Tim Daniel is an independent consultant who has acted for a number of governments, particularly in the developing world. This personal perspective on the life of an international solicitor in private practice was written in 2006.

# THE THREAD OF PUBLIC INTERNATIONAL LAW IN THE LIFE OF A SOLICITOR IN PRIVATE PRACTICE

*Tim Daniel*

I have been extremely fortunate in the matter of practice of public international law. Like many others in this fascinating field I did not particularly set out in that direction, although I had studied both private and public international law at Nottingham University. This however had more to do with having lived abroad for much of my youth: curiously, the places where I lived have come to assume new significance as my career has progressed. For three years I lived overlooking the turbulent stretch of water that separates Jersey from France. On a clear day one could just discern the islets which form the Minquiers and Ecrehos; they had a particular significance for us, having lost a (French) member of the family to the surging waters and swirling tides that frequently claimed the lives of unwary rock pool fishers. From Jersey I moved to Rhodesia where we lived on the edge of the escarpment overlooking Mozambique and the area through which the Beira oil pipeline ran. We left as Ian Smith was about to declare independence. A number of my school-friends were to lose their lives in the conflict that followed. My next home overlooked the Grand Harbour in Malta —as I gazed on that magnificent aspect I little dreamed that one day I, too, might become involved in drawing imagined lines in the sea.

My professional career has been spent as a solicitor practising in the City of London. I was articled to a five-partner firm called Hedleys which had quite a distinctive practice. Languages were important: half my interview was conducted in French (I was reasonably proficient having just studied mime for a year in Paris under Marcel Marceau's teacher). The firm was the last solicitor-manager of a Protection and Indemnity (P & I) Club, in fact, it ran two: one for UK shipbrokers and port agents, the other international. Much of the firm's correspondence was however conducted in German. We acted for a number of German, Swiss, and Austrian trade organizations which represented some of the finest textile mills in Europe: they supplied much of the UK fashion industry and were frequently involved in quality disputes as purchasers

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attempted to prolong payment periods. Increasingly, the mills began to incorporate retention of title clauses in their sale contracts—this led to many and interesting disputes of the *Romalpa* variety. Professor Anthony Guest of King's College was our counsel of choice in advising on the contractual conundrums our clients encountered. Then, one day, we received a call from his chambers informing us that a former student of his, the Solicitor General of Nigeria, wished to see us. That was in 1975: 30 years later I find myself still representing the Federal Republic: in that time Nigeria has featured in a number of landmark public international law cases.

The Solicitor General had travelled to London to obtain the advice of his former teacher on what came to be described by one journalist as 'the largest commercial cock-up in history'. Nigeria, in common with many other oil-producers in the developing world, had suddenly found herself to be a wealthy country. A huge hike in oil prices had taken place in the early 70s which had for a time caused chaos in mainstream Western economies. As things settled down the newly rich oil states set about spending their new-found wealth. In the Middle East ambitious housing projects were started and hospitals and universities began to spring up. In Nigeria military rule had prevailed since shortly after independence in 1960 and a bloody civil war had been fought in Biafra in the late 1960s. Consolidation of military rule required that army barracks be built all around this populous country, the number of whose peoples already exceeded 100 million. The Ministry of Defence was advised that the cement needed to build the barracks was in short supply in Europe because of heavy demand from the Middle East. The story goes that the Ministry was advised that it would have to order 10 times as much cement as it actually needed in order to secure its requirement.

Over 80 c.i.f. contracts were placed, each one for 240,000 tonnes of cement. Payment was to be made under irrevocable letters of credit issued by the Central Bank of Nigeria against documents presented to its correspondent banks in Europe. Demurrage was payable at a rate of US$4–5,000 per day in the event of vessels being unable to discharge their cargo on arrival in Lagos. The majority of vessels likely to be chartered would be able to ship about 10,000 tonnes of cement: at least 24 vessels would be needed to perform each contract. On this basis, over 2,000 vessels would be needed to ship all the ordered cement. At that time Lagos-Apapa could discharge about one cement ship per week. Every cement factory in Europe went on to overtime, particularly those in Spain and in Romania: the Greek shipping community found vessels wherever they could. The result was that by the end of 1975 there were over 400 cement vessels lying at anchor virtually on the equator in Lagos waiting to discharge their cargo; demurrage was running at over US$2 million per day and the cement was hardening in the holds. It would take eight years to discharge the ones that had turned up, and that was only about 20 per cent of what had been ordered.

The Ministry of Defence cancelled all the contracts and the Central Bank refused to honour its letters of credit. Litigation was inevitable. It started in Frankfurt —that was

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when the Solicitor General came over to London. Professor Guest advised retaining a firm of City solicitors well versed in the sale of goods, commercial paper, and shipping, who could also correspond in German. The first claim in London was brought by a Zurichbased company, Trendtex Trading Corporation. Sovereign immunity was pleaded: Nigeria succeeded at first instance before Donaldson J. That decision was overturned by the Court of Appeal with Lord Denning giving the lead judgment. Leave was given to go to the House of Lords. Before Nigeria could be heard Parliament intervened and passed the State Immunity Act in 1978. Lord Denning said it was a pity the Law Lords did not first have the opportunity to hear the case. Ten years of arbitration followed under ICC clauses, with each contract being governed by the law of the seller.

As we endeavoured to find defences to the 'Cement Armada' claims based on fraudulent conduct, we got to know the Ministry of Justice pretty well. In 1982 we were asked by the then Attorney General to produce a report on Nigeria's eastern boundary with Cameroon. There had been a shooting incident in which five Nigerian soldiers had been killed in a clash with Cameroon gendarmes in an area known as the Bakassi Peninsula, which is where the land boundary meets the sea. We commissioned Geoffrey Marsden of Cambridge University to write the report and assisted him with the research. Shortly after the report was delivered the civilian government of President Shehu Shagari was overthrown in a military coup.

In 1993 an attempt was made to return to civilian rule, but it was thwarted by General Sani Abacha in yet another coup. In December Abacha sent troops into Bakassi. In February 1994 Cameroon, unbeknownst to Nigeria, signed up to the Optional Clause accepting the jurisdiction of the International Court of Justice. In March they delivered an Application to the Court requesting determination of sovereignty over Bakassi and of the common maritime boundary. Five weeks later the Application was amended to include the entire land boundary (1,800 kms long) and sovereignty over Lake Chad. By now I had joined the firm of DJ Freeman: for the next eight years I was to be engaged almost full time running Nigeria's defence team. Early in 1995 an outbreak of hostilities led to interim measures being requested by Cameroon; Nigeria subsequently took preliminary objections, and later Equatorial Guinea intervened. In addition to disputing the boundary, Cameroon made state responsibility claims. The case was almost certainly the largest and most complex boundary dispute to have come before the Court. Judgment was given in October 2002. Kofi Annan contacted the two Heads of State and suggested the setting up of a Mixed Commission comprising representatives of the two States and a United Nations delegation to implement the judgment. No doubt this was done primarily in order to avoid further conflict, but the judgment also raised many complex technical and humanitarian issues, which are taking time to resolve.

Although Nigeria's defence took up much of my time whilst the case was before the Court, President Obasanjo was also keen to resolve Nigeria's other maritime boundaries in the Gulf of Guinea, which had become one of the world's foremost

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hydrocarbon producing areas. First of all, talks with Equatorial Guinea were revived, and then we started talks with Sao Tome e Principe. A single maritime boundary with Equatorial Guinea was negotiated, requiring a major unitization agreement to deal with the part of Equatorial Guinea's main oilfield which straddles the boundary. It did not prove possible to negotiate a boundary with Sao Tome: instead, a Joint Development Zone was agreed, with resources split 60/40 in Nigeria's favour. These agreements were reached before the Court gave judgment, and now a common maritime boundary with Benin has been agreed. Nearly all of Nigeria's maritime boundaries in the Gulf of Guinea are thus now delimited.

For completeness, I should perhaps also mention that in 1998–99 we were privileged to be asked to assist in the 'trial preparation' of Botswana's case with Namibia involving Kasikili/Sedudu island in the Chobe river, which came on for hearing before the Court in March 1999. Although some might regard a dispute over a relatively small river island as something of a 'minnow' compared with a case on the scale of the Nigeria-Cameroon case, the fact was that national feelings were no less engaged and much detailed work had to be undertaken to present the case. States cannot choose their neighbours and territorial disputes are always deeply felt, as are disputes between individual neighbours. The objectivity of independent legal advisers has much to contribute to the keeping of the peace in such situations.

Halfway through the Cameroon case, in June 1998, Abacha died. As soon as he was dead the interim military government under General Abdulsalami Abubakar vowed to recover the billions the Abacha family were alleged to have looted during nearly five years of corrupt rule. In May 1999 Olusegun Obasanjo was elected President. Requests for Mutual Legal Assistance were made of various countries, including the UK. In March 2001 the Financial Services Authority put out a press release in which it was stated that US$1.3 billion of Abacha cash had been laundered through banks in the City of London. We were instructed to assist in the recovery effort. In 2002 the Proceeds of Crime Act was passed, considerably tightening up money laundering laws and the necessity for banks to 'know their customer', with particular regard to taking on Politically Exposed Persons (PEPs) as customers. Once again, events in Nigeria had contributed in no small measure to important changes in UK law. As of December 2005, my firm, now Kendall Freeman, is engaged in the recovery of monies looted by individual Nigerian State Governors. They are accorded immunity from suit under the Nigerian Constitution: a species of immunity which has not, thus far, found favour with the English courts.

The relevance of public international law in the legal spectrum is often doubted: it is certainly regarded as a somewhat esoteric subject which the majority of law students dismiss as an option to study. They are the poorer for letting that opportunity slip through their fingers. My own exposure to practice in this area has been limited for the most part to dealing with the affairs of one foreign State, but the activities of that State have had a profound impact on our own domestic law. They have also, in pursuing a proactive

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boundary resolution programme, lessened the likelihood of conflict in a potentially highly volatile region, where the commercial stakes are extremely high. It is my hope that this short account of the work I have been involved in demonstrates the contribution a solicitor and, most importantly, his firm and those instructed by him, can make in resolving some of the issues a modern state can face. States are in some respects no different from individuals in modern society: for most of the time they can get by without assistance from lawyers, but occasionally, just occasionally, a lawyer's particular skills have a part to play in helping to sort out affairs of the State. And when that happens, there are no clients more rewarding to work for.