territories before the ICJ!

In addition to the above, it should be noted that French Cameroon categorically rejected "independence by joining" of the Southern Cameroons when it voted against Southern Cameroon's independence in UNGA Res. 1608(XV). Prior to the Plebiscite vote, the Southern Cameroons had entered into an understanding that should the vote go in favour of achieving independence by joining the Republic of Cameroon, a federation of two states equal in status would be formed. But even after entering into this understanding with the Southern Cameroons, French Cameroon went ahead to vote against Southern Cameroons' independence, thus rejecting any union with the Southern Cameroons. It could not then talk of re-unification with a territory whose independence it had rejected. Its intention was that of annexation.

Further, in violation of the UN Charter and international law, the Republic of Cameroon annexed the Southern Cameroons as far back as September 1961. The Constitution of the Federal Republic of Cameroon was promulgated into law on September 1, 1961 (Law no.24/61) by Ahmadou Ahidjo President of the Republique du Cameroun. This constitution was never ratified by the Southern Cameroons National Assembly or endorsed by its people through a referendum. It was a unilateral law of the Republic of Cameroon; an amendment of its domestic law. Presenting the constitution bill before the Parliament of the Republique du Cameroun on August 11, 1961 shortly before its adoption on August 14, 1961, President Ahmadou Ahidjo of the Republique du Cameroun informed the assembled Deputies that It was not a new constitution but an amendment of the constitution of Republique du

Cameroun to accommodate a part of its territory which was returning to the motherland. He stated that a treaty of union was not needed nor necessary for the purpose but an amendment of the existing constitution.

The Republic of Cameroon achieved independence on 1 January 1960. On what date did the Southern Cameroons become a part of its territory for its president to state in August 1961 that its constitution was being amended to accommodate a part of its territory which was returning to the motherland? The trusteeship over the Southern Cameroons was due to be terminated only on 1 October 1961, but earlier in August of the same year, the French Cameroon president was declaring it to be a part of its territory returning to the motherland! The Republic of Cameroon was therefore making a mockery of the whole international system and order through which it came into being and which also gave birth to the Southern Cameroons!
It should be further noted that the Republique du Cameroun joined the United Nations on 20 September 1960, at a time when the Southern Cameroons was still under the Trusteeship system. Consequently, the seat of the Republique du Cameroun at the UN does not represent the two countries!

The question must therefore be posed how the ICJ arrived the conclusion that the boundaries of the Republic of Cameroon had changed from what they were at its independence on 1 January 1960 to something else without seeing the required proof under Article 102(1) of the UN Charter. Such a proof could only have come from the records of the Secretariat General of the UN. In the absence of such a proof, the ICJ could simply, under Article 102(2), not have entertained any claim of re-unification!

The veil of annexation has finally been lifted with the genocidal war that was declared on the Southern Cameroons in 2017 by the Republic of Cameroon when the people of the Southern Cameroons came out en masse to denounce the annexation of their country. In 2019, the President of French Cameroon openly admitted at the Paris Peace Conference that throughout, the policy of French Cameroon has been to assimilate the Southern

Cameroons. This proves that it has never been union but annexation. Even the federation which was touted as proof of union had long been scrapped by French Cameroon at the time of the Bakassi case. There was no trace even of a pretence of union at the time of the war.

As it turns out, there is not a single document signed between the two countries the Republic of Cameroon claimed to have been "re-unified" which proves that re-unification! The ICJ was just being led in its sleep as it were.

It is manifestly clear therefore that there was never any "re-unification" between the Republic of Cameroon and the Southern Cameroons; that "re-unification" is an impossibility between those two countries given that their paths had never crossed prior to the alleged re-unification in 1961; that it was impossible to talk of the re-unification of one country with a British heritage and another with a French heritage which had no previous past together; that the Republic of Cameroon simply annexed the Southern Cameroons and covered its annexation through the fact that the Southern Cameroons is denied access to international justice by the UN international legal system.

These facts leave no doubt about the extent to which the ICJ was misled in this case. How did the ICJ so mislead itself in the Bakassi case to fundamentally alter the interpretation of the principle of utis possidetis juris without any evidence whatsoever? The danger of the ICJ position in the case is that countries which have annexed neighbouring territories would change their independence dates to that of the annexation and still claim to be complying with the doctrine of Uti possidetis juris! Cameroon's supposed victory at the ICJ in the Bakassi case cannot be said to have been based on the true principle of Uti possidetis juris. It was a massive fraud. It can simply not be understood how the ICJ could reach this decision, claiming it to be based on that principle.

F. Factual and legal misrepresentations

a) The Cairo Resolution which the Republic of Cameroon relied on to substantiate its claim of title is OAU/AU Resolution AHG /Res 16(1) which was passed at the first session of African Heads of States and Governments. This resolution was later enshrined in Article 4 (b) of the Constitutive Act of the African Union.

b) Article 4(b) of the AU Constitutive Act states: 4. The Union shall function with the following principles:

Article 4 (b). respect of borders existing on achievement of independence.

1. It is significant to state that the connection which the Republic of Cameroon sought to make between the OAU/AU Cairo Resolution, Article 4(b) of the AU Constitutive ACT and title Effectivité does not arise from the Cairo resolution or the AU Constitutive Act.
2. Uti Possidetis Juris is a principle of customary international law that serves to preserve the boundaries of colonies emerging as states. In his book on International Law, Professor Malcom Shaw states that the application of the principle has the effect of freezing the territorial title existing at the time of independence to produce what the ICJ Chamber described in the Burkina Faso v Mali case as the "photographs of the territory" at the critical date.[8]
3. He posits that, a concept of a critical date is of especial relevance with regard to the doctrine of Uti Possidetis Juris which posits that a new state has the borders of the predecessor entity so the moment of independence itself is a critical date. [9]
4. Pursuant to the Cairo resolution and Article 4 of the AU Constitutive Act, the borders which the Republic of Cameroon inherited at independence ought to be the borders it inherited on the critical date on which it attained independence on January 1, 1960.
5. In the Land and Maritime Border case, the Republic of Cameroon v Nigeria- Equatorial Guinea Intervening, the Republic of Cameroon urged the ICJ to apply the Cairo Resolution

[8] Case concerning Military and Paramilitary Activities Against Nicaragua (Nicaragua v United States) Merits Judgment , ICJ Reports 1986, p 568, 80 ILR , www.icj-cij.org , See also Malcom, N. Shaw Fifth Edition, Cambridge University Press,2007, p448".

[9] Malcom N. Shaw p.431

17-21 July 1964 and the AU Constitutive Act 4 (b) to find that its boundaries crystalized and were frozen on the date of independence which it alleged is the date of its reunification with the Southern Cameroons on 1 October 1961.

6. The Cairo Resolution and AU Constitutive Act Article 4 (b) established that international borders of Africa countries to be colonial borders which were inherited and frozen on the critical dates on which the territories attained independence.

7. In attempts to prove that its international borders complied with this principle, the Republic of Cameroon pecked its case on an alleged reunification with the Southern Cameroons on 1 October 1961.

8. The alleged reunification, was a fraudulent scheme which the Republic of Cameroon invented to repudiate the clear choice of independence by joining which the Southern Cameroons voted for, on 11 February 1961.

9. The option of independence by joining was not realised on 1 October 1961. The reason for this was that the predicate conditions which were established by UNGA Resolution 1608 (XV) for its realisation were not met.

10. The Republic of Cameroon proceeded to repudiate the independence by joining which the Southern Cameroons voted for on 11 February 1961 by imposing reunification which it construed as annexation and enforced through absorption and colonisation through a unilateral adjustment and amendment of its Constitution on September 1, 1961 and militarily occupying the territory on 30 September 1961.

11. The link or nexus between the supposed reunification of the Republic of Cameroon and the Southern Cameroons and the principle of Effectivité and title does not flow from the AU Constitutive Act and the OAU Cairo Resolution. In this context, it was not established as a matter of law.

12. Apart from alleging without opposition from Nigeria, the Republic of Cameroon did not present factual, testamentary and legal proof of the alleged reunification on which its claim of title was based. Proof of independence by joining was not an issue in the case. It was not raised at all. An alleged claim of reunification on 1 October 1961 was not challenged or

subjected to evidentiary and legal scrutiny by Nigeria. These central issues in the case were therefore not discussed and therefore not resolved by the ICJ.

Martin Dixon & Robert McQorquodale, citing the ICJ Arbitration decision in Island of Palmas Case (The Netherlands v United States) 2 RLAA (1928) 828 stated that ""contemporary approaches to international law consider three primary matters with respect to sovereignty over territory: Effective occupation, consent and right of self-determination" with the basis of sovereignty over territory today by effective occupation, "being the continuous and peaceful display of sovereignty".[10]

The principle of self-determination which is a consideration for the determination on sovereignty is applicable to the Southern Cameroons Case. Ian Browlie states that the present position of international law is that self-determination is a legal principle and that United Nations Organs do not permit Article 2 paragraph 7 to impede discussion and decision when the principle is in issue.[11]

The United Nations Resolution 1608 (XV) was intended to enable the Southern Cameroons to exercise its right to self-determination in fulfilment of Article 76 (b) of the UN Charter. The non-compliance with UNGA Resolution 1608 (XV) in the termination of the trust by UK and the annexation of the Southern by the Republic of Cameroon, the right of self-determination of the Southern Cameroons was subverted.

13. Professor Malcom Shaw writes that although the exercise of effective authority is a crucial element, …. what acts of sovereignty are necessary to found title will depend in each instance upon all the relevant circumstances of the case including the nature of the territory involved, the amount of opposition (if any) that such acts on the part of the claimant state, have aroused, and the international reaction.[12]

14. Effectivité and title claims of the Republic of Cameroon over Southern Cameroons derived from territorial rights and status which were extinct under Articles 119 of the treaty of Versailles and became League of Nations mandate territories under Article 22 of the League

[10] Martin Dixon & Robert McCorquodale Ibid p 258
[11] Ian Brownlie, Principles of Public International Law, Oxford University Press, Fifth Edition p 601
[12] Malcom N. Shaw, p 432

of Nations Charter under allied powers. The Republic of Cameroon became a mandated territory under France and therefore after a trust territory under Article 76 (b) of the United Nations Charter. British Cameroons acquired the same status under the United Kingdom of Great Britain and Ireland. The Republic of Cameroon achieved its independence on 1, January 1960 as a trust territory of the United Nations under French administration. The Southern Cameroons had a right to exercise its right to self-determination and independence under Article 76(b). UNGA Resolution 1608(XV) was an avenue through which that right was to be exercised. Annexation for the purpose of reunification did not confer a valid title in international law based on the facts and the law in this case. The ongoing war in the Southern Cameroons is evidence of the resistance and non-acquiescence to the annexation and colonial status imposed on the Southern Cameroons.

The war which the Republic of Cameroon declared on the Southern Cameroons has claimed the lives of thousands of armless civilians, blighted the territory by terror, extermination, deportation of victims to neighbouring countries, rape as a weapon of war, sexual slavery, torching of over 600 civilian settlements, mass looting and plunder of the existential subsistence economy of the Southern Cameroons.

Based on the forgoing, the Republic of Cameroon cannot validly rely on the ICJ judgment against Nigeria as the basis of its title over the Southern Cameroons or part of the Southern Cameroons. Neither the Republic of Cameroon nor Nigeria has a better claim of title over the Southern Cameroons or any part of its territory.

15. Article 59 of the ICJ Statute states that: The Decision of the Court has no binding force except between the parties and in respect of that particular case. For this reason, this case is not binding on the Southern Cameroons.

G. Annexation And Colonial Rule

The Republic of Cameroon relied on a violation of international law to justify its claim over the internationally established borders of the Southern Cameroons and part of its territory. The alleged root of title of the Republic of Cameroon over Southern Cameroons-Ambazonia is based on a falsification of history, a misrepresentation and misapplication of the principles of international law on the status of the Southern Cameroons.

The Republic of Cameroon manipulated, amended and adjusted its constitution on September 1, 1961 to annex and colonise the Southern Cameroons. In so doing, it ignored independence by joining which the Southern Cameroons opted for in a UN supervised plebiscite on February 11, 1961**.**

The amended Constitution of the Republic of Cameroon which was promulgated into law on September 1, 1961 as the Constitution of the Federal Republic of Cameroon by Ahmadou Ahidjo President of La Republique du Cameroun) (Law no.24/61) provided:

Article 1**.** With effect from the 1st October 1961, the Federal Republic of Cameroon shall be constituted from the territory of the Republic of Cameroon, hereafter to be styled East Cameroon, and the territory of the Southern Cameroons, formerly under British trusteeship, hereafter to be styled West Cameroon.

Article 2. (1**)** National sovereignty shall be vested in the people of Cameroon who shall exercise it either through the members returned by it to the Federal Assembly or by way of referendum; nor may any section of the people or any individual arrogate to itself or to himself the exercise thereof.

Article 47. (1**)** No bill to amend the Constitution may be introduced if it tends to impair the unity and integrity of the Federation**.**

Article 50**.** Notwithstanding anything in this Constitution, the President of the Federal Republic shall have power, within the six months beginning from the 1st October 1961 to legislate by way of Ordinance having the force of law for the setting up of constitutional organs, and, pending their setting up, for governmental procedure and the carrying on of the federal government.

YAOUNDE, the 1st September, 1961 AHMADOU AHIDJO

H. The legalisation of criminal conduct

The Constitution of the Federal Republic of Cameroon was promulgated into law on September 1, 1961 (Law no.24/61) by Ahmadou Ahidjo President of the Republique du Cameroun who signed it in his capacity as President of the Republique du Cameroun.

Prior to the promulgation of the said Constitution on September 1, 1961 it was adopted by the Parliament of La Republique du Cameroun on August 14, 1961, by a vote of 88 and 6 abstentions.

Presenting the constitution bill before the Parliament of the Republique du Cameroun on August 11, 1961 shortly before its adoption on August 14, 1961, President Ahmadou Ahidjo

of the Republique du Cameroun informed the assembled Deputies that It was not a new constitution but an amendment of the constitution of Republique du Cameroun to accommodate a part of its territory which was returning to the motherland. He stated that a treaty of union was not needed nor necessary for the purpose but an amendment of the existing constitution.

The said Constitution was not submitted to the House of Assembly of the Southern Cameroons to obtain the sovereign will of the Southern Cameroons and for adoption. It was imposed after obtaining the unilateral adoption and promulgation into law by the Republique du Cameroun. This process was a complete evisceration and repudiation of the independence by joining option which the Southern Cameroons voted on February 11, 1961.

Left without protection and with the complicity of the Administering Power, Great Britain, the Southern Cameroons was annexed and colonised by the Republic of Cameroon in violation of international law, and Ahidjo's commitment before the 49th meeting of the Fourth Committee of the UN in 1959 that "*French Cameroun are not annexationist, if our brothers of the British zone wish to unite with independent Cameroun, we are ready to discuss the matter with them, but we will do so on a footing of equality".*

It was a subversion and betrayal of the Sacred Trust between the Southern Cameroons and the United Nations. This explains why Her Majesty, the Queen's representative, Governor-General J.O Fields was not in Buea on October 1, 1961 which was fixed for the realisation of the independence by joining.

In the evening of 30 September 1961, some twenty-five kilometres away from Buea, the capital of the Southern Cameroons, the representative of Her Majesty the Queen of England, the Trusteeship Administering Power, shamefully surrendered sovereignty over the Southern Cameroons to Ahmadou Ahidjo, the President of Republic of Cameroon.

The event was marked by a low-keyed military ceremony organised by the British Army which lowered the Union Jack for a modified flag of the Republic of Cameroon to be raised in its place. That marked the calamitous, treacherous and shameful exit of Great Britain. The event sowed the brutal seeds of an ongoing genocidal war and atrocity crimes in Africa.

LEGALITY OF CLAIMS OF TITLE OVER THE SOUTHERN CAMEROONS

The bloodletting and the impunity with which it is caused by the Republic of Cameroon has not sheered into the conscience of the international community, particularly, United Nations and the African Union, perhaps, because it is African blood which is flowing.
The next morning on October 1, 1961, there was no United Nations and no Administering Authority on its behalf present to hand over the instruments of sovereignty to the elected leaders of the Southern Cameroons. The people of the Southern Cameroons were betrayed and sacrificed. They were denied the right to exercise the erga Omnes rights conferred by Article 76 (b) of the UN Charter, UNGA Res. 1514(XV), UNGA Res. 1541(XV) and UNGA Res.1608(XV) to attain independence by joining the Republic of Cameroon on terms freely negotiated and agreed to between parties of equal status.

I. **Circus On The Floor Of The House of Assembly.**

On the 14 September 1961, PM Foncha tabled a motion in his name before the Southern Cameroons House of Assembly urging the House to consider the following motion titled, The future of the Federal Republic of Cameroon:

> "Approve the action of the leaders of the Southern Cameroons in the negotiations with the government of Republic of Cameroon concerning the form of the future Federation and thank the President and government of the Republic of Cameroon for the co-operative and brotherly manner in which they conducted negotiations".

The motion was deferred after a lengthy rebuke from Hon Motomby Woleta CPNC opposition MP, then brought back by Mr Salomon T. Muna and adopted on September 18, 1961.

Prior to the adoption of this motion of thanks on September 18, 1961, Hon Motomby Woleta, again took to the floor and placed on record that no member of the opposition party had seen the text of the purported constitution about which a vote of thanks was sought on the form of the future Federation. Although the supposed vote of thanks was voted, without any other MP taking the floor, the representations by Hon Motomby Woleta suggested that the so-called Federal Constitution was not discussed and/or submitted for debate and adoption by the Southern Cameroons House of Assembly.

LEGALITY OF CLAIMS OF TITLE OVER THE SOUTHERN CAMEROONS

The motion tabled by Prime Minister John Ngu Foncha in his name and not that of the government of the Southern Cameroons concerned solely the form of the future federation in the already promulgated amended Constitution of the Republic of Cameroon, which was renamed Constitution of the Federal Republic of Cameroon without the sanction or adoption by the Southern Cameroons House of Assembly.

Coming as it did on the 18 September 1961, the motion was a belated attempt to retroactively endorse and validate the annexation, absorption and colonialization of the Southern Cameroons which had occurred on September 1, 1961. It was a circus to masked the annexation and slave status which the Southern Cameroons was to endure henceforth.

As specified in the said Federal Constitution, Ahmadou Ahidjo promulgated it in his capacity as President of the Republic of Cameroon. The Southern Cameroons House of Assembly did not adopt it. The Prime Minister of the Southern Cameroons did not co-sign it on behalf of the Southern Cameroons. The British Administering Authority did not sign it.

The operating Southern Cameroons (Constitution Order in Council 1960) was applicable in the Southern Cameroons prior to September 1, 1961, on that date and until October 1, 1961. As a matter of law, its validity was unaffected by the amendment of the Constitution of the Republic of Cameroun. The Southern Cameroons Constitution in Council did not empower any person(s), or institutions, other than Southern Cameroons House of Assembly and the Governor- General on behalf of the Trust Administering Authority to sign binding treaties on behalf of the Southern Cameroons.

The so-called Federal Constitution was purely an internal Constitutional arrangement of the Republic Cameroon. There was absolutely no doubt that the supposed Federal Constitution lasted only eleven years and was abolished in the manner it was established. The change of nomenclature to the United Republic of Cameroon and then back to the name of the Republic of Cameroon at independence lasted twelve years.

The said Constitution could not legally be construed as fulfilling or implementing UNGA Resolution 1608 (XV). There was no provision in the said Constitution purporting to have that effect. Besides, the Republic of Cameroon at the date of the promulgation of the impugned Constitution did not exercise sovereignty over the Southern Cameroons. The

Republic of Cameroon was not the Trust Administering Authority over the Southern Cameroons. It was not a party to the Trusteeship Agreement over the Southern Cameroons.

J. Constitutional Noose of Impunity.

Article 59 of the said Federal Constitution stated that: *This Constitution shall replace the Constitution of the Republic of Cameroun approved on the 21 February,1960 by the people of Cameroon; shall come into force on the 1st October 1961; and shall be published in its new form in French and in English, the French text being authentic*. There was no provision regarding the Southern Cameroons Constitution (Order in Council 1960) and no statement about the government of the Southern Cameroons which was recognized in UNGA Res. 1608 as the duly recognized party to the negotiation of implementable terms of the union after the independence on 1 October 1961.

The Constitution of the Republic of Cameroon which the Federal Constitution replaced was adopted by the people of the Republic of Cameroon on 21 February 1960 and promulgated into law by Ahmadou Ahidjo, then Prime Minister pursuant to law no.59-56-of 31 October 1959 on March 4, 1960. The said Constitution in the following essential provisions stated:

The prime minister head of government has promulgated this constitutional law whose provisions stated:

Title One: Sovereignty

Article 1**,** The Republic of Cameroon is a one, united and indivisible, lay, democratic and social republic.

Article 50, No constitutional amendment to change the republican nature of the state**,** territorial integrity of the state or the democratic principles of the state shall be admissible. The provision of Article 1 above (Constitution of 21 February 1960) of the Republic of Cameroun being one, united and indivisible state was not retained in the version which was modified and promulgated by Ahidjo on September 1, 1961 as the Federal Constitution.

Article 50 of the Constitution of the Republic of Cameroon expressly outlawed any Constitutional amendment to change the territorial integrity of the state. Therefore, by Article 50 of its own Constitution, an amendment to change the territorial integrity of the Republic of Cameroun, which was frozen on the critical date of January 1, 1960 was illegal, thus void.

This provision may be the rationale for the Republic of Cameroon promulgating Law no.24/61) of *Se*ptember 1, 1961 purely to annex the Southern Cameroons rather than negotiate a treaty for the actualisation of independence by joining through the implementation of UNGA Resolution 1608 (XV). This must be the reason why, by law no 84-1 of February 1984 the Republic of Cameroun reverted to its constitutional legality at independence which was ordained and protected by Article 50 of its founding constitution of February 21, 1960**.**

PART I: The state and sovereignty.

Article 1 1. The United Republic of Cameroon shall, with effect from the date of entry into force of this law, be known as Republic of Cameroon (Law No 84-1 of February 4, 1984).

2. The Republic of Cameroon shall be a decentralized unitary State. It shall be one and indivisible, secular, democratic and dedicated to social service. It shall recognize and protect traditional values that conform to democratic principles, human rights and the law. It shall ensure the equality of all citizens before the law.

This constitutional arrangement was repeated by Law No. 96/06 of 18 January 1996 amending the Constitution of 2 June 1972**,** amended and supplemented by Law No. 2008/001 of 14 April 2008, thus:

The National Assembly has deliberated and adopted; the President of the Republic promulgates the law whose content follows Law No.96 /06 of 19 Jan. 1996:

Title I: State and Sovereignty

Article I: (1) The United Republic of Cameroon takes from the entry into force of this Law the name of Republic of Cameroon (Law No. 84-1 of 4 February 1984). (2) The Republic of Cameroon is a decentralized unitary State. It is one and indivisible, secular, democratic and social.

Yaoundé, 18 January 1996 The President of the Republic Paul BIYA.

K. Conclusion

This paper has demonstrated that the claim of reunification on October 1961 by the Republic of Cameroon as a fulfilment of the requirements of Article 4(b) of the AU

Constituent ACT and the Utis Possidetis Juris principle which was endorsed by a resolution of African Heads of State and Governments in Cairo in their conference from 17-21 July1964 was without merit and without legal basis.

The submission that the alleged reunification on 1 October 1961 was the critical date on which the Republic of Cameroon acquired title over the Southern Cameroons and its borders crystalized and were frozen is also without merit. The Republic of Cameroon has since changed the **date** of its alleged reunification to 20 May 1972, a date it celebrates as its national day.

After laying fanciful claims of title over the Southern Cameroons based on an alleged critical date of 1 October 1961, the Republic of Cameroon produced no legal instrument recognized in international to justify that a reunification was possible under the circumstances and that indeed it occurred; of independence by joining after compliance with UNGA Resolution 1608 (XV) . Consequently, no valid legal instrument or treaty was duly submitted and registered in the Secretariat of the UN pursuant to Article 102 of the UN Charter for it to have the validity and enforcement value under Article 103 of the UN Charter.

A review of the Republic of Cameroon's constitutional history establishes that its constitution has consistently been manipulated to attempt to mask the annexation and colonial status to which it annexed and subjected the Southern Cameroons. There was no provision in the purported federal constitution about Cameroon being one and indivisible. The said provision existed only in the constitution of the Republic of Cameroon at independence in 1960 and its subsequent adjustments in 1972, 1984 and 1996.

The Republic of Cameroon pledged in its various constitutions to respect international law and the UN Charter. The annexation and imposition of colonial status on the Southern Cameroons were violations of international law and the Republic of Cameroon's UN Charter obligations.

These violations individually or in aggregate merit a robust intervention by the United Nations and the International Community to end impunity, annexation, colonisation and

war which threatens peace and security in the Gulf of Guinea. Perpetrators of atrocity crimes must be held accountable and the root causes of the Southern Cameroons conflict must be addressed for the supremacy of the international rule of reign.

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