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KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ) is the official journal of the School of Law, Kampala International University. It is a peer-reviewed journal providing distinctive and insightful analysis of legal concepts, operation of legal institutions and relationships between law and other concepts. It is guided in the true academic spirit of objectivity and critical investigation of topical and contemporary issues resulting from the interface between law and society. The result is a high-quality account of in-depth assessment of the strengths and weaknesses of particular legal regimes with the view to introducing reforms. In furtherance of the requirements of advanced academic scholarship, the Journal places high premium on originality and contribution to knowledge, plain and conventional language, and full acknowledgment of sources of information among other things. It is superintended by a Board of respected academics, lawyers, and other legal professionals.

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Scope

Kampala International University Law Journal (KIULJ) is the official Journal of the School of Law, Kampala International University, Uganda. It is a peer-reviewed Journal providing an objective and industry focused analysis of national and international legal, policy and ethical issues. The Journal publishes well researched articles that are in sync with sound academic interrogation and professional experience on topical, legal, business, financial, investment, economic and policy issues and other sectors.

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FROM THE EDITORIAL SUITE

The primary objective of the **KAMPALA INTERNATIONAL UNIVERSITY LAW JOURNAL (KIULJ)** is to provide as platform for a robust intellectual discourse, through the publication of incisive and insightful articles and other contributions from a variety of scholars, jurists and practitioners across jurisdictions. The desire to accomplish this objective guides the choice of the materials being presented to the reading public in every edition. The peer review and editing processes of the papers that are finally selected for publication are equally influenced largely by the pursuit of this goal.

To this end, articles from seasoned scholars and practitioners in each edition address a wide spectrum of issues from different branches of the law, such as, International Criminal Law, Law of International Institutions, Environmental Law, Human Rights Law, Medical Law, Oil and Gas Law, Constitutional Law, Corporate Governance to mention but a few. You will, no doubt, find these scholarly works a worthy contribution to knowledge in their respective fields.

On behalf of the Editorial Board, I wish to appreciate all our reviewers, internal and external, for their constructive criticisms, comments and suggestions. These go a long way to enrich the quality of the papers published in this Journal. The various contributors who painstakingly addressed the observations and suggestions of the reviewers, thus facilitating the achievement of the purpose of the review process also deserve our commendation.

We also, with a grateful heart, acknowledge the interest our teeming readers have continued to show in the succeeding editions of the journal just as we assure them of our readiness to give them the best always. We equally thank our editorial consultants for their useful advice and comments that have contributed to the continuous improvement of the quality of the journal. Legal practitioners and scholars are hereby informed that contributions to our journal are received on a rolling basis. They should feel free to send in their manuscripts and ensure they comply with the submission guidelines as spelt out in the Call for Papers obtainable from the journal's website (www.kiulj.kiu.ac.ug). All contributions should be addressed to the Editor-in-Chief and forwarded to the email addresses supplied in this edition.

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TABLE OF CONTENTS

INVASION OF UKRAINE: INTERROGATING THE CRIMINAL LAIBILITY OF RUSSIA UNDER INTERNATIONAL LAW	
IFEOLU JOHN KONI, Ph.D.....	1
CLIMATE CHANGE, HUMAN RIGHTS AND THE RESPONSE OF THE AFRICAN HUMAN RIGHTS SYSTEM: FOCUS ON THE AFRICAN COMMISSION AND THE COURT ON HUMAN AND PEOPLES' RIGHTS	
KELESE GEORGE NSHOM & GIDEON FOSOH NGWOME.....	23
LEGAL MECHANISMS TO COUNTER TAX AVOIDANCE IN NIGERIA	
ISAU OLATUNJI AHMED, Ph.D.....	46
STATE AND INDIVIDUAL RESPONSIBILITIES FOR CRIME OF AGGRESSION UNDER THE ROME STATUTE: WHAT PROSPECT FOR INTERNATIONAL CRIMINAL JUSTICE	
FON FIELDING FORSUH, Ph.D.....	63
GENDER DISCRIMINATION AND THE INTERNATIONAL DIVISION OF LABOUR: A LEGAL APPRAISAL	
O. F. OLUDURO& Y. F. OLUWAJOBI.....	86
EROSION OF THE PHILOSOPHY OF POSITIVISM THROUGH JUDICIAL ACTIVISM: EMERGING TREND IN THE PRINCIPLE OF JUDICIAL PRECEDENT IN NIGERIA	
IGBONOH A JOSHUA, PhD.....	113
THE IMPACT OF INTERNATIONAL LAW ON DOMESTIC CORPUS: A REVIEW OF ATTORNEY-GENERAL, CROSS RIVER STATE V ATTORNEY-GENERAL OF THE FEDERATION	
YAHYA DURO U. HAMBALI, Ph.D & JOSEPHINE N EGEMONU, LLM	130
RESISTANCE AGAINST RAPE AND KIDNAPPING IN NIGERIA: JUSTIFYING LETHAL SELF DEFENCE AGAINST VIOLENT CRIMES	
ATERO AKUJOBI, Ph.D.....	141
JUDICIAL IMPARTIALITY AND INDEPENDENCE IN NIGERIA: A REALITY OR A FAÇADE?	
DORCAS A AKINPELU, LLM & ADEOLA O. AGBOOLA, LLM....	156

THE STATUTE OF EXTRAORDINARY AFRICAN CHAMBERS: AN END TO IMPUNITY IN AFRICA?

JOEL A ADEYEYE, Ph.D.....170

EXPLORING THE JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NIGERIA

DR.AMADE ROBERTS AMANA&DR.SOLOMON A.IENLANYE..194

REFLECTIONS ON THE CLEAVAGES OF IDENTITY AND INDIVIDUALITY OF WOMEN IN CAMEROON

NCHOTU VERALINE N. MINANG, Ph.D.....207

THE IMPACT OF INTERNATIONAL LAW ON DOMESTIC CORPUS: A REVIEW OF ATTORNEY-GENERAL, CROSS RIVER STATE *v* ATTORNEY-GENERAL OF THE FEDERATION

YAHYA DURO U. HAMBALI, PhD* & JOSEPHINE N EGEMONU,
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Abstract

International law shares similar attributes with national law with defined rules and established courts. Decisions of International Courts such as the International Court of Justice (ICJ) and International Criminal Court (ICC) are meant to be obeyed and enforced by the international community. This may affect some domestic laws that regulate some state of affairs within a State. Accordingly, the objective of this review is to examine how the decisions of the ICJ in Attorney-General, Cross River State v Attorney-General of the Federation & Anor. has affected the Nigeria's policy which had prior to the judgment classified Cross River State as a littoral State to enable it enjoy the benefits of the 13% revenue derivation from the Federation Account. The review adopted doctrinal approach to answer the lone question of whether the judgment of the ICJ in the case under review changed the status of Cross River State from a littoral State to a landlocked State contrary to the state of affairs before the judgment. It was found that the judgment and the principles of international law were heavily relied on by the apex national court to arrive at its decisions in the case under review. It is therefore evident that according rules of international law as much respect as it is accorded domestic law does not in any way question the sovereignty of any nation but rather promotes peace among sovereign nations.

Keywords: International Law, Littoral State, Domestic Law, Derivation, Nigeria

Introduction

The judgment of the International Court of Justice in a dispute between Nigeria and the Republic of Cameroon as regards the sovereignty of the Bakassi Peninsula and the maritime boundaries between the two countries generated a wide range of

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controversies over whether by virtue of the judgment in which the International Court of Justice decided that Cameroon had sovereignty over the Bakassi Peninsula and the area consisting of the Cross River Estuary which hitherto were part of the territory of Cross River State, Cross River State has ceased to be a littoral State and in consequence, ceased to be entitled to partake in the 13% allocation of the revenue accruing to the Federation Account from oil wells in the maritime territory of Nigeria. Cross River State was not going to accept these and consequently, it approached the Supreme Court in *Attorney-General, Cross River State v. Attorney-General of the Federation*¹ for various declaratory and injunctive reliefs bordering on the sanctity of its status as a littoral State despite the judgment of the International Court of Justice which gave Bakassi Peninsula and the Estuarine territory of Cross River State to Cameroon in 2002 and the full implementation of same by Nigeria in 2008.

This case is reviewed with the view to discussing the issues raised therein, arguments canvassed by parties in support of their respective cases, principles decided, the significance of the judgment of the Supreme Court in the case in regard to its recognition of international law as a system of law with equal force with domestic law, as well as the contribution of the judgment to the development of law or the corpus of Nigerian jurisprudence. To achieve these, the paper which is flanked both at the entry and exit points with introduction and conclusion respectively. In between the introduction and conclusion are the facts of the case, the submissions of counsel, the principles decided in the case and the significance of the judgment.

Facts of the Case

Cross River State is one of the thirty-six States of the Federal Republic of Nigeria.² It was classified as a littoral State because the Bakassi Peninsula and the Cross River Estuary, which were contiguous to the Atlantic Ocean, were part of its territory. Cross River was also classified as a crude oil producing State in respect of oil wells in the Atlantic Ocean contiguous to the shore of Nigeria, which entitled it to enjoy allocation from the revenue accruing to the account of the Federation of Nigeria (the Federation Account) from those oil wells in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and related statutory provisions. In 2002, the International Court of Justice (ICJ) delivered its judgment in a dispute between Nigeria and the Republic of Cameroon as regards the sovereignty of the Bakassi Peninsula and the maritime

¹ [2012]16 NWLR (Pt 1327) 425 SC

² Other States are: Abia, Akwalbom, Anambra, Bauchi, Bayelsa, Benue, Borno, Delta, Ebony, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, and Zamfara.

boundaries between the two countries. The ICJ decided that Cameroon had sovereignty over the Bakassi Peninsula and the area consisting of the Cross River Estuary which hitherto were part of the territory of Cross River State. In response to the judgment of the ICJ, Nigeria opened negotiation with Cameroon with the expectation that Cameroon would allow Nigeria to retain the western part of the Bakassi Peninsula.

While the negotiation between Nigeria and Cameroon was ongoing, the President of Nigeria brokered an agreement between Cross River State, Akwa Ibom State and Rivers State in 2005, under which seventy-six (76) oil wells in the Atlantic Ocean and within the maritime territory of Nigeria were attributed to Cross River State for the purpose of computing Cross River State's allocation of revenue from the Federation Account. After that agreement, Cross River State filed a suit, *A.G. Cross River State v. A.G. Federation*³ at the Supreme Court against the Federal Government of Nigeria and Akwa Ibom State over her entitlement to revenue from the Federation Account and over disputed boundaries between Cross River State and Akwa Ibom State. The Supreme Court in its judgment in that case, found that the effect of the judgment of the ICJ delivered in 2002 was that Cross River State no longer had an estuarine territory, a seaward boundary or a maritime boundary with Akwa Ibom State or any other Nigerian State, and as such had become a landlocked State between Akwa Ibom State and Cameroon. In essence, the Supreme Court held in the case that Cross River State was no longer a littoral State. The Court also in that case, rejected the map of Nigeria's littoral States drawn by the National Boundary Commission by which the seventy-six (76) offshore oil wells were attributed to Cross River State because it was anticipatory of a favourable outcome of the ongoing negotiation between Nigeria and Cameroon in which it was expected that the latter would concede the western part of the Bakassi Peninsula to the former.

Meanwhile, Cross River State continued to enjoy allocation of revenue derived from the Federation Account in respect of the seventy-six (76) offshore oil wells. Eventually, Cameroon refused to allow Nigeria to keep the western part of the Bakassi Peninsula. Consequently, Nigeria recognised the sovereignty of Cameroon over the Peninsula in 2008 and transferred the control of the Peninsula and the estuarine territory of Cross River State to Cameroon in full compliance with the judgment of ICJ under what is now known as 'the Green Tree Agreement'. The National Boundary Commission (the NBC) drew a revised map of the littoral States in Nigeria after the Green Tree Agreement was fully implemented by Nigeria. The map excluded Cross River State as a littoral State. It was adopted and acted upon by

³ [2005]15 NWLR (Pt 947) 71

the Revenue Mobilisation Allocation and Fiscal Commission (the RMAFC) Inter-Agency meeting held in Kano in August 2008. Consequently the RMAFC omitted Cross River State from its list of the littoral States entitled to allocation of 13% of revenue accruing to the Federation Account from offshore oil wells, which it forwarded to the Accountant-General of the Federation of Nigeria.

Cross River State was aggrieved with the actions of the NBC and the RMAFC. The Attorney-General of Cross River State suing on behalf of Cross River State as the plaintiff, accordingly sued the Attorney General of the Federation (1st defendant) and the Attorney-General of Akwa Ibom State (the 2nd defendant) on behalf of the Federal Government of Nigeria and Akwa Ibom State respectively at the Supreme Court of Nigeria seeking the following declaratory and injunctive reliefs among others:

1. A declaration that the historical method for determining the estuarine or maritime boundary between littoral States in Nigeria is valid and that the application of the said method in the statement of the boundary dispute between the 1st defendant and the plaintiff in 2006 was lawful and valid.
2. An order of perpetual injunction restraining the 1st defendant (sic) himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Account as a littoral State.

Relying on an earlier decision of the Supreme Court of Nigeria in *A.G., Rivers State v. A.G., Akwa Ibom State*⁴ in which the court upheld the sanctity of the agreement in support of the case of the plaintiff in that case, the plaintiff in the instant case, based its claim on the fact that Cross Rivers State was wrongfully and unlawfully excluded from her entitlement to allocation of 13% of the revenue accruing to the Federation Account from the (76) offshore oil wells attributed to it as a littoral State under the 2005 agreement between Cross River State, Akwa Ibom State and Rivers State. However, the plaintiff did not tender any map to support the contention that Cross River State had access to the sea directly and not through any other State.

Looking at issues raised by parties to the suit, the Supreme Court narrowed their issues down to three as follows:

1. Whether there is in existence any issue of boundary adjustment between the plaintiff and the 2nd defendant in view of the binding agreement and

⁴[2011] 8 NWLR (Pt 1248) 31

- resolution between the parties under the supervision of the 1st defendant since 2006 through its agencies.
2. Whether the plaintiff is entitled to the derivation revenue from the seventy-six oil wells which were previously located within the 200 metres water depth isobaths contiguous to its territory as stipulated in sections 1 and 2 of the Allocation of Revenue (Abolition of Dichotomy) in the Principle of Derivation Act 2004.
 3. Whether the order of mandatory and perpetual injunction restraining the 1st defendant by himself or through any of its agents from excluding the plaintiff from its entitlement to 13% derivation in relation to the sharing of revenue from the Federation Accounts as a littoral State are enforceable.

Submission of Counsel

Counsel for the plaintiff argued on behalf of the plaintiff and emphasised that by the 31st of January 2005, the issue of boundary was mutually settled by the parties. The 2nd defendant, Akwa Ibom State wrote to the President on the 31st of January 2005 through exhibit A to confirm her consent to the agreement. By the letter of the NBC dated 4th of January 2005, the agreed maritime boundary between the plaintiff and the 2nd defendant are –

- i. The terminal point of the Akwa Ibom /Cross River Inter-State boundary in Cross River Estuary has coordinate 43733 N and 82439 E.
- ii. The Maritime boundary between Akwa Ibom and Cross River States should be a line drawn from the point referred in (a) above southwards until it intersect with Nigeria/Equatorial Guinea international maritime boundary.
- iii. Items (i) and (ii) above have further implications as follows -
 - a) Cross River state has 35904 N and 81253 E as coordinates of the terminal point on the Nigeria/Equatorial Guinea international maritime boundary.
 - b) Cross River will gain 77 number of oil wells and Akwa Ibom State will lose the same number of oil wells.
 - c) The status of the plaintiff as an oil producing State was sequel to the amicable resolution of the boundary dispute between the plaintiff and the 2nd defendant in 2005.

It was further submitted on behalf of the plaintiff that the 1st defendant or any of its agencies has no power to resolve the purported dispute without the contribution and the views of the plaintiff and the defendant. The statutory duties of the NBC implies that there must be a boundary dispute before the commission can refer the dispute to its technical committee. The counsel for the plaintiff also dismissed the claim of the federal government that the decision of the ICJ in the Cameroon/Nigeria border dispute on the Bakassi Peninsula, as the basis of the review of the derivation fund

formula and why the plaintiff's name was removed from the table of beneficiaries.

The dismissal by the plaintiff's counsel was predicated upon the following facts –

- i. The decision of the ICJ was made in 2002.
- ii. The boundary dispute between the plaintiff and the 2nd defendant was amicably settled in 2005.
- iii. The decision of the ICJ has implication of the retention of the western part of Bakassi Peninsula in Nigeria which means legally and administratively Bakassi LGA of Cross River State remains integral part of Nigeria. This entails that Cross River State has an outlet to the sea.
- iv. The ICJ decision can no longer be the basis for changing realities as erroneously canvassed by RMAFC and NBC.

It was then submitted on behalf of the plaintiff that the 1st defendant having acted *ultra vires* of its powers under the law, the purported settlement of non-existent boundary dispute is null and void.

The defendants also replied in arguments to the above submissions of the counsel for the plaintiff. The summary of the defendants' reply to the submissions is as follows:

- i. The NBC; the RMAFC; the Surveyor-General of the Federation and the Department of Petroleum Resources did not determine any boundary dispute between the plaintiff and the 2nd defendant at her Inter-Agency Retreat in Kano in August 2008. Whereas the RMAFC is statutorily empowered to monitor accruals to and disbursement of revenue from the Federation Account and review from time to time the revenue allocation formulae and principles in operation to ensure conformity with changing realities, the NBC is statutorily empowered to define and delimitate boundaries between States, Local Government Areas or Communities in the Federation and between Nigeria and her neighbours in accordance with delimitation instrument or document established for that purpose.
- ii. The judgment of ICJ did not give Nigeria the privilege of retaining Western Bakassi neither did the judgment at any time excise Bakassi nor award it to Nigeria. The entire Peninsula was handed over to Cameroon in August 2008. Hence, the NBC letter of 4th January 2004 was written in anticipation that Bakassi Peninsular would become part of Nigeria and the NBC in 2005 transferred and attributed to Cross River State the 76 oil wells which hitherto were legally property of and within the maritime boundaries of Akwa Ibom State.

- iii. The Supreme Court had earlier, in the case of *A.G., Cross River State v. A.G., Federation*⁵ rejected exhibit CRSG 1, the NBC revised boundary map that was then approved by the President of the Federal Republic of Nigeria in that, it would be premature for the court to determine the maritime boundaries of the two States when Nigeria and Cameroon were yet to conclude their negotiation to finality and the international boundaries fixed by the ICJ is codified and published in line with the agreement.
- iv. It is a misconception to conclude that RMAFC Inter-Agency meeting went in search of a non-existent maritime boundary dispute between Cross River State and Akwa Ibom State. With the decision and execution of the judgment of ICJ between Nigeria and Cameroon, there can never be a maritime boundary dispute between Cross River and Akwa Ibom States. The consequence of the judgment of the court is that Cross River State has become landlocked between Rivers and Akwa Ibom States, with no seaward boundary and it has as well ceased to be a littoral State. The NBC and RMAFC consequently have statutory power to react to the changes and realities, the after effect of the ICJ judgment.
- v. The plaintiff failed to tender any map to support the contention that Cross River State has access to the sea directly and not through any other State.
- vi. The negotiated agreements relied on by the plaintiff may only be effective in the context of Onshore/Offshore Dichotomy Abolition Act 2004 where the parties share maritime boundaries. The plaintiff and the 2nd defendant do not share maritime boundaries and there cannot be an enforceable agreement between the two States on the attribution of the 76 oil wells pursuant to the Dichotomy Abolition Act. Hence, the case of *A.G., Rivers State v. A.G., Akwa Ibom State*⁶ is not applicable to the instant case as both parties in the former suit were and still littoral States while the latter i.e. the instant suit is between a non-littoral State i.e. Cross River State and a littoral State i.e. Akwa Ibom State.

Principles Decided in the Case

Based on the submissions of counsel to both parties the Supreme Court of Nigeria decided the following major principles in the case among others:

1. By virtue of section 1 (1) and (2) of the Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act, 2004, if a State does not lie contiguous to two hundred metres water depth Isobaths, the State cannot claim derivation entitlement to the natural resources that lie within that territory. In the instant case, Cross River State, the plaintiff had the foregoing attributes until 2008 when the situation changed irredeemably by the implementation and final

⁵ [2005] 18 NWLR (Pt. 958) 581

⁶ *supra* (n 4)

execution of the ICJ judgment which found in favour of Cameroon in 2002 that the Bakassi Peninsula, the estuarine area of Cross River State belong to Cameroon. Hence, the plaintiff not being a littoral State and not having a maritime boundary or abutting the sea, the 76 oil wells which is the subject matter of her claim in the instant suit, which lies offshore and within a maritime territory of Akwalbom State cannot be attributed to it.

2. A littoral State, in the Nigerian context or globally must be contiguous with or abut the sea. It must have direct access to the sea through its own territory not through the territory of another State. In the instant case, by the combined effects of the judgment of the ICJ and the judgment of the Supreme Court of Nigeria in the case of *Attorney-General of Cross River State v. Attorney-General of the Federation and Anor.*⁷ the plaintiff does not have a seaward boundary, estuarine sector or a maritime boundary to warrant it being described a littoral State in Nigeria to enable it enjoy the benefits of the 13% revenue derivation from the disputed 76 oil wells located offshore of Nigerian coast.
3. A court would recognise that a contract is frustrated where after the contract is concluded, events occur which makes performance of the contract impossible, illegal or something radically different from that which was in contemplation of the parties at the time they entered into the contract. In the instant case, the contract or agreements between the parties under which the 2nd defendant agreed to hand over 76 offshore oil wells to the plaintiff was based on the expectation that Nigeria would be successful at keeping the western part of the Bakassi Peninsula, which could have maintained the plaintiff's space among Nigeria's littoral States. Nigeria was however unsuccessful in its bid to keep that part of Bakassi Peninsula with the full implementation of the ICJ judgment in favour of Cameroon in 2008.
4. The effect of a contract which is discharged on ground of frustration is that agreements of parties under the contract is brought to an end automatically by the operation of law irrespective of the wishes of the parties to the contract.
5. A plaintiff who seeks a declaratory relief has the burden to establish his claim on the strength of his case and he cannot rely on the weakness of the case of the other party for his own case. The burden of proof on a party seeking declaratory reliefs is heavy because declaratory reliefs are not granted even on admission by the defendant where the plaintiff fails to establish his entitlement to the declaratory reliefs by his own evidence.

⁷ *supra* (n 1)

The Significance of the Judgment

Although, the suit was unanimously dismissed, it however made some significant contributions to the development of the corpus of Nigerian jurisprudence. The decisions in this suit set up what must be considered in determining if a State is a littoral State for the purpose of taking benefits of allocation of 13% of the revenue accruing to the Federation Account from oil wells in the maritime territory of Nigeria and these are that:

- i. The State must lie contiguous to two hundred metres water depth Isobaths;
- ii. The State must have seaward boundary, estuarine sector or a maritime boundary or abutting the sea in the maritime territory of Nigeria;
- iii. The State must have direct access to the sea, not through another State.

The case also establishes the principles that a party cannot seek to enforce the terms of an agreement, which performance has become extinct or rendered practically unsustainable by some supervening circumstances which the parties at the time of entering into the agreement, did not envisage. By this principle, the Supreme Court makes it abundantly clear that it will not be the business of the court to look at extraneous matter to justify a belief that the parties to such agreement actually envisaged the occurrence of the supervening circumstances as of the time of their agreement. This view of the present authors is supported by the fact that it would have been a moot argument if the issue had been canvassed on behalf of the plaintiff or *suomotu* by the Supreme Court that the parties to the 2005 agreement, strongly relied on by the plaintiff, must have envisaged a 50/50 chance of the success of negotiation between Nigerian and Cameroon over allowing Nigeria to keep the Western part of the Bakassi Peninsula while entering into the 2005 agreement. The Supreme Court's decision was hinged on the extinction of the subject matter of the agreement by operation of law, i.e. by the full implementation of the ICJ judgment in favour of Cameroon in 2008 by Nigeria in line with international conventions to which Nigeria is a party.

As well as this, the recognition and compliance with the judgment of the ICJ in the case between Nigeria and Cameroon over Bakassi Peninsula and the reliance on same by the Supreme Court of Nigeria further lent credence to the existence of international law as a system of law where members of the international community recognise that there exists a body of rules binding upon them as law.⁸

Conclusion

The principles set out by the Supreme Court in *A.G. Cross River Case* are well founded principles in that, it is now made abundantly clear what makes a State a littoral State for the purpose of taking benefits of allocation of 13% of the revenue

⁸ Martin Dixon, *Textbook on International Law* (3rdedn, Blackstone 1996) 3

accruing to the Federation Account from oil wells in the maritime territory of Nigeria. It is now beyond context, the fact that the recognition and compliance of international communities with the rules of international law support the belief that international law is a system of law which can be enforced and applied by national courts in the same manner as it is done to national or domestic laws.

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