

THE ABOLITION OF ON-SHORE/OFF-SHORE DICHOTOMY

ACT: NOT YET UHURU

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The abolition of the On-shore/Off-shore dichotomy Act in February 2004 brought instant celebrations to many parts of the Niger Delta. Delta, most particularly, in Akwa Ibom State where a Thanks Giving Service was held at the Uyo Stadium. “Thank you” delegations besieged President Obasanjo in Aso Rock, and the self-congratulatory parties have been going on non-stop. The Vanguard Newspaper captured all these developments in a humourous cartoon, depicting Niger Deltans in big wrappers and shirts and oversize hats bending down to the rhythm of their native drums with the caption “Jesus we thank you wellu wellu”. – See Vanguard Newspaper, Wednesday 25th February 2004, at page 14.

There is nothing wrong per se in the almost universal celebrations in the Niger Delta and all the back slapping, provided we all know what we are rejoicing and celebrating about. It is possible that the Governors of the Niger Delta States and their senior officials understand what is meant by 200 metres Isobath. But from my investigations, it is clear that 99.9% of the peoples of the Niger Delta know nothing of this concept or its implications.

When this proposal was first sent to the National Assembly by the President, the easily understood term “Contiguous Zone” (24 nautical miles) was what he used. When the National Assembly amended the Bill, they substituted another easily understood term, “Continental Shelf” (200, or in special cases 350 nautical miles) for Contiguous zone. The President rejected this and sent

a fresh Bill a year later, based on a new concept, “200 Metres Isobath”. With the exception of the experts in Oceanography, Hydrographers and Geoscientists and the like, the overwhelming majority of the country was baffled. Everybody hoped it meant the end of the On-shore/Off-shore dichotomy, but no one took the trouble to find out the meaning of this strange term. I wonder whether the Legislators were sure of what they were passing.

To those of us who have some basic knowledge of the Law of the Sea, the meaning was clear enough. What was uncertain was its implication, when applied to the Coastal States of Nigeria. An Isobath is a line representing the horizontal contour of the sea bed at a given depth. So a 200 metres Isobath, means a line representing the horizontal contour of the sea bed at 200 metres depth. In other words the 200 metres Isobath off the Nigerian Coast is a line joining all points off the coast of Nigeria (from Lagos to the boundary with Cameroon) where the sea is 200 metres deep.

The implication of this new Act is that the derivation principle only applies to those areas between this 200 metre depth line and the Nigerian coast or low water mark. Any part of the Nigerian Continental Shelf, deeper than 200 metres, is outside the derivation zone and proceeds of resources in this area of the sea will go straight to the Federation account. Coastal States derive nothing from this vast area.

A few points are therefore clear from this analysis:

- (i) The On-shore/Off-shore dichotomy was **NOT** abolished by the Act, but was merely reduced, by, (as will soon be demonstrated), an insignificant fraction.
- (ii) Since the Off-shore derivation zone of a state is based on the 200 metres Isobath line, each coastal state will have a different breath of sea for derivation purposes. Thus a coastal state

whose sea bed plunges sharply into the sea immediately after the shore line or low water mark, will have a narrow belt of sea for derivation purposes because its sea beds gets to the 200 metre depth very soon after the shore line. On the other hand, a coastal state with a gently sloping sea bed will have a wider derivation belt because its sea bed will not reach the 200 metre depth, until it has covered a considerable distance. To that extent, the 200 metres Isobath concept is inequitable and unfair, since some coastal states will have short derivation zones while others will have relatively longer ones.

If a 200 metre Isobath line is drawn from Lagos State in the west to Cross River State in the east, the injustice of the concept becomes obvious because whilst the sea bed off Lagos is deep, that of Bayelsa, Rivers, Akwa Ibom and Cross River States is relatively shallow, sloping down very gently.

This has been confirmed by the Director-General of the National boundary Commission. As reported in the 'Daily Independent' of Monday 29 March 2004 at page A6., the Director-General has stated that because of the creeks and rivers flowing into the Niger Delta area, the water margin was shallow (resulting in wider 200 metre Isobath zone) for states on the eastern coast like Akwa Ibom, Bayelsa, Cross River and Delta. But for Ondo, Ogun and Lagos in the south west zone the Director-General said that the 200 metres isobar, would be very close to the coast line; "as close as **three** to **five** kilometres from the Bar Beach around Lagos".

My own layman's interpretation of the relevant charts indicates that the Off-shore derivation belts or zones of the coastal states works out roughly as follows: Lagos 15.5 miles (28km); Ogun 15.5 miles (28km); Ondo 27.7 miles (50km); Delta 33 miles (60km); Bayelsa 38.8 miles (70km); Rivers 38.8 miles (70km); Akwa Ibom 44.4 miles (80km)and Cross River 44.4 miles(80km).

What emerges from this analysis is that Akwa Ibom and Cross River States have a 200 metre Isobath derivation zone three times the breath of Lagos and Ogun States.

On the question of the accuracy of these measurements, I must defer, with regard to Lagos, to the figures given by Alhaji Dahiru Bobo, Director-General of the National Boundary Commission who gives the 200 metres Isobath breath of Lagos as “Three to Five Kilometres” as against my figure of 15.5 miles or 28 kilometres. If he is correct, Lagos and Ogun states, are worse off under the 200 metre depth Isobath than under the earlier Obasanjo bill based on the Contiguous zone which is 24 miles, or 44.4 kilometres, as against the 200 metre Isobath figure of 28 kilometres (mine) or three to five Kilometres (Dahiru Bobo’s).

That is not all. It will be recalled that based on the negotiations and arrangements by which the various Nationalities and Regions of Nigeria agreed to establish a United and Independent Nigeria, it was agreed that for the purposes of derivation, the continental shelves of Regions (now States) were deemed to be part of that Region or State. This was entrenched in section 140(6) of the 1960 (independence) and 1963 (Republican) Constitutions.

Now the Continental Shelf of a coastal state is 200 miles and currently, Nigerian geo-scientists and marine scientists are working on a project to enable us claim up to 350 miles of Continental Shelf as provided for in Article 76, paragraphs 4,5 and 6 of the 1982 Convention of the Law of the Sea.

Considered in this light, 44miles, (by my apparently generous measurement) which is the widest zone to which the derivation principle is applicable under the 200 metre Isobath concept, is a far cry from 200 miles, not to mention 350 miles Continental Shelf which we expect to have in the nearest future.

By far the most disturbing consequence of the Coastal States' limitation to a 200 metre depth belt for derivation purposes, is that all the major off-shore Oil and gas finds are now in the deep off-shore zone between 1000 and 2500 metres as against the 200 metre limitation for coastal states. There are currently about sixty deep sea blocks allocated to oil Companies. Moreover, some gigantic oil and gas fields have been discovered in the deep sea bed since 1996. These include Bonga, 1996; Bosi, 1996/7; Abo, 1997; Agbami, 1998; Erha, 1999; Akpo, 1999 and Bonga-SW 2001. Many others are in the process of discovery or test drilling. Available information indicates that at the end of 2003, one hundred and ten (110) wells had been drilled in the deep off-shore; the shallowest, Okpok-1, being 1,260 metres deep and the deepest Aje-1, had a depth of 5, 800 metres. It was drilled by Yinka Folawiyo and Co. These drilling operations have resulted in 4 billion barrels of recoverable oil reserves whilst gas reserves are estimated at 25 trillion cubic feet. The Nigerian Coastal States off whose shores these tremendous findings are being made, will not enjoy ANY derivative rights in these deep sea areas.

What is more disturbing is that the deep Off-shore will progressively bring an increasing proportion of Nigerian oil and gas. As the land and shallow Off-shore (200 metres) reserves are getting exhausted, the deep off-shore reserves beyond 200 metres will keep on increasing. In short, the future of the Nigerian oil and gas exploration and exploitations lies in the deep off-shore outside the derivation zone granted to the coastal states, under the 200 metres Isobath Act.

In the light of all the above, has the 200 metre Isobath Act brought Uhuru to the Niger Delta States? Should they be singing "thank you Jesus wellu wellu" over the 200 metres Isobath, or should they continue the struggle for the restoration of their derivation rights over the whole of the Continental Shelf? I believe we should rather thank God in advance for the hope of restoration of

our rights over the whole of the Continental Shelf, whilst working to realise this fundamental Constitutional and human right, instead of ridiculing ourselves on the restoration of a tiny fraction of what is rightfully ours.