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An Alternate Role for the International Court of Justice: Applied to Cameroon v. Nigeria

Joe C. Irwin

I. INTRODUCTION

On March 29, 1994, the Republic of Cameroon (hereinafter "Cameroon") instituted proceedings, via Application, before the International Court of Justice (hereinafter "ICJ"). These proceedings were initiated against the Federal Republic of Nigeria (hereinafter "Nigeria") in regard to a dispute described as relating essentially to the question of sovereignty over the Bakassi Peninsula.[1]

Cameroon's Application alleged that Cameroon's title to the Bakassi Peninsula was contested by Nigeria; that since the end of 1993, this contestation had taken the form of an aggression by Nigeria which resulted in great prejudice to Cameroon, for which the ICJ was requested to order reparation.[2] Cameroon further alleged that the delimitation of the maritime boundary between the two States had remained a partial one and despite many attempts to complete it, the two parties had been unable to do so; and Cameroon requested the ICJ to determine the course of the maritime boundary between the two States beyond the line fixed in 1975.[3] At the close of the Application, Cameroon reserved the right to complement, amend, or modify the present Application and to submit to the Court a request for the indication of provisional measures should they prove to be necessary.[4]

On June 6, 1994, Cameroon exercised the above right and filed an Additional Application for the purpose of extending the subject of the dispute to a further dispute, described in that Additional Application as relating essentially to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad.[5] The Additional Application alleged that Cameroon's title to that part of the territory was contested by Nigeria.[6] Cameroon also requested the ICJ to specify

1. *See* Land and Maritime Boundary (Cameroon v. Nig.), 1996 I.C.J. 13, 1 (Provisional Measures Order of Mar. 15).
2. *Id.*
3. *Id.*
4. *Id.* at 2.
5. *Id.*
6. Land and Maritime Boundary (Cameroon v. Nig.), 1996 I.C.J. at 2.

definitively the frontier between the two States from Lake Chad to the sea, and asked it to join the two Applications and to examine the whole in a single case.[7]

No objections were raised by Nigeria in treating the Additional Application of Cameroon as an amendment to the initial Application, and the ICJ also indicated its acceptance of the amendment by its Order of June 16, 1994.[8] Nigeria, however, did raise preliminary objections to the jurisdiction of the ICJ over the issues raised in both Applications, and the admissibility of the claims of Cameroon.[9] In response to the objections raised by Nigeria the ICJ issued the Order of January 10, 1996, which suspended the proceedings on the merits until May 15, 1996, at which time Cameroon was to present a written response to Nigeria's objections.[10]

Before Cameroon entered its response to Nigeria's objections, hostilities in the disputed territories increased, and Cameroon then initiated before the ICJ its Request for the Indication of Provisional Measures.[11] After oral statements, the ICJ issued the Order of March 15, 1996.[12]

II. INEFFECTIVENESS OF THE PRESENT ROLE OF THE ICJ

The ICJ was created by the U.N. Charter in 1945 and was designed to be the principal judicial organ of the United Nations.[13] Most of the cases that have come before the ICJ have been decided by the entire Court.

The ICJ has jurisdiction over two types of cases: contentious cases and cases seeking an advisory opinion.[14] While many of its decisions have been important, the ICJ has not lived up to the hopes of many of its early supporters; that hope being the ICJ, along with the United Nations, would evolve into an international government. To begin with, 90 cases in almost 50 years is not a heavy caseload (though the ICJ's docket has become more active recently).[15] Moreover, many of the cases have not been of great international importance. In more than 20 contentious cases, the ICJ's jurisdiction or the admissibility of an applica-

7. *Id.* at 2-3.
8. *Id.* at 3.
9. *Id.* at 4.
10. *Id.*
11. *Id.*
12. *Id.* at 9.
13. *See* U.N. CHARTER arts. 92-96.
14. *See* STATUTE OF THE COURT, arts. 36-65.
15. *See* Edith B. Weiss, *Judicial Independence and Impartiality: A Preliminary Inquiry, in* THE INTERNATIONAL COURT OF JUSTICE AT A CROSSROADS 135-39 (L. Damrosch ed., 1987).

tion (i.e., the complaint) was challenged, with the ICJ dismissing almost half of these cases.[16] When the ICJ did reach a judgment on the merits, the affected parties have generally complied with it, but there have been exceptions, especially in recent years.[17]

The reason for the ICJ's limited influence are varied. These include the limits on the ICJ's jurisdiction, its relatively rigid procedure, and the enforceability of its decrees. On enforceability of decrees, a U.N. member "undertakes to comply with the decision" of the ICJ if "it is a party" to the case, and the U.N. Security Council may "decide upon measures to be taken to give effect to the [ICJ's] judgment."[18]

As noted, although states have complied with the ICJ's judgments in many of the cases, recalcitrant States have on occasion refused to comply. For example, the ICJ's first decision in a contentious case was against Albania for mining the Corfu Channel and damaging British warships.[19] Although the ICJ ruled in 1949 that Albania should pay monetary damages, Albania has yet to do so.[20] In 1980, Iran refused to comply with the ICJ's judgment to release the U.S. hostages.[21] Even the United States continued to support the Nicaraguan Contras in spite of the ICJ's 1986 decision saying that this support violated international law.[22] Furthermore, the U.N. Security Council, hampered in part by its veto-wielding members, has yet to take measures to enforce an ICJ judgment.

III. AN ALTERNATIVE ROLE FOR THE ICJ

In light of the apparent ineffectiveness of the ICJ, it is suggested that by modifying the study of Fredrich Kratochwil,[23] and applying it to the role of the ICJ, the ICJ may expand its role and effectiveness in conflict resolution. Kratochwil asserts that one of the main functions of third-party intervention is to expedite conflict resolution through peaceful means.[24] In any contentious case brought before the ICJ, the ICJ is in fact a third party intervenor whose function is to expedite the resolution of the contentious case. The ICJ may effectively enhance this function through substantive methods, such as fact-finding or judgments, or through initiating such procedural methods as good offices and media-

16. *Id.*
17. *Id.*
18. U.N. CHARTER art. 94.
19. *See* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 301 (1995).
20. *Id.*
21. *Id.*
22. *Id.*
23. *See* FREDRICH KRATOCHWIL, ET AL., PEACE AND DISPUTED SOVEREIGNTY: REFLECTIONS ON CONFLICT OVER TERRITORY (1985).
24. *Id.* at 122.

tion.[25] By applying Kratochwil's study to the ICJ, the role of the ICJ may be: explicit, i.e., limiting its role to establishing communications between the parties or, at the other extreme, involving authoritative rule application (e.g., adjudication); or, implicit, i.e., using norms and rules to allow antagonistic parties to take a step back and view their disagreement more objectively.[26] The critical element remains the belief of the two disputants that the ICJ can help in the achievement of a settlement or resolution and that its role in both substance and procedure should be considered.[27]

To expedite the contentious case to resolution through peaceful means, the obvious goal of the ICJ's intervention should be to achieve an exchange of promises and commitments between the parties (either legally or informally framed), in writing, that particular actions will be taken to resolve the source of the dispute.[28] Kratochwil asserts that trust between the two disputants is crucial to the formulation of settlements; without the faith that the promises exchanged will be carried out, a peaceful effort to solve the problem will collapse.[29] Likewise, the ICJ, through the prestige of its office, must maintain trust between the disputants.

The ICJ may achieve trust and agreements between the parties by reducing the incongruence of perceptions and/or principles.[30] Kratochwil asserts that incompatible perceptions can be resolved more easily if the parties share common principles to guide resolution; a difference in principles can be sidestepped if there exists a single perception of reality in which both parties can work to satisfy their interests.[31] By facilitating agreement on either principles or perceptions, the situation is reduced to one-step processes towards settlement. However, Kratochwil warns that when principles are so divergent that the process for resolution becomes an issue itself, interest bargaining usually prevails, which is neither good nor bad, but may take unwanted forms.[32] The ICJ, however, by dictating the legal process may ensure the resolution of incompatible principles.

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25. *Id.*

26. *Id.*

27. *Id.*

28. *See* Thomas R. Colosi, *Negotiations in the Public and Private Sectors*, AM. BEHAV. SCI., Nov.-Dec. 1983, 229, 233 (this particular issue of the journal is dedicated to the issue of negotiation and its behavioral perspectives).

29. KRATOCHWIL, *supra* note 23, at 123.

30. *Id.*

31. *Id.*

32. *Id.* The literature by Fisher an Ury has noted this, distinguishing between position bargaining and interest bargaining. ROGER FISHER AND WILLIAM URY, INTERNATIONAL MEDIATION: A WORKING GUIDE (1978); ROGER FISHER & WILLIAM URY, GETTING TO YES (1983).

When the positions of the disputants in contentious cases are diametrically opposed, the ICJ must decrease the incongruence by enhancing the potential for change among the perception and principles of both parties.[33] The ICJ can raise doubts about the positions held and objectively question issues, assumptions, and facts of either party.[34] The role of the ICJ should be to point out problems and raise doubts about the respective positions through legal opinion, not for judgment and therefore choosing a side, but for the purpose of forcing the parties to legally question their own perceptions and principles.[35]

IV. ALTERNATIVICE ROLE APPLIED TO CAMEROON V. NIGERIA

The alternative role of the ICJ and the methods it may utilize for resolving the boundary and territorial dispute between Cameroon and Nigeria peacefully, may be achieved through the congruence of perceptions and coping with incongruent principles.

A. Perceptions

The ICJ may motivate and achieve congruence of perceptions between Cameroon and Nigeria by:

encouraging, organizing, and participating in information-generating activities;[36]

requiring both parties to explain and document their perceptions and relevant facts of the conflict;[37]

establishing the advantage of priorities among facts and concerns;[38]

generating options for the parties to consider in interest negotiations;[39]

encouraging the possibility of partial agreements and interim measures;[40] and

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33. KRATOCHWIL, *supra* note 23, at 123.

34. Colosi, *supra* note 28, at 235.

35. KRATOCHWIL, *supra* note 23, at 123.

36. *See* LALL, MODERN INTERNATIONAL NEGOTIATING 9-20 (1966) (even comprehensive studies of negotiating have neglected the role of information, e.g., inquiry is the only informational aspect among eight different forms of negotiating).

37. KRATOCHWIL, *supra* note 23, at 124.

38. *Id.*

39. *Id.* at 125.

40. *Id.*

possibly requiring the inclusion of a group of two or more states in the resolution process.[41]

Perceptions between Cameroon and Nigeria may be more easily reconciled if both are working from a co-created common knowledge base.[42] This knowledge base may be created from geodetic surveys, census-taking in disputed areas, fact-finding commissions, and historic verifications. Kratochwil cautions however, that such surveys can also have the effect of aggravating disputes if they reveal facts that compound existing problems.[43] The Peru-Ecuador border conflict is an example in which new information led to greater conflict.[44] Kratochwil asserts the problem was one of timing and not of the produced information. By having both Cameroon and Nigeria participate in creating the base of information from which future settlement discussions may stem allows for the important first step of participation of occur. However, the ICJ must evaluate the potential for greater conflict versus the value of the co-collected common knowledge so that a Peru-Ecuador situation does not ensue.

Finding a firm basis for agreement or disagreement is also a useful task for ICJ intervention. Complete knowledge of where Cameroon and Nigeria agree and disagree may be incomplete. One scholar of diplomacy has noted the importance of exploring the parties' awareness of their counterpart's perceptions, of determining to what extent they are informed about the opponent's views and how reasonable they find them.[45] Kratochwil notes that greater awareness may not mean greater acceptance, but without such knowledge, misinterpretation of each other's actions is assured.[46] Knowledge between Cameroon's and Nigeria's view may not lead to immediate resolution. But even knowledge of their differences is an important step to take. In a sense, it is an agreement to disagree, which is a foundation upon which further agreement may occur.

Structuring issues to recast the nature of the disagreements and thus modifying the disputants' perspectives encourages tradeoffs, concessions, and comprehensive perspectives.[47] Identification and the ordering of issues can give the ICJ a clear avenue to crafting a solution. For example, a complete airing of the concerns of Argentina and Chile

41. *Id.* at 126.

42. *Id.* at 124.

43. *Id.*

44. *See* BRYCE WOOD, AGGRESSION AND HISTORY: THE CASE OF ECUADOR AND PERU 2-3 (1978).

45. *See e.g.*, GLENN FISHER, INTERCULTURAL NEGOTIATION 24 (1978).

46. KRATOCHWIL, *supra* note 23, at 124.

47. *See* DYNAMICS OF THIRD PARTY INTERVENTION: KISSINGER IN THE MIDDLE EAST 28-33 (Jeffrey Z. Rubin ed., 1981).

in the Beagle Channel dispute might have resulted in a settlement sooner than the lengthy Papal intervention which salvaged some benefit from the disavowed arbitral award of 1977.[48] Though this process may by objected to by Cameroon and/or Nigeria, by doing this, the ICJ is able to define the varying importance of different facets of the issues presented and regulate the manner and timing of when they are to be presented for resolution. If a particularly contentious issue would threaten the entire process, then the ICJ could re-focus the attention on a less contentious issue and thereby initiate a cooling off period. Kratochwil asserts that working towards recognition of the counterpart's concerns implies no acceptance of these concerns but is likely to yield more pointed and constructive negotiations.[49]

One major downfall in the process of resolution is the potential for a perceived stalemate or the total dissatisfaction of one party resulting in a walk-out. To inhibit the potential for these downfalls, the ICJ may propose or order new options and alternatives whose sole purpose is to keep the parties in the resolution process. One study of Latin American conflicts noted that the frustration engendered by unresolved border problems often leads to armed conflict when all avenues for resolution appear otherwise blocked.[50] The ICJ must maintain the sense of the possibility for peaceful resolution during the slow process of judgment and order. Roger Fisher suggests that by treating the dispute as one problem and, after understanding the desires and constraints of both sides, to draft an agreement tailored to the needs of the parties that, with revisions, is likely to be acceptable to both sides.[51] Such an approach would keep the focus off the overall conflict by requiring the focus of Cameroon and Nigeria be kept on coordinating perceptions through the process it entails. For example, were this process to be used in the Somali-Ethiopian context it might have revealed to what degree there existed actually compatible ends (Ethiopian security and Somali land use) rather than incompatible means (sole and sovereign possession of the same territory).[52]

The ICJ should be willing to allow the common perceptions between Cameroon and Nigeria to be developed in increments. The distinction has been made between conflict resolution and conflict settlement;[53] the

48. *See* F. A. Vallet, *The Beagle Channel Affair*, 71 AM. J. INT'L L. 733, 734 (1977).

49. KRATOCHWIL, *supra* note 23, at 123.

50. *See* Ruben de Hoyos, *Islas Malvinas or Falkland Islands: The Negotiation of a Conflict, 1945-1982, in* CONTROLLING LATIN AMERICAN CONFLICTS 185 (M.A. Morris and V. Millan eds., 1983).

51. *See* Roger Fisher, *Playing the Wrong Game?, in* DYNAMICS OF THIRD PARTY INTERVENTION: KISSINGER IN THE MIDDLE EAST 128 (Jeffrey Z. Rubin ed., 1981).

52. *See* TOM FARER, WAR CLOUDS ON THE HORN OF AFRICA 57-58 (1976).

53. *See* JACOB BERCOVITCH, SOCIAL CONFLICTS AND THIRD PARTIES: STRATEGIES OF CONFLICT RESOLUTION 11 (1984).

first occurs when the basic structure of the situation giving rise to behavior has been re-perceived and re-evaluated, the second takes place when only the destructive behavior has diminished and hostile attitudes have lessened. If the ICJ is unable to completely change the perception of Cameroon and Nigeria (which is more than likely), then conflict settlement must be relied upon. Even though settlement may only be an initial step and of interim duration, it can provide a cooling off period and growth of trust between the parties as well as confidence in the third party.[54] At times the interim settlement can have remarkable longevity: the Trieste settlement of 1954 was not accepted by Italy as an agreement that extinguished its claims to the territory held by Yugoslavia, but the "Memorandum of Understanding" has settled the issue for over 40 years.[55] Without mentioning sovereignty, the dispute was shelved without loss of face to either party: as the American negotiator said in retrospect of the situation, "nothing is as permanent as the temporary."[56]

While a single intervening third party, such as the ICJ, may sometimes hinder efforts at conflict resolution by taking sides and thereby changing its role to a conflictual mode with either Cameroon or Nigeria, a third-party group of states, with the ICJ as the "lead" intervening party, may influence the negotiations between Cameroon and Nigeria effectively. In Latin America multi-state third-party interventions have a long history. They have proposed peace plans and served to guarantee the execution of treaties.[57] In 1953 when Costa Rica was attacked by rebels from Nicaragua, the OAS appointed an investigating committee which produced recommendations that were implemented with OAS support.[58] In 1969, Nicaragua, Costa Rica, and Guatemala mediated a dispute between El Salvador and Honduras.[59] The Contadora group composed of Panama, Mexico, Venezuela, and Colombia has persistently attempted to find alternatives to militarization in resolving Cen-

54. For an interesting study on partial settlement as a technique see, Roger Fisher, *Fractioning Conflict, in* INTERNATIONAL CONFLICT AND BEHAVIORAL SCIENCE: THE CRAIGVILLE PAPERS (Roger Fisher ed., 1964).

55. *See* SUCCESSFUL NEGOTIATIONS: TRIESTE 1954 (John C. Campbell ed., 1976).

56. ROBERT D. MURPHY, *in* SUCCESSFUL NEGOTIATIONS: TRIESTE 1954 141 (John C. Campbell ed., 1976).

57. Many multilateral agreements for peaceful settlement procedures have been signed since the Latin nations gained independence in the early 19th century, though few have had lasting effects. *See* Juan Carlos Puig, *Controlling Latin American Conflicts: Current Juridical Trends and Perspectives of the Future, in* CONTROLLING LATIN AMERICAN CONFLICTS 185 (M.A. Morris and V. Millan eds., 1983). The influence of the third party was notably greater in U.N. and other mediation activities when several states constituted the third party. *See also* LALL, MODERN INTERNATIONAL NEGOTIATING 100 (1966).

58. Puig, *supra* note 57, at 185.

59. *Id.* at 186.

tral American conflicts.[60] The role of the ICJ in defining perceptions of the problems is crucial in creating cohesion of perceptions between Cameroon and Nigeria. By utilizing the avenue of including a group of two or more states in the resolution process, the ICJ gains a wider perspective of the respective views, gains an independent party not perceived by Cameroon and/or Nigeria as a potential conflicting party, and receives further points where agreement may be established. In keeping with the hopes of the ICJ's original proponents, this is in essence the ICJ becoming a global court with a global perspective and judgment.

B. Principles

The ICJ may change the perceptions of Cameroon and Nigeria as new data become accepted among them as "facts". Perception are, however, also based on principles which are normative at their core. Principles may involve both the legal reasoning by which the dispute between Cameroon and Nigeria should be resolved (e.g., belief in the equidistance principle) and the process mechanisms through which such reasoning should be determined (e.g., belief in ICJ resolution). Kratochwil asserts that such principles may be pushed toward congruence through legal and process methods.[61] The ICJ may motivate and achieve congruence in principles between Cameroon and Nigeria by:

> creating doubts in the minds of Cameroon and/or Nigeria that a particular principle is the most appropriate for the circumstance;
>
> working toward agreement on microprinciples, disaggregating the issues so as to allow different principles to resolve different issues;
>
> untying the bundle of sovereign rights inherent in sovereignty, potentially implementing several principles simultaneously and allowing for shared responsibility and multiple national interests; and
>
> notarizing principles in agreements even when they cannot be immediately and fully implemented.[62]

The ICJ may bring flexibility into the rigid confrontations of principle between Cameroon and Nigeria by raising doubts about its application in the particular issue at hand.[63] Instead of just focusing upon the legal issues at hand, the ICJ may modify its approach and take a more

60. *Id.* at 192.
61. KRATOCHWIL, *supra* note 23, at 133.
62. *Id.* at 128.
63. *Id.*

factual tact. Does the issue properly illustrate the principle? Why are alternative principles not appropriate? Are the state's interests best pursued through strict adherence to this principle? How compatible is the principle with competing patterns of reasoning concerning the dispute? The ICJ may even question the parties separately (if the questions are strictly to that parties principles and does not ask for the other party's response) raising questions designed to arouse doubts about the uniqueness of a given principle's applicability to the case.[64]

The questioning of the ICJ should focus on the factual bases of perception and the ideological basis of belief of either/or Cameroon and Nigeria should be encouraged, but doubting the values of national identity or ideology is not productive. Kratochwil cautions that care should be taken by the ICJ not to question the base values from which adherence to these principles springs.[65] Questioning Cameroonian or Nigerian values such as ethnic or linguistic unity, territorial integrity, or historic entitlement may provoke a defensive, closed mentality in the party.[66] The efficacy of pursuing these values by either Cameroon or Nigeria through any particular principle is what should be explored by the ICJ.[67] By doing so, the ICJ may effectively avoid stalemate in concessions and encourage the acknowledgment of common interests.

As a correlation to obtaining mutual interests, harmonized principles among Cameroon and Nigeria may be achieved by the ICJ requiring agreement on specific issues before continuation on to others. For example, such agreement on microprinciples was used by Henry Kissinger in his Middle East diplomacy.[68] It was a success because it worked towards settlement even though it attempted no final resolution of the underlying conflict.[69] Although trust was low and there was very little room for mediation, Kissinger was still able to harness the immediate common interests of the states in gaining a settlement of the immediate issue of disengagement.[70] If Cameroon and Nigeria can formulate mutually beneficial principles for new issue areas, the older issues may start to yield to creeping coordination. This method differs from traditional functionalist approaches in that it is not limited to technical areas.[71] Instead, it encourages spillover into all issue areas on

64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. For an analysis of Kissinger's mediation effort *see* I. William Zartman, *Explaining Disengagement, in* DYNAMICS OF THIRD PARTY INTERVENTION: KISSINGER IN THE MIDDLE EAST 148-67 (Jeffrey Z. Rubin ed., 1981).
69. *Id.*
70. *Id.*
71. In comparison with functionalist theory which endeavored to depoliticize matters of international public policy and spread apolitical cooperation, use of micro-principles

distinctly political grounds, for the normative base applicable to one issue may be perceived as having wider applicability.[72]

If and when the Cameroon and Nigeria agree on micro-principles to solve one problem within the larger dispute, the agreement should be notarized by the ICJ. Kratochwil asserts that progress on solving smaller issues one at a time can lead to larger settlements; disaggregating the problem into smaller, more definable parts allows for more specific and appropriate use of principles and eliminates the need to fight for exclusionary adoption of one principle or another.[73] By doing so, the ICJ is making the benefits of resolution larger and dividing the issues to be resolved.

Kratochwil asserts that one of the most useful means to gain congruence of principle between disputants is to separate sovereign rights.[74] The state system makes for clear definitions of jurisdictions but hinders resolution of interstate problems of shared resources and environments. These rights were not always so indivisibly bound; theory in international politics has recognized a "heteronomous sovereignty" in Medieval Europe where powers and rights were a patchwork of overlapping jurisdictions.[75] The ICJ is not precluded, even when recognizing sovereignty, from requiring shared jurisdiction within the same geographic area as part of the resolution process between Cameroon and Nigeria. Kratochwil argues that recognition of full jurisdiction over some area of governance (e.g., social or political affairs) need not conflict with the reality of an indivisible environment and responsibility in the community of nations.[76] Such an order may force Cameroon and Nigeria towards leniency in other issues in dispute.

When historic boundaries are inappropriate between Cameroon and Nigeria for reasons of administrative necessity, the ICJ should divide the responsibilities along the lines of which party is most appropriate to supervise them. This does not mean denying the state rights of either Cameroon or Nigeria but rather granting or sharing the rights for mutual benefit until a lasting resolution may be fashioned. This in itself is denying each Cameroon and Nigeria absolute claim, while at the same time allowing dual access. The Austrian-Italian agreements regarding the South Tyrol (or Alto Adige) region exemplify what form

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could allow functionally specific norms to be implemented where appropriate, and yet facilitate their spread where desirable. For a discussion of traditional functionalist theory *see* PAUL TAYLOR & A.J.R. GROOM, FUNCTIONALISM: THEORY AND PRACTICE IN INTERNATIONAL RELATIONS (1975).

72. *Id.*

73. KRATOCHWIL, *supra* note 23, at 129.

74. *Id.*

75. John C. Ruggie, *Continuity and Transformation in the World Polity: Towards a Neorealist Synthesis*, 35 WORLD POL. 261, 274-75 (1983).

76. KRATOCHWIL, *supra* note 23, at 130.

shared jurisdiction might take. Through bilateral agreements and multilateral resolutions, jurisdictional matters traditionally regarded as under the purview of domestic affairs were recognized as a legitimate international concern.[77]

As evidenced by the Chinese lease of Hong Kong to the United Kingdom in the heyday of colonialism 100 years ago, a state does not alienate it claim to possession of a territory through granting another state specific rights in the territory for a stated period. The agreement between Britain and China on the future of Hong Kong initialed on September 21, 1984 affirmed this, but at the same time re-distributed some of the rights of sovereignty. Kratochwil asserts this method of dividing sovereignty allows a variety of principles of governance to hold within a single geographic area, which is what the historic accidents of colonial borders necessitate for much of the world.[78] Such an arrangement initiated by the ICJ would lend flexibility to the political structuring of an agreement between the diverse and shifting ethnic populations of Cameroon and Nigeria, and would be in line with the hope of its early supporters of playing a major role in global conflict resolution and initiating a more globally oriented judicial organ.

Kratochwil notes that one method of coping with coordinate principles that remain completely incompatible is to incorporate them in the agreement settling the dispute but not adhere to them strictly.[79] If the ICJ officially recognized in a judicial context the significance of a Cameroonian or Nigerian principle in a circumstance in which it cannot be fully implemented, both Cameroon and Nigeria may agree to adhere in principle. Official recognition or notarization of the principle then would be a bases for continuing the process. Once again, such an action by the ICJ would be a step upon which a final resolution can later be fashioned.

This method may have been utilized in the Gulf of Main resolution.[80] The equidistance principle Canada favored as a method of dividing the Gulf and its wealth of fish and oil resources had been used in many circumstances around the world, even if it had been specifically disavowed by the ICJ as customary international law.[81] Because the U.S. had maintained this principle as the basis for deciding other pending U.S.-Canadian maritime delimitations and because it was the most practical, convenient, and certain way of defining the boundary

77. For a more detailed discussion and history of this matter, *see* H. SIEGLER, OESTERREICH CHRONIK, 1945-1972 (1973).

78. KRATOCHWIL, *supra* note 23, at 131.

79. *Id.* at 132.

80. *See* Delimitation of the Maritime Boundary of the Gulf of Maine (Can. v. U.S.), 1984 I.C.J. 246 (Oct. 12).

81. *Id.*

between adjacent and opposite states, the jurisdictions could arguably have been divided by this method.[82] However, even the widely accepted logic of the equidistance principle must be notarized, and important circumstances prevented its full implementation. The ICJ's decision in many ways reflected these considerations.

If the conflict between Cameroon and Nigeria even defies rigid legal mechanisms, the resolution may still be brought about by the ICJ if it utilizes interest bargaining. Borders are barometers of power at a particular time and place, and bargaining always requires a power framework which tells each party the limits to its capability.[83] Negotiations of interests is still power-based. Therefore, the ICJ should be cautioned because its goal is peaceful resolution to the boundary and territorial dispute between Cameroon and Nigeria, and interest bargaining may well leave relatively weaker parties' interests unsatisfied, sowing the seeds for future disputes and *revanchisme* if the power distribution shifts at some later time.[84]

Equity is not necessarily an outcome from the interest bargaining approach. The role of the ICJ is to present equitable principles set forth in judicial judgments to reinsert equity into the resolution effort. Extra-legal negotiations by the ICJ can effectively prevent the conflict from escalating between Cameroon and Nigeria; but the farther resolution moves from the reconciliation of contending principles, the nearer it moves to power politics. Therefore, Kratochwil suggests that a midpoint on the continuum is the point to aim for when principles conflict.[85]

V. CONCLUSION

It has been suggested that in light of the apparent ineffectiveness of the ICJ, the ICJ should consider an alternative avenue in the conflict resolution between Cameroon and Nigeria, and modify its role based upon the study of Fredrich Kratochwil.[86] Such a modified role would then not limit the ICJ to a strict legal ruling (which by operation puts the parties in contention), but would allow the consideration of the opposing perceptions and principles of Cameroon and Nigeria and the

82. For the U.S. preference for equidistance in the Beaufort Sea, Juan de Fuca Strait, and Dixon Entrance (Near Alaska), see Wang, *Canada-United States Fisheries and Maritime Boundary Negotiations: Diplomacy in Deep Water*, 38-39 *in* WORLD POL. 21, 23 (1981). For a detailed but dated account of U.S.-Canadian arbitral history, see, P.E. CORBETT, THE SETTLEMENT OF CANADIAN-AMERICAN DISPUTES (1937).

83. *See e.g.*, Anthony Allott, *Boundaries and the Law in Africa*, *in* AFRICAN BOUNDARY PROBLEMS 12 (C.G. Widstrand ed., 1969); Isaiah Bowman, *The Strategy of Territorial Decisions*, 24 FOREIGN AFFAIRS 3, 117-194 (1946).

84. KRATOCHWIL, *supra* note 23, at 132.

85. *Id.* at 133.

86. KRATOCHWIL, *supra* note 23.

fashioning of a remedy that is conciliatory to both disputants. In Japan, conciliation is the cornerstone of domestic conflict resolution, with gradations from formal to informal legal mechanisms.[87] Accordingly, with the main function of ICJ intervention being to expedite conflict resolution through peaceful means,[88] conciliation through the harmonization of perceptions and principles is paramount in fashioning a lasting remedy between Cameroon and Nigeria.

This alternative role of the ICJ may be effectively enhanced through substantive methods, such as fact-finding, or judgments, or through initiating such procedural methods as good offices and mediation.[89] Such substantive and procedural methods may be traditionally viewed as outside the scope of the ICJ, but, to bring a peaceful resolution to so diametrically contentious parties such as Cameroon and Nigeria, any successful role should be utilized. Further, the role of the ICJ may be: explicit, i.e., limiting its role to establishing communications between the parties or, at the other extreme, involving authoritative rule application (e.g., adjudication); or, implicit, i.e., using norms and rules to allow antagonistic parties to take a step back and view their disagreement more objectively.[90]

The obvious goal of the ICJ in finding a resolution to the dispute between Cameroon and Nigeria is to achieve an exchange of legally or informally framed agreements.[91] But without trust, without a meeting of the minds (a meeting of perceptions and principles), a peaceful resolution, even if judicially ordered, will collapse.[92] The only avenue to facilitate an effective ICJ order to which Cameroon and Nigeria would agree to be bound, and stand by it, is through first reducing the incongruence of perceptions and/or principles.[93]

Common principles lead to compatible perceptions, which then leads to a single perception of reality in which both Cameroon and Nigeria can work to satisfy their interests.[94] This process may be required for each step, each issue, and each interest, one at a time. But the result is a brick to lay in the foundation of final resolution. It is conceded that some perceptions and principles may be so divergent between Cameroon and Nigeria that the process for resolution is in itself an issue. In such a case, interest bargaining usually prevails, which may

87. *See* 1 D.F. HENDERSON, CONCILIATION AND JAPANESE LAW 183-87 (1965).
88. KRATOCHWIL, *supra* note 23, at 122.
89. *Id.*
90. *Id.*
91. Colosi, *supra* note 28, at 233.
92. KRATOCHWIL, *supra* note 23, at 123.
93. *Id.*
94. *Id.*

have unforeseen consequences.[95] In this situation the legal authority of the ICJ can at least be modified to ensure resolution with equitable principles (though probably only to a limited extent because interest bargaining includes power and the party holding the power usually gets the better bargain).

However, if the positions of Cameroon and Nigeria are diametrically opposed, the ICJ stands in the perfect position to initiate decrease in the incongruence by enhancing the potential for change among the perception and principles of both parties.[96] The ICJ can raise doubts about the positions held and objectively question issues, assumptions, and facts of either party.[97] The role of the ICJ should be to point out problems and raise doubts about the respective positions through legal judgment. Not for judgment's sake (and thereby choosing a side with no power to enforce), but rather, by using its legal judgment to facilitate Cameroon and Nigeria to legally question their own perceptions and principles.[98] The merging of perception and principle leads to a functioning relationship requiring "mutual accommodation to future contingencies by [Cameroon and Nigeria] rather than a written embodiment of strict rights and duties,"[99] which in the pursuit of a peaceful resolution, is a good place for the ICJ to start.

95. *Id.* The literature by Fisher an Ury has noted this, distinguishing between position bargaining and interest bargaining. ROGER FISHER & WILLIAM URY, INTERNATIONAL MEDIATION: A WORKING GUIDE (1978); ROGER FISHER AND WILLIAM URY, GETTING TO YES (1983).

96. KRATOCHWIL, *supra* note 23, at 123.

97. Colosi, *supra* note 28, at 235.

98. KRATOCHWIL, *supra* note 23, at 123.

99. HENDERSON, *supra* note 87, at 183-87. *See also* C.M. Kim & C.M. Lawson, *Law of the Subtle Mind: the Traditional Japanese Conception of Law*, INT'L & COMP. L. Q., vol. 28 1979, at 491-513.