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# THE ROLE PLAYED BY DIPLOMACY IN THE RESOLUTION OF THE BAKASSI CONFLICT

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#### **ABSTRACT**

This article will examine the how diplomatic agreements, treaties, judicial opinions and ruling, diplomatic exchanges played an important role in the resolution of the Bakassi conflict between Cameroon and Nigeria. Diplomacy was a major tool in the realization of these agreements, treaties and declaration between all the actors involved in this conflict.

**Keywords:** Bakassi, Judicial opinions, Diplomacy

#### INTRODUCTION

One of the legacies that colonialism left behind is many unmarked borders, resulting from Europeans signing agreements and swapping territories without African presence or knowledge. They left behind the mess for the newly independent countries to find and examine agreements and historical records written in many languages to determine where one country's borders stop and the other begins. It was hard work and time consuming because some territories changed hands after Germany's defeat in World War I. Germany's loss was the other European's gains.

Another problem that complicated reaching a timely solution for border disputes was the political instability in Africa resulting from frequent military coups. The Bakassi conflict is an excellent case study because it dragged on for years because of the political instability in Nigeria. The new military regime refused to ratify the agreement reached with Cameroon before the coup and wanted to start new negotiations. This was an excise of futility because the Nigeria regime was not even willing to comply with the agreements signed by the British. To avoid war, the parties wisely agree to turn the case over to the International Court of Justice to make a ruling on

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the borders between Nigeria and Cameroon. Although it took many years, both countries accepted and complied with the ICJ ruling.

Diplomacy is an essential tools in promoting, preventing and resolving conflict. Peace negotiation or diplomatic settlement can only occur if there exist an environment where conflict parties can mutual agree to exchange and share information. Communication, therefore is the goal of language as mutual agreement is the goal of conflict resolution. Exchanging and sharing information during a conflicting situation is a preamble to negotiation, negotiation and the finally settlement between the conflicting or warring parties. Diplomacy, therefore becomes one of the very significant tools that can be employed to prevent the occurrence of conflict. This was true to a greater extent in the Bakassi case. This article will examine the how diplomatic agreements, treaties, judicial opinions and ruling, diplomatic exchanges played a critical role in the resolution of the Bakassi conflict between Cameroon and Nigeria. Communication was a major tool in the realization of these agreements, treaties and declaration between all the actors involved in this conflict

#### HISTORICAL BACKGROUND

When the colonial powers arrived in Africa during the second part of the 19<sup>th</sup> century they were eager to extend their spheres of influence. In this vain they signed agreements with the local tribal leaders. This was true of the Case of Britain in Nigeria. On 10 September 1884, the Queen of Great Britain and the King of Old Calabar signed a Treaty of Protection. By signing this treaty the King of Calabar tacitly cede his kingdom to Britain as a protectorate. This meant Britain had the right to determine the destiny of the kingdom.

The Bakassi conflict is a classic example of the often thorny and sensitive question of arbitrary colonial borders that have split ethnic communities among countries all over the African continent. They paid no attention to the historical, demographic, ethnic, linguistic and/or socio-cultural affinities and realities. In fact the British Prime Minister at the time aptly describes their activities and consideration during the partition of Africa. He stated that:

We [the colonial powers have engaged in drawing lines upon maps where no white man's feet have ever trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by small impediments that we never knew exactly where those mountains and rivers and lakes were.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Judge Ajibola, International Court of Justice Report (1994) accessed at http://www.nuigalway.ie/human rights/Docs/Publications/Castellino%20Abstract.html

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The Bakassi peninsula, claimed both by Cameroon and Nigeria, is a swampy, 600 square mile (1000 square Kilometers) area that juts into the Gulf of Guinea - - a region, that may contain more than 24 billion barrels of crude oil (about 10 percent of the world's oil and gas reserves). The peninsula is estimated to contain more than 10 billion barrels of crude oil, territory rich in fish. Yet, like other communities the people of this peninsula lack the basic compulsory needs of life: potable water, electricity, roads and education. Still, for more than two decades the peninsula was a major cause of disagreement between Cameroon and Nigeria. Some, wonder why Bakassi, a piece of land which is only accessible by boat, made-up of a complex network of creeks and sandbars, and with its peoples virtually ignored by the governments of Cameroon and Nigeria for decades would receive this much attention today. The issue is the billions of crude oil deposits hidden below the peninsula.

#### **DIPLOMACY AT WORK**

The Bakassi peninsula was founded around 1450 by the Efik, and was incorporated within the political framework of the Kingdom of Old Calabar. On 10 September 1884, Britain signed the Treaty of Protection with the Kings and Chiefs of Old Calabar. But this enabled Britain to exercise control over the entire territory of Old Calabar, including the Bakassi peninsular. This protectorate agreement with African Kingdom had imprecise definitions of boundaries. In 15 November 1893, Britain and Germany agreed to define the boundaries in Africa, of course in absentia of African. This was followed by a supplement agreement on 19 March 1906 that covered British and German territories from Yola to Lake Chad.

Further agreements were reached between Britain and Germany on the question of their borders from Yola to the Sea. The first agreement involved the settlement of the Frontier between Nigeria and the Cameroons, which was signed in London on 11 March 1913 and the second agreement addressed the precise demarcations of the Anglo-German boundaries between Niger and Kameroun from Yola to the Cross River signed at Obokum on 12 April 1913. Germans were interested in shrimp fishing and an assurance from Britain that it would not expand eastward. For Britain, an uninterrupted and secure sea-lane access to Calabar, a key trading post was its primary interest. The German conceded the "navigable portion of the offshore to Britain because

<sup>&</sup>lt;sup>2</sup> "Nigeria agrees Bakassi Handover" <u>BBC News</u> http://news.bbc.co.uk/2/hi/africa/5073256.stm

<sup>&</sup>lt;sup>3</sup> Paul Maidment, "The other Gulf" <u>Forbes.Com</u> at http://www.forbes.com/2003/03/07/cx\_pm\_0307westafrica\_html

<sup>&</sup>lt;sup>4</sup> J. Ndumbe Anyu, "The International Court of Justice and Border Conflict Resolution in Africa: The Bakassi Peninsular Conflict," Mediterranean Quarterly 18:3 (Summer 2007), 41-42

<sup>&</sup>lt;sup>5</sup> Nowa Omoigui, "The Bakassi Story" http://www.omoigui.com p.3

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it already had the option of using Douala as a sea port. In exchange for German cooperation not to threaten British access to Calabar, Britain conceded the Bakassi peninsula to the Germans. This was achieved without the resistance of the "Obong" (ruler). In effect, the absence of resistance meant the rulers approved of the agreement. British and German maps from 1914 show the Bakassi peninsula in Kameroun.<sup>6</sup>

After World War I, the Treat of Versailles divided all German territories between Britain and France and the League of Nations placed them under British or French mandates. The boundaries between British and French mandated Kameroun was defined by the Franco-British Declaration of 10 July 1919 signed by Viscount Milner, the British Secretary of State for the Colonies, and Henry Simon, the French Minister for the Colonies. Under the terms of this agreement Bakassi and the rest of the British Cameroons were placed under British mandate and administered coterminous with "Nigeria" but were merged into a single entirety. In fact, the 1913 border was retained. A further agreement was signed in 1931 between Britain and France to put into law the 1913 agreement. These agreement place Bakassi on Cameroon side of the map.<sup>7</sup>

After WWII, the British and French mandates over Northern/Southern Cameroons and Cameroun respectively under the League of Nations was replaced by trusteeships established by the newly created United Nations Organization (UNO). These new arrangements affirmed the border provisions of the Anglo-German and Anglo-French agreements. Once more placing Bakassi under Cameroon territory.

Historically, the territorial authority of the Kings and Chiefs (paramount rulers) of Old Calabar is said to have extended as far as the Rio del Rey, which includes Bakassi.

Accordingly, Nigeria's claim to Bakassi, on the basis of original title, vested in the Kings and Chiefs of Old Calabar, the geographical extent of which covered southeastern Nigeria, which in the 1700s was populated mainly by the "Efiks" and the "Efiat." Nevertheless, the plot thickens when Great Britain ceded Bakassi to Germany in 1913, an act that produced a number of contradictions. As stated through a number of bilateral treaties and other legal instruments, Britain ceded the territory to Germany, which governed Kameroun (Cameroon), until the defeat of Germany in World War I. Britain and France were granted protectorate rights over the British Cameroons and French Cameroun until 1960 when the Republic of Cameroon won its independence.

<sup>&</sup>lt;sup>6</sup> Ibid 4

<sup>&</sup>lt;sup>7</sup> Anyu, "The International Court of Justice and Border Conflicts...," (summer 2007), 42

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In an 11 February 1961 referendum, Southern Cameroon agreed to join the French Cameroun and the new question that arouse for Nigeria concerning the delineation of the maritime boundary with Cameroon. A legal consideration was the issues included in disputes over the maritime boundaries. Cameroon knew of three oil prospect ion blocks (blocks "L", "M", and "N" in 1959. Block "N", the most easterly one, constituted the maritime projection of the Bakassi Peninsula, which Nigeria viewed as part Cameroonian territory. The Nigerian Foreign Ministry in 1962 wrote "the boundary follows the lower course of the Akwayafe River, where there appear to be no uncertainty, and then out into Cross River estuary." Moreover, Diplomatic Note No. 570 of 27, 1962, from the Nigeria Ministry of External Affair to the Embassy of Cameroon in Lagos, to which was attached a map of the region prepared by the Nigeria Federal Survey, Nigeria recognized the Bakassi peninsular as part of Cameroon territory. To the surprise of many, despite evidence of an official diplomatic instrument affirming Cameroon's ownership of Bakassi.

However, Nigeria back-peddled in the mid-1960s and the dispute between the two neighbors ensued. Cameroon persistence in peaceful negotiated settlement of the conflict is evident by subsequent agreements between Cameroon and Nigeria

#### THE YAOUNDE DECLARATION

In April 1971, Presidents Ahmadou Ahidjo of Cameroon and Yakubu Gowon of Nigeria met in Yaoundé to discuss the Bakassi conflict. At the end of that discussion both heads of state signed the "Coker-Ngo" Agreement, which stated that the offshore delineation of the approach to the Calabar estuary would be – up to 3-mile limit on both sides. <sup>10</sup>

In an attempt to mitigate a full blown war between the two countries, Presidents Ahmadou Ahidjo of Cameroon and Yakubu Gowon of Nigeria on 4 April 1974, signed the Yaoundé II Declaration that recognized the validity of the 1913 treaty with respect to Bakassi. The Yaoundé Declaration also recognized the border lines established by the same treaty (1913) that were the recognized borders between Cameroon and Nigeria. But these type disputes have a way of revival.

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<sup>&</sup>lt;sup>8</sup> <u>CR 2002/5.</u> Written Submission by Cameroon to the International Court of Justice (22 February 2002), 13

<sup>&</sup>lt;sup>9</sup> Anyu, "The International Court of Justice and Border Conflict...,) (summer 2007), 43 <sup>10</sup> Ibid.

<sup>&</sup>lt;sup>11</sup> <u>CR 2002/5.</u> Written Submission by Cameroon to the International Court of Justice (22 February 2002), 13

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#### THE KANO AGREEMENT

Since 1971 there had been persistent stalemate between Cameroon and Nigeria over the delineating of maritime boundaries. The Kano Agreement of 1 September 1974 attempted to thaw the ice on this issue of maritime boundaries. The agreement recognized the lawfulness of oil operations carried out in the west of the corridor by Nigeria and to the east by Cameroon. Bakassi and its surrounding waters lie to the east of the corridor. By implication Nigeria acknowledged Cameroon's claim over Bakassi.

#### THE MAROUA AGREEMENT

This point is further amplified and affirmed by the actions of the two countries. Nigeria and Cameroon signed a maritime border agreement in 1975 at Maroua, Cameroon. Both President Gowon of Nigeria and President Ahidjo of Cameroon agreed to prolong the maritime boundary beyond the "point 12" defined as being situated at the limit of the maritime boundary adopted by both countries in the Yaoundé Declaration. However, in late 1975, a military coup d'état overthrow General Gowon without the agreement having been ratified by the Nigerian parliament. Seizing on that technicality Nigeria then claimed that because the agreement was never ratified it was not bound by its terms. This position exacerbated an already dangerous situation in the peninsular. Attempts by Britain, France and Togo to mediate the conflict failed to arrive at a peaceful resolution. 14

#### THE BAKASSI CONFLICT AND THE INTERNATIONAL COURT OF JUSTICE

Problems brewed on the peninsula on May 16, 1981 when Cameroon gendarmes killed six Nigerian soldiers following a Nigerian military incursion. In 1993, after several skirmishes, Cameroon and Nigeria started to a heavy military build up on the peninsula. By 1994, the dispute had escalated from mere angry recriminations to a massive build-up of troops by both countries on the peninsula. With tensions high Cameroon, eager to avert a war with Nigeria, resorted to legal avenues through the International Court of Justice to resolve this border dispute. On 29

Ibid., 14-15

<sup>&</sup>lt;sup>12</sup> Ibid.,16

<sup>&</sup>lt;sup>13</sup> Dola J. Young, "Energy Development and Maritime Boundary Disputes: Two West African Examples," <u>Texas International Law Journal</u> Vol. 19 No. 2 (1984), 441

<sup>&</sup>lt;sup>14</sup> Jedrzej George Frynas, "Foreign Investment and International Boundary Disputes in Africa: Evidence from the Oil Industry" <u>Occasional Paper Series</u> No. 9, Africa Studies Centre School of International Studies and Law Coventry University (2000), 6 See also <u>PostExpressWired</u>, 3 May 1997 and 30 March 1999.

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March 1994, it filed a suit with the ICJ complaining of encroachment by Nigeria onto Cameroonian territory - the Bakassi peninsula. Sporadic clashes persisted well into 1996 when both sides signed a cease-fire but both sides continued to issue bitter accusation each other of numerous violations despite an order of the ICJ (March 1996) calling "for the cessation of all hostilities in the Bakassi Peninsula." <sup>15</sup>

The ICJ ruled on 11 June 1998 that it had jurisdiction to hear the case on the merits and found that Cameroon's claims were admissible. In a related development, the ICJ authorized Equatorial Guinea to intervene in June 1999 on the basis of that country's arguments to protect its rights in the Gulf of Guinea as the maritime boundary between Cameroon and Nigeria was determined. Although several oil discoveries have been made on the peninsula and its adjoining waters, operations were suspended to give way for the ICJ's ruling.

The ICJ, on October 10, 2002, issued a key ruling on the land and maritime boundary between Cameroon and Nigeria. While the court ordered Nigeria to "expeditiously" pull its officials, troops and police from the richly endowed Bakassi peninsula, bringing to an end the lingering and internecine conflict that has embroiled Cameroon and Nigeria for decades on end, it also in the same ruling, the

ICJ, in what observers describe as a "Solomonic compromise", also ordered Cameroon to promptly withdraw forces from some islands of Lake Chad.  $^{16}$ 

The Court held that the 1913 Anglo-German treaty had effectively ceded Bakassi to Germany. The ICJ denied to enforce the provisions of Articles XVIII-XXII of the Agreement of 1913 that established that Nigeria holds an original title that considers it to be earlier in time and therefore superior to Cameroon's claim. On the contrary, the ICJ agreed with Cameroon's legal strategy against Nigeria, which effectively addresses the legal principle that new law takes precedence over old law. Cameroon's case adequately and cogently reflected that from the time leading to its independence in 1961 and since then and till the early 1990s, Nigeria, by its actions or omissions or through statements emanating from its officials and legal experts consented to Cameroonian sovereignty in the Bakassi peninsula. The question of the Anglo-German Treaty triggered the central issue of the entire case which Nigeria argued unsuccessfully, the time worn legal maxim he who hath not cannot give (nemo dat quod non habet). Simply put, what authority did Great Britain, (a mere protectorate as per the 1884 Treaty) to give away Bakassi? Nigeria maintains

<sup>&</sup>lt;sup>15</sup> Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria, Order of 15 March 1996, ICJ website at <a href="http://www.icj/cij.org/icj">http://www.icj/cij.org/icj</a> (February 2000)

<sup>&</sup>lt;sup>16</sup> International Court of Justice, Case concerning the Land and Maritime Boundary Between Cameroon and Nigeria, (2000), <u>General list No. 94.</u>, 10 October 2002, p.4

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that it is trite that one cannot pass title of something he does not have. Accordingly, it argues that Great Britain had neither the right nor the capacity to cede its territory, that such transfer was invalid, null and void and that Great Britain was obviously in breach of its obligations to the Kings and Chiefs and people of Old Calabar which were merely to protect them and not to alienate their land. In response, the ICJ pieced together provisions of the Foreign Jurisdiction Acts of 1890 which state that irrespective of whether the jurisdiction is acquired by on treaty, capitulation, grant, usage, sufferance or other lawful means, it may be held and exercised in as ample a manner as if it were acquired by cession or conquest of territory. 17 In effect, any jurisdiction available to Great Britain in a country under its protection was indistinguishable in legal effect from other territory acquired by conquest. Consequently the Anglo-German Treaty acquired validity on the strength of the Foreign Jurisdiction Acts of 1890. 18

# DIPLOMACY, THE UNITED NATIONS AND IMPLEMENTATION OF THE ICJ **RULING**

It is important to note that prior to the September 2002 ICJ ruling, the UN Secretary-General, Kofi Annan met with Nigerian President Olusegun Obasanjo and Cameroonian President Paul Biya in Paris to discuss the Bakassi conflict. During the discussion both presidents agreed to respect and implement the decision of the ICJ, as well as establish an implementation mechanism with the help of the United Nations. The also agreed to confidence-building measures, including demilitarization of the peninsula and possible economic cooperation (joint ventures) the two countries. 19

Although Cameroon and Nigeria agreed to respect the ICJ's ruling, Nigeria open display of naked defiance to the ruling led many to the thought that enforcing the ruling would present a worrying scenario, for, as fitting as the ICJ is an arbiter, it is without backing. Many Western diplomats and news reports were dismayed by Nigeria's initial expressed statements that appeared to reverse assurances of the agreement it reached with Cameroon that they would accept the Courts decision. With time and intense diplomatic pressure from the United Nations, Nigeria reverted to its agreement with Cameroon and opted to a negotiated settlement that would pave the way for the implementation of the ICJ ruling. On 12 June 2006 at the Green tree Estate in Manhasset outside New York City Cameroon and Nigeria agreed to respect the ruling. <sup>20</sup>

<sup>&</sup>lt;sup>17</sup> Anyu, "The International Court of Justice and Border ..." (2007), 48.

<sup>&</sup>lt;sup>18</sup> See Sobhuza II v Miller (1926) AC 518 at 524

<sup>&</sup>lt;sup>19</sup> Yoko Yashara, "Nigeria and Cameroon Try to Settle the Bakassi Peninsula Dispute," UN Chronicle, Online Edition, www.un.org/Pubs/chronicle/2004/webArticle/032004 bakassi.asp.

<sup>&</sup>lt;sup>20</sup> Anyu, "The International Court of Justice and Border –Conflict..." (Summer 2007), 51.

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On 15 November 2002, a second meeting was held in Geneva between the UN Secretary-General and the presidents of Cameroon and Nigeria. During that meeting both presidents agreed to establish a Mixed Commission made-up of representatives from both countries to address differences and consider all implication and modalities of follow-up on the ICJ ruling. The Commission which was chaired by the Special representative of the Secretary-General for West Africa, Ahmedou Ould-Abdullah, was charged with demarcation land boundaries, demilitarization of the peninsula, reactivation of the Lake Chad basin Commission, recommending confidence building measures (including joint venture) and troop withdrawal along the boundary.<sup>21</sup>

The Commission on 13 June 2003 discussed the progress towards the planning and implementation of determining the border between Cameroon and Nigeria. On 3 and 4 December 2003. Nigeria agreed to withdraw its troops from the Lake Chad area. Between 13 and 20 February 2004, a sub-committee of the Mixed Commission visited the Bakassi Peninsula and met with authorities, citizens and traditional rulers. This was the Commission's first visit to the Peninsula since it was establish in 2002. Cameroon and Nigeria agreed to the additional field visits by the Commission. Between 6 and 7 April 2004 the Commission met again in Yaoundé, Cameroon.<sup>22</sup> The modalities for Nigeria's final withdrawal from the disputed area defied the efforts of Mixed Commissions. On 12 June 2006 at the Green tree Estate in Manhasset, New York, when Secretary-General Annan began days of intensive mediation between Cameroon and Nigeria. The mediation yielded dividend and a settlement was arrived at. Under the terms of the agreement Nigerian troops were to withdrawn within 60 days limit from the date the agreement was sign (12 June 2006), with a likelihood of extension. Additionally, transitional arrangements for Bakassi, which was the last of four areas to be demarcated in accordance with the ICJ ruling, must be completed by 2008. At the signing ceremony Kofi Annan heralded the "stunning" cost effectiveness of the Mixed Commission. He argued that the tripartite commission had no peace keeping force and cost only \$5 million per annum compared with \$200 million annually for the UN's Ethiopia and Eritrea mission. Along the same lines, Obasanjo of Nigeria pressed the agreement as "a great achievement in conflict resolution, which practical reflects its cost effectiveness..." adding that the agreement "should represent a model for the resolution of similar conflicts in Africa, and I dare say, in the world at large." Finally, Biya of Cameroon followed suit in his praises of the agreement. He described the agreement as "an efficient instrument to implement the court's decision bringing a definitive conclusion to our border

<sup>&</sup>lt;sup>21</sup> Ibid. see also Statement by Secretary-General Kofi Annan following His Geneva Meeting with Presidents of Cameroon, Nigeria," press release, SG/SM/8495 AFR/515, www.un.org/News/Press/docs/2002/sgsm.doc.htm.

<sup>&</sup>lt;sup>22</sup> Anyu, "The International Court of Justice –Border Conflict...(summer 2007), 52

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conflict" <sup>23</sup> The United Nation's Secretary-General's office played the role of an honest broker just before and after the ICJ''s disposition in the Bakassi peninsula case, thus introducing a new approach to the implementation of the ICJ ruling in disputes between member states. International law, which is normative at best, was facilitated by the good will of Cameroon and Nigeria and with the assistance of the United Nations.

The secretary-general of the United Nations used his offices to set up modalities to the ICJ ruling in the Bakassi peninsula conflict. This is a novelty for never before has the Secretary General of the United Nations the use the UN as an instrument in facilitating the implementation of ICJ decisions. Also this new approach is cost effective and result-oriented. It is hope this becomes model for the future

#### **CONCLUSION**

Diplomacy is an essential tool in promoting, preventing and resolving conflict. Peace negotiation or diplomatic settlement can only occur if there exist an environment where conflicting parties can mutual agree to exchange and share information. Diplomacy, therefore is one of the tools that uses language as a means to reaching mutual agreement among conflicting parties. Exchanging and sharing information during a conflicting situation is a preamble to negotiation, negotiation and the finally settlement between the conflicting or warring parties. The role of communication therefore becomes one of the very significant tools and methods that can be employed to prevent the occurrence of conflict. This was true in the Bakassi case. Diplomatic agreements, treaties, judicial opinions and ruling, diplomatic exchanges played a critical role in the resolution of the Bakassi conflict between Cameroon and Nigeria. This illustrates why and how modern diplomacy is increasing placing great emphasis on the use of effective communication in settling disputes among nation-states.

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<sup>&</sup>lt;sup>23</sup> "Nigeria Agrees Bakassi Handover," BBC News, 13 June 2006, news.bbc.co.uk/2hi/Africa/5073256.stm.

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