

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE,
THE HAGUE,
THE NETHERLANDS

APRIL, 1981

NEW GHANA.....Applicant

v.

NEW TOGO.....Respondent

MEMORIAL OF THE APPLICANT

TEAM NO. 160

TABLE OF CONTENTS

	<u>Paras</u>	<u>Page</u>
1. <u>INDEX OF AUTHORITIES</u>		vi
2. <u>JURISDICTION OF THE COURT</u>		xii
3. <u>STATEMENT OF FACTS</u>		xii
4. <u>QUESTIONS PRESENTED TO THE COURT</u>		xii
5. <u>SUMMARY OF ARGUMENTS</u>		xiii
6. <u>ARGUMENT</u>		
I. JURISDICTION	1-2	1
II. TERRITORIAL SEA		1
A. <u>Boundary from the mouth of the New Oti River to the Eastern Edge of Keta Island</u>		
a. The median line is appropriate in such a "narrow waters" or "straits" situation	3-4	
b. The 1948 treaty extends only to the mouth of the New Oti River as a matter of construction and intention	3-4	
c. New Togo has no historic title	4	
d. No special circumstances apply	5	
B. <u>The Territorial Sea Generally</u>		2
a. No historic title or special circumstances exist	6	
b. Keta Island can be used as a basepoint for delimitation	7	
c. State practice justifies the use of an equidistance line	8	
C. <u>The Roadstead</u>		3
a. The roadstead lies within New Ghana's 12-mile territorial sea, or may be included if it lies outside	9	
b. New Togo is estopped from asserting title	10	
III. CONTINENTAL SHELF		3
A. <u>The Equidistance Line</u>	11	
a. State practice has made the equidistance line a rule of customary international law	11-12	
b. This Court is not bound by its decision in the North Sea Continental Shelf cases	12	
c. Art. 6 of the 1958 Convention on the Continental Shelf is norm creating	13-14	

	<u>Paras</u>	<u>Page</u>
d. Failure to agree is no barrier to applicability of the rule	15	
e. The "special circumstances" criterion makes the rule feasible	16	
f. Ability to make reservations to Art. 6 is no barrier to development of the norm	17	
g. The Court has a positive role to play in developing international law	18	
h. The rule is convenient and practicable	19	
i. Art. 83(1) of the Draft Treaty on the Law of the Sea is not part of customary international law	20	
<u>B. Equity and Equidistance</u>		6
a. If customary international law requires delimitation according to equitable principles, equidistance is the most practicable, convenient and equitable method available	21+25	
<u>C. The Old Bed of the New Oti River</u>		8
a. As a continuation of a land boundary it indicates the natural prolongation of New Ghana's continental shelf	26	
<u>D. Special Circumstances</u>		8
(i) The Concave Coast and Proportionality	28-31	
(ii) Keta Island		9
a. Keta Island has its own entitlement to a continental shelf	32-33	
b. It may be used as a base point for the outer edge of the continental shelf	34	
c. Keta Island is not a special circumstance	35-37	
d. Alternatively, it cannot be ignored but may be given reduced effect	38	
(iii) New Lome Rock		12
a. New Lome Rock cannot be used as a basepoint	39	
b. It has no territorial sea	40	
c. Insignificant and uninhabitable rocks are not entitled to a continental shelf	41-45	
d. New Lome Rock should be ignored for delimitation purposes, or enclosed by an enclave	46	

	<u>Paras</u>	<u>Page</u>
IV. RIGHTS IN THE AREA		15
A. <u>Sedentary Fishery Rights</u>		
a. The doctrines of prescription and occupation have not survived the development of the continental shelf jurisdiction	47-48	
b. Ownership of the seabed is inconsistent with freedom of the high seas and sovereignty over the continental shelf	49	
c. No formal claims to sovereignty has been made	50	
d. In any event a conflict of regimes would be undesirable	51	
B. <u>Non-sedentary Fisheries</u>		16
(Exclusive Fisheries jurisdiction)		
a. While recognising New Togo's historic rights over the fin fisheries, New Ghana has the right to conserve its living resources by licensing New Togolese fishermen	52	
b. Licensing of New Togolese fishermen falls within the jurisdiction of the E.E.Z., now part of customary international law	53	
C. <u>Axim Block</u>		17
a. The Axim Block belongs to New Ghana	54	
b. New Togo is estopped from denying New Ghana's ownership	55-56	
c. In the alternative, international co-operation must take precedence over unilateral exploitation	57	
D. <u>Use of Force</u>		17
a. New Ghana is entitled to use force to protect its sovereign territory in and around Axim Block	58	
E. <u>The Salt Dome</u>		17
a. The salt dome falls within the outer limits of New Ghana's sovereignty	59-60	
V. INTERIM MEASURES OF PROTECTION		18
a. Pending judgment the Court is asked to grant interim measures protecting New Ghana's rights over Axim Block from New Togolese oil drilling	61	

v.

	<u>Paras</u>	<u>Page</u>
VI. CONCLUSION		18
a. Summary of declarations requested by New Ghana from the Court	62	
7. <u>FOOTNOTES</u>		19
8. <u>MAPS</u>		24

INDEX OF AUTHORITIES

<u>1. STATE PRACTICE</u>	<u>NOTE</u>	<u>PAGE</u>
A. TREATIES AND CONVENTIONS		
1. Preliminary Draft Articles on the Delimitation of Coastal State Jurisdiction in Ocean Space and on the Rights and Obligations of Coastal States in the Area under their Jurisdiction. Submitted by Malta to the U.N. Seabed Committee (July 1973) U.N. Doc. A/A.C. 138/SC. II/L.28. ODA, THE INTERNATIONAL LAW OF OCEAN DEVELOPMENT Vol. II, 266 (1975) (Oda)	97 100	13 13
2. Certain Specific Aspects of the Regime of Islands in the Context of Delimitation of the Marine Spaces between neighbouring States. Submitted by Romania to the U.N. Seabed Committee (August 1973) U.N. Doc. A/A.C. 138/SC. II/L.53 Oda, Vol. II, 250.	97 100	13 13
3. Convention on the Continental Shelf 499 U.N.T.S. 311 (1958).	3, 35 40	1, 5 5
4. Draft Articles on the Exclusive Economic Zone. Submitted by Algeria, Cameroon and fourteen other African countries to the U.N. Seabed Committee (July 1973) U.N. Doc. A/A.C. 138/SC II/L. 40. Oda Vol. II, 295	97 101	13 13
5. UNCLOS III, Draft Convention on the Law of the Sea U.N. Doc. A/CONF. 62/WP. 10/REV. 3, 27 August 1980.	3, 65 75, 97,99,137	1, 8, 10 13,13,17
6. Santiago Declaration of 1952, U.N. Doc. ST/LEG./SER. B/6, 723 (1956).	79	11
7. Convention on the Territorial Sea and the Contiguous Zone 516 U.N.T.S. 205 (1958)	7, 10, 14, 93,94 94	2, 2, 2,13,13
8. Vienna Convention on the Law of Treaties U.N.Doc. A/CONF. 39/27, 280.	1, 5 31	1, 1 4
9. Aaland Islands Convention 9 L.N.T.S. 217 (1921)	92, 28	12, 4
10. Offshore Boundary Agreement between Abu Dhabi and Dubai NEW DIRECTIONS Vol. V, 214.	113,118	14,15
11. Offshore Boundary Agreement between Abu Dhabi and Qatar NEW DIRECTIONS Vol. V, 223.	28,39 113,118	4,5 14,15
12. Continental Shelf Boundary: Bahrain-Saudi Arabia February 22, 1958 NEW DIRECTIONS Vol. V, 207: ST/LEG./SER. B/16 (1974) 400.	28,39 113,118	4,5 14,15
13. Agreement between Denmark and Sweden (1899) SYMMONS, THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW (1979)	92	12
14. Convention between France and Spain on the Delimitation of the shelves of the two States in the Bay of Biscay January 29, 1974 NEW DIRECTIONS Vol. V, 251 (1977)	28,30	4,5

	<u>NOTE</u>	<u>PAGE</u>
15. Agreement as to the course of the Border of the Territorial sea between the Federal Republic of Germany and the Democratic Republic of Germany, July 2, 1974: SEBEK, EASTERN EUROPEAN STATES AND THE LAW OF THE SEA, Vol. II, Chap. 2, 32 (1979).	25 69	3 9
16. Agreement between Indonesia and Malaysia, Office of the Geographer, U.S. State Department, International Boundary Study (Ser. A, No. 1 1970).	91	12
17. Agreement concerning the Boundary Line dividing the Continental Shelf between Iran and Qatar NEW DIRECTIONS Vol. V, 226 U.N. Doc. ST/LEG./SER. B/16 (1974) 416.	28,39	4,5
18. Continental Shelf Agreement: Iran-Saudi Arabia, October 24, 1968 NEW DIRECTIONS Vol. V, 216 U.N.Doc. ST/LEG./SER. B/13 (1976) 403.	39 28 90	5 4 12
19. Treaty of Peace with Italy (Trieste) T.I.A.S. No. 1648, 130 (1947).	21 22	3 3
20. Agreement between the Government of the Italian Republic and the Government of the Tunisian Republic relating to the Delimitation of the Continental Shelf between the two Countries NEW DIRECTIONS Vol. V, 247.	28,39	4,5
21. Convention between Italy and Turkey for the Delimitation of the Territorial Waters between the Coast of Anatolia and the island of Castellorizo 138 U.N.T.S. 243 (1933).	23,39	4,5
22. Italy-Yugoslavia: Agreement on the Continental Shelf January 8, 1968 NEW DIRECTIONS Vol. I, 112 (1973); 7 INT'L LEG. MAT. 547 (1968)	28,39	4,5
23. Japan-Republic of South Korea: Agreement concerning the Establishment of Boundary in the Northern part of the Continental Shelf adjacent to the two Countries, Oda, Vol. II, 92.	113 118	14 15
24. Ems-Dollard Treaty between the Netherlands and Germany 509 U.N.T.S.	136	17
25. Supplemental Agreement to the Ems-Dollard Treaty 509 U.N.T.S. 104.	136	17
26. Anglo-Danish Fishery Treaty of 1901 BR. AND FOR. ST. PAPS., Vol. 94, 29.	92	17
27. Agreement between the United Kingdom and France regarding rights of Fisheries in Areas of the Ecrehos and Minquiers (1951) 121 U.N.T.S. 97 (1952).	98	13
28. Agreement between Norway and Sweden concerning the Delimitation of the Continental Shelf, July 24, 1968, Oda, Vol. I, 391	28 113 118	4 14 15
29. Agreement between the People's Republic of Poland and the Democratic Republic of Germany on the Delimitation of the Continental Shelf in the Baltic, October 29, 1968. SEBEK, EASTERN EUROPEAN STATES AND THE LAW OF THE SEA, Vol. II, Chap. 2, 20 (1979)	26 28 69	4 4 9

	<u>NOTE</u>	<u>PAGE</u>
30. Treaty of Peace with Yugoslavia (Trieste) T.I.A.S. No. 1648, 138 (1947)	21,22	3,3
31. Agreement between the United Kingdom and Norway relating to the exploitation of the Frigg Field Reservoir Cmnd 6491	136	17
B. PROCLAMATIONS AND STATUTES		
32. Australia: Pearl Fisheries Acts ACTS AUST'L P. No. 8 cf 1952, No. 4 of 1953	124	15
33. Australia: Pearl Fisheries Act (No. 2) ACTS AUST'L P. No. 38 of 1953.	124	15
34. Australia: Proclamation of September 10, 1953 48 AM. J. INT'L L. Supp. 102 (1954).	124	15
35. Bangladesh: Territorial and Maritime Zones Act, No. 26 (1974)	20	3
36. Declaration of 15 November 1968 by the Chairman of the Revolutionary Council of the Union of Burma on the Territorial Sea of Burma U.N.Doc. ST/LEG./SER. B/15, 49 (1970)	15	3
37. Presidential Declaration of June 23, 1947 (Chile) U.N. Doc. ST/LEG./SER. B/6 (1956).	80	11
38. Cuba: Military Order No. 173 of June 22, 1901 U.N. Doc. ST/LEG./SER. B/15, 60 (1970)	17	3
39. Cuba: Legislative Decree No. 108 of January 8, 1934, U.N.Doc. ST/LEG./SER. B/15, 60 (1970)	17	3
40. Dominican Republic: Act No. 6 of September 6, 1967 on the Territorial Sea, the Contiguous Zone and the Continental Shelf U.N. Doc. ST/LEG./SER. B/15, 76 (1970)	16	3
41. Decree of Congress of Ecuador, February 21, 1950 U.N.Doc. ST/LEG./SER. B/6, 13 (1956)	80	11
42. Ireland: Maritime Jurisdiction Acts, 1959 and 1964 U.N. Doc. ST/LEG./SER. B/15, 90 (1970)	18	3
43. Proclamation of 6 June 1969 by the President of the Republic of Kenya concerning the Territorial Sea and the Contiguous Zone of the Republic of Kenya U.N.Doc ST/LEG./SER. B/15, 95 (1970).	24	3
44. Mexico: Law regulating the eighth Paragraph of Article 27 of the Constitution, relating to the Exclusive Economic Zone 15 INT'L L. MAT. 382 (1976).	106	14
45. New Zealand: Territorial Sea and Fishing Zone Act (1965) U.N. Doc. ST/LEG./SER. B/15, 102 (1970).	19	3
46. Peru: Presidential Decree No. 781 concerning Submerged Continental or Insular Shelf U.N. Doc. ST/LEG./SER. B/6, 16 (1956).	80	11
47. Proclamation by the President of 24 August 1973 on the extent of the Territorial Waters of the United Republic of Tanzania U.N. Doc. ST/LEG./SER. B/18, 31 (1976)	24	3

<u>2. JUDICIAL DECISIONS</u>	<u>NOTE</u>	<u>PAGE</u>
48. Administrative Tribunal of the I.L.O. Case (1976) I.C.J. 77, 98.	2	1
49. Arbitral Award of the King of Spain (1960) I.C.J. 192.	134	17
50. Anglo-Norwegian Fisheries Case (1951) I.C.J. 116	46	6
51. "The Anna" (1805) 165 E.R. 809.	12	2
52. Asylum Case (1950) I.C.J. 266.	43	6
53. Barcelona Traction Case (1970) I.C.J. 305.	32	4
54. Case Concerning the U.S. Embassy in Tehran (1979) I.C.J. 7, 74 AM. J. INT'L L. 266 (1980)	140	18
55. Channel Arbitration 54 INT'L L. REP. 6 (1977)	47,48 68,69,77 78,82,85 86,87,88 89,95,96 103,104 114,115	6,6 9,9,10 11,11,12 12,12,12 12,13,13 13,13 14,14
56. Beagle Channel Arbitration 17 INT'L L.MAT. 634 (1978)	1	1
57. Competence of the General Assembly Case (1950) I.C.J. 4.	4	1
58. Competence of the I.L.O. Case (1922) P.C.I.J., Ser.B, No. 2, 39	1	1
59. Fisheries Jurisdiction Case (1974) I.C.J. 3.	128,130	16,16
60. The S.S. Lotus (1927) P.C.I.J. Ser. A, No. 10	43	6
61. North Sea Continental Shelf Cases (1969) I.C.J. 3.	27,33,37 38,42,49 54,58,59 60,62,67 73,74,76 83,84,105 126	4,4,5 5,5,7 7,7,7 8,8,9 10,10,10 11,12,13 15
62. Norway v Sweden (1909) G. WILSON, THE HAGUE ARBITRATION CASES 102 (1915).	8,9	2,2
63. Nottebohm Case (1955) I.C.J. 122.	30	4
64. Nuclear Tests Case (1974) I.C.J. 253	135	17
65. Temple of Preah Vihear Case (1962) I.C.J. 6.	134	17
<u>3. BOOKS</u>		
66. E. BROWN, THE LEGAL REGIME OF HYDROSPACE (1971)	57	7
67. E. BRÜEL, INTERNATIONAL STRAITS, A TREATISE ON INTERNATIONAL LAW (1947)	6	2
68. R. B. FINNEGAN, R. S. JUNN & C.E. WILSON, LAW AND POLITICS IN THE INTERNATIONAL SYSTEM (1979)	56	7

	<u>NOTE</u>	<u>PAGE</u>
69. D. GREIG, INTERNATIONAL LAW (2nd ed., 1976).	137	17
70. L. LUCCHINI AND M. VOELCKEL, LES ETATS ET LA MER (1977)	35	5
71. W. REISMAN AND B. WESTON (ED.), TOWARD WORLD ORDER AND HUMAN DIGNITY (1976).	44	6
72. C. SYMONS, THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW (1979).	91 109,117	12 14,15
73. M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 4 (1965)	6,125	1,15
 <u>4. ARTICLES</u>		
74. Ahnoi, <u>The Exclusive Economic Zone: An Analysis of the Concept as Contained in the Revised Single Negotiating Text U. GHANA L.J. 137 (1977)</u>	139	18
75. Beauchamp, Crommelin and Thompson, <u>Jurisdictional Problems in Canada's Offshore.</u> 11 ALBERTA L. REV. 431 (1973)	53	7
76. Brown, <u>The North Sea Continental Shelf Cases</u> 23 CURRENT LEG. PROBS 187 (1970)	41	5
77. Brown, <u>Rockall and the Limits of National Jurisdiction of the U.K.</u> 2 MARINE POLICY 181 (Pt I), 275 (Pt II) (1978)	102	13
78. Carros and Savini, <u>The New International Law of Fisheries Emerging from Bilateral Agreements</u> 3 MARINE POLICY 79 (1979)	129 131	16 16
79. Feulner, <u>Delimitation of the Continental Shelf Jurisdiction between States: the Effect of Physical Irregularities in the Natural Continental Shelf</u> 17 VIRGINIA J. INT'L L. 77 (1976)	61,63 111	8,8 14
80. Friedman, <u>The North Sea Continental Shelf Cases: a Critique</u> 64 AM. J. INT'L L. 229 (1970)	71 72	9 10
81. Goldie, <u>Sedentary Fisheries and Article 2(4) of the Convention on the Continental Shelf - a Plea for a separate regime</u> 63 AM. J. INT'L L. 86 (1969).	127	16
82. Grisel, <u>Lateral Boundaries of the Continental Shelf and the Judgment of the International Court of Justice in the North Sea Continental Shelf Cases</u> 64 AM. J. INT'L L. 562 (1970)	5,66	7,9
83. Gündling, <u>Die exklusive Wirtschaftszone</u> 38 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZAÖVR) 616 (1978)	132	16
84. Hurst, <u>Whose is the Bed of the Sea?</u> 4 BR. Y. B. INT'L L. 34 (1923-1924)	120	15
85. Lagoni, <u>Oil and Gas Deposits Across National Frontiers</u> 73 AM. J. INT'L L. 215 (1979)	136	17

	<u>NOTE</u>	<u>PAGE</u>
86. Lauterpacht, <u>Sovereignty over Submarine Area</u> , 27 BR. Y. B. INT'L 376 (1950).	34	4
87. Nweihed, E.Z. <u>(Uneasy) Delimitation in the Semi-enclosed Caribbean Sea: Recent Agreements between Venezuela & her Neighbours</u> 8 OCEAN DEV. & INT'L L. 1 (1980).	81	11
88. MacDonald, <u>The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice</u> 8 CANADIAN Y. B. INT'L L. 3 (1970).	45	6
89. Mirvahabi, <u>Significant Fishery Management Issues in the Law of the Sea Conference; Illusions and Realities</u> 15 SAN DIEGO L. REV. 493 (1978).	133	16
90. Moore, <u>National Legislation for the Management of Fisheries under Extended Coastal State Jurisdiction</u> 11 J. MAR. L. COMMERCE 153 (1980).	132	16
91. O'Brien (ed.), <u>Boundary Delimitation in the Economic Zone: The Gulf of Maine Dispute</u> 30 ME. L. REV. 207 (1979).	64	8
92. O'Connell, <u>Sedentary Fisheries and the Australian Continental Shelf</u> 49 AM. J. INT'L L. 185 (1955).	123	15
93. Onorato, <u>Apportionment of an International Common Petroleum Deposit</u> 26 INT'L COMP. L. Q. 324 (1977).	136	17
94. Phylactopoulos, <u>Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed</u> , 8 INT'L L'YER 431 (1974).	56	7
95. Symmons, <u>Legal Aspects of the Anglo-Irish Dispute over Rockall</u> 26 N. IR. L. Q. 65 (1975).	109 110	14 14
96. Young, <u>Sedentary Fisheries and the Convention on the Continental Shelf</u> 55 AM. J. INT'L L. 359 (1961)	119	15
<u>5. INTERNATIONAL MATERIALS</u>		
97. Statute of the International Court of Justice.	29	4
98. United Nations Charter.	36	5
99. Report of the African States Regional Seminar on the Law of the Sea Yaoundé 1972 U.N. Doc. A/A.C. 138/79 NEW DIRECTIONS Vol. I, 250.	130	16
100. Report of Australian Delegation, Seventh Session of UNCLOS III (1980).	52	7
101. Report of the International Law Commission to the General Assembly (1956) 2 Y. B. INT'L L. COMM'N 272 (1956).	50	7
102. Statement by Ambassador Gauci, Chairman of the Delegation of Republic of Malta, 35th Session U.N.G.A. General Debate October 8, 1980 (High Commission, Canberra).	35	7
103. Subcommittee II of Second Committee. Acts of the Hague Conference Vol. II, 212 (1930).	13	2

JURISDICTION OF THE COURT

New Togo and New Ghana have agreed to submit their present dispute by way of a special agreement. Under Article 36(1) of the Statute of the International Court of Justice, the Court has jurisdiction to hear and determine the issues referred to it.

STATEMENT OF FACTS

The Parties agree that the Statement of Facts contained in the Compromis signed by the Parties is true.

QUESTIONS PRESENTED TO THE COURT

Taking into account all relevant factors affecting the delimitation of the oceanic boundary between two sovereign and independent states over the adjacent continental shelves,

1. What are the general and specific principles, rules and criteria applicable to the delimitation of said boundary between the Applicant and the Respondent states in the Atlantic Ocean?
2. How should the Parties apply said principles, rules and criteria to the instant facts in order to determine the location of said boundary and their rights in the areas in dispute?

SUMMARY OF ARGUMENT

New Ghana submits that its oceanic boundary with New Togo is an equidistance line between the habitable territories of the two states as is depicted by the dotted line on Map III attached to the Compromis submitted to the Court by the parties.

Although the 1948 UK - France boundary treaty is binding on the parties, this treaty does not purport to delimit any part of the offshore boundary between the two states. It was directed exclusively to fixing the land boundary up to the mouth of the New Oti River. Such an interpretation is supported by an examination of the context of the treaty and of the natural and ordinary meaning of its terms.

Accordingly, as New Togo is not a party to either the Convention on the Continental Shelf or the Convention on the Territorial Sea and the Contiguous Zone, the rules of customary international law apply. The boundary in dispute divides the territorial waters, contiguous zone, continental shelf, and exclusive fishing (and economic) zones claimed by the parties.

The boundary delimiting the respective territorial seas is to be drawn by use of the equidistance method which, as embodied in Art.12 of the Convention on the Territorial Sea and the Contiguous Zone, is required by customary international law.

For reasons of practical convenience New Ghana submits that the boundary line between the respective continental shelves and exclusive fishing zones be the same line. This boundary should be drawn according to the principle of equidistance, which is now a rule of customary international law. The overwhelming endorsement of this principle in the practice of states has dispelled much of the doubt cast upon its status as a rule of international law, as was recognised in the UK - France Channel Arbitration.

Alternatively, if delimitation in accordance with "equitable principles" is held to be the relevant rule to be applied, equidistance is in fact the most

efficient and equitable method to apply in the present case.

New Ghana submits that there are no special circumstances which would require diversion from an equidistance line or which would require adjustment according to considerations of equity. The buoyed channel set up simply as an aid to transportation of the Applicant's minerals, the location and configuration of Keta Island, and the slightly concave configuration of the coastline, are not features allowing deviation from the equidistance line or creating "geographic inequity". Any such "inequity" arises solely from New Togo's restricted coastline which the Court cannot remedy without "refashioning nature".

As Keta Island is of considerable size and population and is connected to the mainland both physically and economically, it must be given full effect as a basepoint for the territorial sea, continental shelf, and exclusive fishing zone.

New Ghana submits that the area claimed by it is the natural prolongation of its land territory and does not encroach upon that of New Togo. The only geological feature on the continental shelf is the old New Oti River bed, which is the extension of the land boundary. It indicates that the natural prolongation of New Ghana's land territory approximates more closely to its equidistance line than to New Togo's perpendicular line.

New Togo is, it is argued, estopped from denying that the roadstead is included in New Ghana's territorial sea.

It is contended that New Lome Rock is not entitled to be used as a basepoint for New Togo's continental shelf, nor can it claim its own continental shelf. As an uninhabitable rock it is entitled at the most to a twelve mile enclave. New Ghana admits the historic rights of the New Togolese fishermen but insists that its own rights to preserve its natural resources in accordance with the jurisdiction established under its exclusive fishery and economic zone entitle it to license them.

New Togo has no residuary rights to any of the sedentary fisheries on New Ghana's continental shelf.

New Lome Rock and the surrounding fisheries are in the fisheries zone of New Ghana. New Ghana is entitled to require that fishermen fishing in her fisheries zone be licensed. The Axim Block is situated on New Ghana's continental shelf. New Togo's delayed protest estops them from denying New Ghana's sovereignty over the Axim Block and its surrounding area.

The salt dome falls within the exploitability criterion of the Convention on the Continental Shelf. If this criterion has been replaced in customary international law by the concept of the continental margin, the salt dome lying on the continental rise falls within it. Alternatively the salt dome may be exploited as a non-living resource within the outer limit of New Ghana's Exclusive Economic Zone.

NEW GHANA - ARGUMENTI. JURISDICTION

1. New Ghana submits that this Court has jurisdiction to declare the principles appropriate to the delimitation not only of the Parties' continental shelves, but also to the delimitation of their respective territorial seas and exclusive fishing/economic zones. Although the Compromis refers to the "oceanic boundary...over the continental shelf," this phrase must be interpreted in its context.¹ The statement of facts, containing maps showing the boundaries claimed as starting in the territorial sea, evinces a clear intention that the territorial sea boundary be considered. The submission of the dispute concerning licensing of the Respondent's fishermen similarly necessitates the delimitation of the respective fishing/economic zones.²

2. Furthermore delimitation of the Parties' territorial waters is essential for the delimitation of the continental shelf, as the continental shelf begins only where the territorial sea ends.³ To neglect the territorial sea would lead to an unreasonable interpretation of the treaty.⁴

II. THE TERRITORIAL SEAA. The Boundary from the Mouth of the New Oti River to the Eastern Edge of Keta Island

3. New Ghana submits that the median line provides the appropriate means of delimitation in the territorial sea between Keta Island and the New Togolese mainland. The 1948 treaty extends only to the mouth of the New Oti River as a matter of construction and intention.⁵

4. The words indicate that the border was to be "south to the Atlantic", which, it is submitted, begins at a straight baseline drawn across the mouth of the New Oti River. The treaty was intended to deal only with internal as opposed to territorial waters, as it was drawn up in order to deal with disputes in the New Oti River, over "fishing and navigation" rights and not the seabed (with its non-living resources) of the territorial sea. Consequently, the territorial sea was not delimited in 1948. New Ghana denies that there is any rule of customary international law indicating that the thalweg is the boundary in the absence of other delimitation. The work of Bruel and Gidel indicates that, in the absence of agreement, the midway line, not the thalweg, is the correct means of delimitation in such an area of "narrow waters" or "straits",

to which the present case is analogous.⁶ Article 12 of the 1958 Convention on the Territorial Sea and the Contiguous Zone⁷ states that in the absence of historic title or special circumstances the equidistance rule shall apply. New Ghana concedes that this Convention is not applicable, but submits that this article represents the customary law as indicated above. New Togo has no historic title over the area. The buoys put in by the British were put in purely as a guide to navigation, not as a boundary. New Ghana is not thereby estopped from claiming that the water beyond the channel up to the median line belongs to her. In fact the Grisbadarna arbitration⁸ would support any claim New Ghana has in this area and in the area to the east of Keta Island, as the uncontested British placing of navigational aids and the surveying of the sea by first the U.K. then the Applicant are relevant "circumstances of fact"⁹ in drawing any boundary.

5. No special circumstances apply for the following reasons: the treaty does not extend to offshore areas; New Ghana cannot in any case deny New Togo access to her internal ports as New Togo has the right of innocent passage through Ghanaian waters;¹⁰ Keta Island is not a special circumstance for reasons to be enumerated.¹¹

B. The Territorial Sea Generally

6. New Ghana contends that there are no special circumstances which could alter an equidistance line delimiting the territorial sea. New Togo cannot argue historic title. Although both states claim 12 mile territorial sea limits, in previous years they both claimed 3 mile limits. By extending the territorial sea around Keta Island, New Ghana is merely acting in accordance with the rule of customary law expressed in Art. 3 of the Draft Convention and is not attempting to deprive New Togo of any area of sea over which it had previously claimed sovereignty.

7. New Ghana is entitled to use Keta Island as a basepoint for the determination of the territorial sea. The use of islands within the territorial waters as basepoints is in accordance with state practice. In "The Anna",¹² the border of the United States was held to be drawn from islands at the river mouth. At the 1930 Hague Conference,¹³ a general agreement was reached that islands, islets and rocks not constantly submerged could be used as basepoints. The 1958 Convention on the Territorial Sea¹⁴ extended this right to the use of a low-tide elevation as a basepoint, as long as it

was within the territorial sea. A fortiori, an island such as Keta Island, which is exposed even at high tide and is within the territorial waters, can be used as a basepoint for the delimitation of territorial waters. New Ghana reserves its position as to any rights which may appertain to New Lome Rock. State practice is to use as basepoints islands in the territorial sea: for example, Burma,¹⁵ Dominican Republic,¹⁶ Cuba¹⁷ (the territorial waters extend from the coast and the keys surrounding it), Ireland (which draws baselines from islands)¹⁸, New Zealand,¹⁹ and Bangladesh.²⁰ The territorial sea must therefore be drawn around it, that is, 12 miles from its coast, and it can be reduced only where it meets the territorial sea of New Togo.

8. There is considerable state practice justifying the use of an equidistance line in territorial waters:

The agreements between Italy and Trieste,²¹ Yugoslavia and Trieste,²² Italy and Turkey,²³ Kenya and Tanzania,²⁴ Federal Republic of Germany and German Democratic Republic,²⁵ and German Democratic Republic and Poland.²⁶

C. The Roadstead

9. New Ghana submits that the roadstead is in its territorial waters. It is within the 12 mile territorial sea drawn using Keta Island as a basepoint and customary international law provides that title to a roadstead can be obtained by the state who has established it. Under Art. 9 of the Convention on the Territorial Sea, a roadstead can be acquired even if it is outside the territorial waters. Art. 12 of the Draft Convention reiterates this principle, and there is no state practice which is opposed to this view.

10. It is submitted that New Togo is estopped from arguing that she has any title to the roadstead. It was established by the British for New Ghana's use, and the sporadic use by New Togo has been admittedly subject to the prior permission of New Ghana.

III. THE CONTINENTAL SHELF

A. The Equidistance Line

11. New Ghana concedes that the 1958 Geneva Conventions on the Continental Shelf and on the Territorial Sea and Contiguous Zone are not binding between New Ghana and New Togo. But New Ghana submits that for the purpose of the delimitation of the lateral

boundary of the territorial sea, the contiguous zone, the continental shelf and the fisheries zone, in the absence of special circumstances, the application of the equidistance line is a rule of customary international law. New Ghana concedes that, apart from the particular circumstances of the delimitation of straits and narrow waters, the application of the equidistance line was not a rule of customary international law up to the inception of the 1958 Continental Shelf Convention. It submits that since that date it has become one, due to the preponderance of state practice applying the rule.

12. New Ghana is aware that the Court in the North Sea Continental Shelf Cases²⁷ expressed the view that the equidistance line was not a rule of customary international law. New Ghana submits that an examination of state practice since 1958 and in the eleven years since that judgment demonstrates the contrary.²⁸ It is submitted that this pattern of acquiescence has arisen over a sufficient period of time in this rapidly developing area and that it is both extensive and uniform enough to establish equidistance as a rule of customary international law. The International Court of Justice is not bound by the rule of stare decisis and is therefore not bound by its decision in the North Sea Continental Shelf Cases.

13. It is submitted that Article 6 of the Convention (containing the equidistance rule) was, in contra distinction to this court's finding, capable of creating and has in fact created, a norm of customary international law. Such norm creation was demonstrated in the Asstebohm case²⁹ where Arts 1 and 5 of the Hague Convention on Certain Questions relating to the Conflict of Nationality Laws were relied upon to bind Guatemala and Liechtenstein, neither of which was a party to the Convention.³¹ Many similar examples exist of conventions which have evolved into binding customary norms.³²

14. This submission is supported further by an examination of the nature and extent of the ratifications to the convention. In the North Sea cases this court noted that "a very widespread and representative participation in the convention might suffice in itself, provided it included that of states whose interests were specifically affected".³³ Similarly Lauterpacht has stressed the relative importance of states inaugurating the change above the mere number participating within this sphere.³⁴ There were 54 ratifications in 1977, 9 more than the Territorial Sea Convention which is acknowledged to be part of customary international law. The U.S.A., Canada, Australia

and the U.S.S.R., four of the five nations with the largest continental shelves have ratified the Convention, as has the rest of Western Europe, all of Eastern Europe except Hungary (which has no sea borders) and third world states such as Colombia, Fiji, Jamaica, Kenya, Malaysia, Mexico, Nigeria and Thailand. Of the non-signatories, 20 are landlocked and 33 have very short coastlines. Many of the non-signatories which have coastlines nevertheless use equidistance in their delimitations, including Indonesia which has the world's second largest continental shelf area.³⁵

15. As regards the specific arguments put up against equidistance in the North Sea Cases: agreement and negotiation are basic elements of customary international law.³⁶ The reiteration of the necessity of attempting agreement³⁷ before applying the equidistance rule in Art. 6, does not prevent the principle of equidistance from being a rule of customary international law which can come into operation when negotiation has failed.

16. The role to be played by "special circumstances" in the drawing of the equidistance line, although undefined, serves to guarantee that the harshness of a particular delimitation can be modified.³⁸ So far from detracting from the norm-creating generality of Art. 6, this qualification has served to make the application of the equidistance line feasible in most circumstances (see the agreements given above,³⁹ where the equidistance line was drawn having taken into consideration circumstances which could have prevented agreement being reached). Rules of customary international law should contain a certain amount of flexibility in order to be capable of general application.

17. The fact that it is possible to make reservations to Article 6⁴⁰ demonstrates only that at the time of composition of the convention the equidistance line was not yet a rule of customary law. It is submitted that this does not indicate that it could not consequently become one by reason of the practice of states. In any event, the ability to make reservations merely shows that certain states were concerned about the general rubric "special circumstances".⁴¹ No reservations were made to the general concept of equidistance.

18. It is submitted that the test applied by the Court in the North Sea cases⁴² in determining whether a rule is recognised by the members of the international

community is too strict and literalist in the international context. The requirement that states have a feeling that they are acting in accordance with a legal obligation (opinio juris)⁴³ fails to appreciate the difficulties of proving that the acts of a state are motivated by a sense of obligation. Such an approach has an inhibiting effect on the development of customary law, in a time of rapid change and forces such rules to be brought into effect only by international legislative action rather than by the gradual development of practice. The approach of the International Court in this area has been the subject of much criticism: "the criteria and standards the Court has enumerated for establishing customary law...suggest an extremely rigid and unworkable concept of custom and an inadequate appreciation of its role in creating international law".⁴⁴ Canada added a reservation to its conditions of acceptance of the jurisdiction of the International Court for exactly this reason.⁴⁵ The Court has failed to realise that it too plays a role in developing the rules of customary law, (in contrast to its previous actions).⁴⁶ By adopting a rigid, literalist approach it retards the development of international law. It should therefore follow the practice of states without insisting upon the importance of tests which, by the very nature of the international community, will be satisfied only with difficulty.

19. The Court should take into account the convenience and practicability of the equidistance method. In the Channel Arbitration⁴⁷ the court deliberately ameliorated the International Court's approach to equidistance, recognised that the convenience of the method had been demonstrated by state practice, and relied primarily upon it.

20. It is contended that the provisions of Art. 83(1) of the Draft Treaty on the Law of the Sea do not represent a rule of customary international law. State practice demonstrates conclusive support for the use of the equidistance line (as shown above) and Art. 15, which retains the obligatory use of equidistance line for the delimitation of the territorial sea shows its general acceptance by the international community. In the Channel Arbitration the parties accepted the concept in principle,⁴⁸ only disagreeing as to the manner of its application.

B. Equity and the Equidistance Line

21. If the Court does not accept New Ghana's submission that the application of the equidistance line is in accordance with customary international law, the proper

test to apply is that of equity.⁴⁹ New Ghana submits that under the rules which would then be applied, equidistance is the most practicable, convenient and equitable method available.

22. The inherent advantages of the equidistance method: the rule has its origin in the attempt of the International Law Commission to provide a fair and convenient method of delimitation.⁵⁰ Francois, inspired by the writings of Whittemore Boggs, described the equidistance method generally as "the only fair and logical solution".⁵¹ Continuing support for the principle has been demonstrated from the 1958 Geneva conventions to UNCLOS III.⁵² It provides certain and definitive delimitation, which is of great importance in ensuring the prompt and effective exploitation⁵³ of oil and gas reserves, the primary reasons for delimitation.⁵⁴ It provides the sole objective standard in an area of great uncertainty, and can, with modifications to cope with special local circumstances, be applied in all cases. It provides for international stability in an area where confusion and uncertainty can lead to disagreeable results. (For example, Libya basing a claim on unstated "equitable" notions, has used a gunboat to force a company off a Maltese oil rig situated well within the postulated median line.⁵⁵ Similarly, failure to agree on a method of delimitation in the Aegean Sea has left vitally needed oil reserves untouched.⁵⁶) Hence, equidistance is the only definite means of giving practical expression to otherwise vague and vexatious notions of equity.⁵⁷

23. State practice supports the use of the equidistance line as the most convenient and equitable method of resolving boundary disputes (see above).

24. The continental shelf is essentially the seabed and subsoil of the submarine areas adjacent to a state's coast, but outside the area of its territorial sea. As interpreted by the International Court, the continental shelf is the natural prolongation of the land territory of the coastal state. The aim of delimitation is to give each state as much of the shelf which constitutes its natural prolongation as possible, without encroaching on the natural prolongation of the land territory of the other state.⁵⁸

25. The consequence of this, as was explained in the Channel Arbitration,⁵⁹ is that the concept of "equity" is in effect confined to "geographical" considerations.

The aim is to delimit areas of shelf in dispute with precision, not to share out the available shelf. As was held in the North Sea cases,⁶⁰ equitable principles involves the use of any method (including equidistance) which produces an equitable result. It is submitted that in most fact situations a line giving a state the shelf which is nearer to its territory is the most equitable. "Proximity" is an important test in determining geographical considerations.⁶¹ Where there are no real differences in geological structure, the determination of the so-called "natural prolongation" becomes of necessity a matter for legal rather than geological tests. The only geological feature on the shelf mentioned is the old New Oti River bed, which, it will be shown, follows New Ghana's proposed border more closely than it does New Togo's. In these circumstances, the equidistance line is a logical method by which to put equitable considerations into effect.

C. The Bed of the New Oti River

26. New Ghana submits that the bed is an indication of the natural prolongation of the shelf, thus showing that the 1978 equidistance line conforms generally to the geographic and geologic realities of the area. The UNESCO secretariat in 1957 recognised that "depressions" or "shelf channels" could be recognised as "integral parts of the shelves".⁶² The river bed is directly connected with a land feature constituting a sovereign boundary. Such a continuation of the land boundary would indicate that the natural prolongation of land sovereignty properly follows the river-bed. Feulner is of the view that "in situations where the features of the continental shelf are part of a larger feature which extend landward into the adjacent landmass, the rationale of natural prolongation would support the extension of the on-shore boundary to the shelf".⁶³ Similarly, the USA contends that the boundary in the Gulf of Maine should go along the Fundy Channel.⁶⁴ Hence "natural prolongation" follows New Ghana's equidistance line more closely than New Togo's 1979 perpendicular line.

D. The Delimitation of the Continental Shelf and the Fisheries Zone: Special Circumstances

27. New Ghana submits that for the convenience of administration the delimitation of the continental shelf and the fishing zone should be identical.⁶⁵

28. (i) The Concave Coast and Proportionality: New Ghana stresses that the rights of the littoral states to areas of adjacent continental shelf are ipso jure and ab initio vested in those states. The court cannot "re-fashion nature" in order to provide "equity", by making the situation of a country with an extensive coastline similar to that of a state with a restricted one. The disadvantage which New Togo claims is due to its delimitation with New Benin is not relevant. New Ghana is not bound by such an agreement so as to be obliged to give up its rights to the shelf constituting the natural prolongation of its sovereignty, in accordance with the doctrine res inter alios acta. New Ghana therefore submits that this boundary cannot and should not be taken into account in the current arbitration. It is also submitted that the line drawn by New Togo due south does not represent the natural prolongation of the respective shelves, is not an extension of the land boundary, does not represent an equidistance line, even if Keta Island is left out of account, nor is it a line drawn perpendicular to the coastline.⁶⁶ New Ghana should not be disadvantaged by New Togo's deliberate choice to disregard geographic realities and surrender some of its rights at international law.

29. Although the International Court mentioned proportionality as one of the factors to be considered in a shelf delimitation,⁶⁷ the Court in the Channel Arbitration⁶⁸ made it clear that it can only be a factor and not a principle of customary international law. There can be no question of a court assigning continental shelf to a state in proportion to the length of its coastline.⁶⁹ With this in mind, it is submitted that the fact that a concave coastline is involved cannot be in itself a special circumstance robbing the equidistance line of its relevance. The circumstances in which the International Court was willing to consider the concave coast of a state were unusual, and have not been repeated in this case. In the circumstances of the demarcations between the Federal Republic of Germany, the German Democratic Republic and Poland⁷⁰ where a concave coastline was involved, equidistance lines were drawn. It is submitted that Friedmann is correct when he points out that choosing one such factor merely involves "taking one particular and limited aspect out of the thousands of inequalities of natural boundaries".⁷¹ The concave curvature of a coast is merely "one of the thousands of inequalities of nature, which have been

magnified by the division of the planet into some 120 sovereign national states of very unequal size and wealth".⁷²

30. It is submitted that any alleged disadvantage to New Togo from a delimitation based on an equidistance line would result solely from New Togo's restricted coastline. Both the major cases on this area have indicated that apportioning on the basis of coastline length would be "refashioning nature".⁷³ The effects of particular geographical features have only been abated where the length of the coastline would otherwise result in "roughly comparable attributions of continental shelf".⁷⁴ Here the lengths of coastline are unequal from the start and it is not the function of the court to attempt to remedy them.

31. In any event, the trend of UNCLOS III is to compensate geographically disadvantaged states for this disadvantage by giving them a greater share in the resources of the deep sea bed.⁷⁵ This recognises that such states cannot be compensated for their geographically disadvantaged position at the expense of the legal entitlements of other developing states. New Togo's claim should therefore be to share in these resources, not to obtain a portion of shelf which is the natural prolongation of New Ghana.

32. (ii) Keta Island: New Ghana submits that Keta Island should not be treated as a special circumstance, ignored, or given only partial effect in the delimitation of the boundary. It contends that Keta Island has its own entitlement to a continental shelf, and can in any event be used as a basepoint in the delimitation of the continental shelf appertaining to the mainland of New Ghana.

33. Although the continental shelf which appertains to rocks and islets has been the subject of much controversy, it is clearly a rule of customary law that an island of the size and importance of Keta Island can and does have a continental shelf. Art. 1(b) of the Continental Shelf Convention grants islands their own continental shelf. The Article was subsequently stated to be a part of customary international law in the North Sea cases.⁷⁶ In the Channel Arbitration the court rejected the French proposition that the Channel Islands could only be regarded as being situated on the continental shelf of the mainland of France, rather than generating their own shelf.⁷⁷ Art. 121(2) of the Draft Convention, which was the result of considerable

discussion, grants islands their own continental shelves, but refuses to admit that rocks unable to sustain human habitation or economic life of their own (Art.121(3)) have any such entitlement. It is therefore submitted that Keta Island does have its own continental shelf and that it is inaccurate to regard its presence as a distortion of the boundary line. In these geographical circumstances the continental shelf which appertains to New Togo and Keta Island certainly overlaps. It is submitted that the only equitable solution in this case is to draw an equidistance line.

34. Similarly, a state in delimiting the outer edges of its continental shelf under the provisions of the UNCLOS treaty, utilizes the baselines from which it measures its territorial sea (Art.4). It is submitted that it is valid for New Ghana to use Keta Island as a basepoint for this purpose. In the practice of states, islands are often used as basepoints. In the Channel Arbitration the Eddystone Rocks and Ushant were used.⁷⁸ The Declaration of Santiago claims a 200 mile zone around islands forming part of the territory⁷⁹ of the signatories: Chile, Peru and Ecuador.⁸⁰ Venezuela receives a northward bulge in its maritime boundary with the U.S.A. due to Aves Island, a "modest extension of sandcovered by purslane" valuable for its guano and famous for its wildlife. It is therefore presumably capable of supporting human life as well.⁸¹

35. New Ghana submits that Keta Island should not be recognised as a special circumstance for the following reasons: it is situated within the territorial sea of New Ghana and should therefore be regarded as an appurtenance of, or portico to, the mainland. The court in the Channel Arbitration regarded as significant the fact that Ushant lay within France's territorial waters and constituted one of the basepoints for the delimitation of France's territorial sea.⁸² The view of the court in the North Sea cases appeared to be that islets, rocks and other minor projections could be disregarded,⁸³ but there is no state practice to the effect that a substantial island with considerable economic significance and population, lying within the territorial waters of its own state, should be disregarded in a delimitation.

36. It is also submitted that islands do not per se constitute a "special circumstance" requiring adjustment to be made. The court in the North Sea cases was prepared to consider that rocks and islets could be special circumstances, but did not

mention islands. Judge Morelli in his dissenting opinion⁸⁴ went so far as to comment that even the existence of an island with an abnormal effect on the equidistance line would not necessarily constitute a special circumstance. In the Channel Arbitration the court took all islands into consideration in determining a line on the basis of equitable principles and gave the Scilly Isles half effect⁸⁵ only because of their distance from the mainland and the resultant distortion given otherwise equal lengths of coastline.

37. The size and economic importance of an island are relevant considerations in a delimitation.⁸⁶ As Keta Island is both large and possessed of a considerable population, connected to the mainland both physically and economically, it is submitted that it should be given full effect in a delimitation. The situations in which such an island has been given less than full effect do not apply here. It is not on the "wrong" side of a hypothetical median line⁸⁷ or "wholly detached geographically" from the littoral state.⁸⁸ Similarly, Keta Island cannot be said to be an interruption of the natural prolongation of New Togo's coast, as the area in dispute can equally be described as the natural prolongation of Keta Island.

38. New Ghana submits alternatively that if the court does not consider that Keta Island should be given full effect, there is some precedent for giving it half or reduced effect, but none for giving it no effect. The Scilly Isles in the Channel Arbitration were given half effect,⁸⁹ and Kharg Island, an island which was at that time not as important as Keta Island, was given half effect for baseline purposes in the 1968 Saudi Arabia - Iran agreement.⁹⁰ In the 1969 Indonesia-Malaysia agreement,⁹¹ the Wahina islands were given approximately three-quarter effect. The situation, size and population of Keta Island should prevent its being more drastically discounted.

39. (iii) New Lome Rock: it is conceded that New Lome Rock is part of New Togo's territory, but New Ghana contends that New Lome Rock cannot be used as a basepoint for the delimitation of a boundary.

40. New Ghana submits that there is no principle of customary international law which grants an uninhabitable rock its own territorial sea. Traditionally, if territorial waters were to be credited to a rock and islet, such arrangement was made by treaty in the absence of a decisive rule of law on the subject.⁹² The 1958 Convention

on the Territorial Sea left the position of rocks and islets undefined, though admitting the right of an island to have the territorial sea of the mainland,⁹³ and denying a low-tide elevation a territorial sea of its own.⁹⁴ There is a certain amount of state practice indicating that rocks and islets have no territorial sea. In 1905 the U.K. did not consider that Eddystone Rock had a territorial sea.⁹⁵ In the Channel Arbitration France denied that the rock could generate a territorial sea.⁹⁶ In the third UNCLOS discussions, there was a strong feeling that the right to be attributed to desolate rocks and islets should be severely limited.⁹⁷ There is also some state practice under which small and insignificant islands have their territorial sea removed and replaced by small fishing zones, e.g., former agreement between U.K. and France on Ecrehos and Minquiers.⁹⁸ New Ghana submits that there is no reason either in logic or in equity for New Lome Rock to have more than a safety zone around it.

41. State practice has accepted that islands are capable of generating a continental shelf and Exclusive Economic Zone. Nevertheless, a distinction can and has been made between islands of a respectable size, capable of habitation, and rocks which, although above water at high tide, are incapable of sustaining human life.⁹⁹ Despite the opinion of the court in the North Sea cases that Art. 1 of the Geneva Convention on the Continental Shelf was a part of customary international law, the position of rocks as opposed to islands has not been clearly defined. In the discussion of the new treaty on the Law of the Sea, the opinion was expressed strongly by the delegations from Malta and Romania¹⁰⁰ and in the joint proposal of the African states¹⁰¹ that in order to be entitled to a continental shelf on its own account, an island must be of a certain size, importance and inhabitability. The ultimate formulation of draft Art. 121(3) reflects this. Brown¹⁰² expresses the view that it is now a rule of customary international law that an island must fulfil certain criteria before it can be entitled to a continental shelf.

42. State practice also demonstrates an acceptance of this distinction. In the U.K.-France Channel Arbitration,¹⁰³ the Court looked at the size, economy, population and political status of the Channel Islands, Ushant and the Scilly Isles¹⁰⁴ in order to determine, in part, how these islands should be treated in the delimitation. Similarly, the Court in the North Sea cases¹⁰⁵ talks of ignoring rocks and islets but

giving full effect to other islands. The Mexican declaration of an EEZ does not declare an EEZ around rocks, in accordance with the Draft Treaty.¹⁰⁶ In the Iran-Saudi Arabia agreement¹⁰⁷ and the Italy-Yugoslavia agreement,¹⁰⁸ rocks and small islands are given only a limited territorial sea and hence shelf. The legitimacy of the attempt by the U.K. to claim a continental shelf for the so-called "island" of Rockall, either of itself or as part of the Scottish mainland, has been strongly challenged by Ireland, Iceland and Denmark.¹⁰⁹

43. New Ghana therefore contends that there is no rule of customary international law which entitles a rock of no great size or particular significance its own continental shelf. It contends that the 1958 Geneva Convention cannot be used to support such a contention, that there is no body of state practice which supports it, and that there is a substantial body of opinion against it.

44. New Ghana also contends that New Togo cannot use New Lome Rock as a basepoint in order to extend its claim to a continental shelf. As submitted above, small islands and rocks cannot be used to generate their own continental shelf. They should not therefore be used to serve the same purpose, that is, to extend the continental shelf of the mainland state into areas of shelf which do not represent its natural prolongation. It is submitted that New Lome Rock should be completely disregarded.

45. New Ghana contends that state practice is generally opposed to allowing states to claim uninhabitable rocks as basepoints. The objection of Ireland, Denmark and Iceland to U.K.'s "Rockall" claim¹¹⁰ and the objection of Taiwan to Japan's attempts to use uninhabited islands in the East China Sea¹¹¹ to extend their continental shelf claims demonstrates this. There is significant state practice which ignores insular formations outside the territorial waters, in whole¹¹² or in part¹¹³ in drawing the boundary line. There is also some authority for granting an island reduced weight for basepoint purposes.¹¹⁴

46. New Ghana submits that New Lome Rock should either be left completely out of account in the delimitation, or confined to an enclave of territorial waters or shelf. In the Channel Arbitration¹¹⁵ the Channel Islands were given a 12 mile enclave because they were on the "wrong" side of the median line, as New Lome Rock is in this case. A similar solution was adopted in the Italy-Yugoslavia agreement¹¹⁶ (involving the

islets of Pelagosa and Caiola), the Saudi Arabia-Iran¹¹⁷ agreement (involving the islands of Al-Arabiya and Falsi) and the Abu Dhabi-Qatar delimitation¹¹⁸ (the islet of Daiyina). Such enclaves have been no larger than 13 miles.

IV. RIGHTS IN THE AREA

A. Sedentary Fishery Rights

47. It has been argued that it is possible for a state to acquire rights in the sedentary fisheries of the seabed and hence of the seabed itself by either prescription, that is, by prolonged and effective use without objection from other states,¹¹⁹ or by occupation, that is, by use.¹²⁰ It is however submitted that even if this proposition gained the form of a rule of customary international law, which New Ghana submits is not the case, it has become merged into the doctrine of the continental shelf. As a result of the discussion by delegates in the framing of the 1958 Geneva Convention on the Continental Shelf, Art. 2 was included, which provides for the exclusive rights of the coastal state to explore and exploit the seabed,¹²¹ and extend this right to the exploitation of the living and non-living resources of the seabed.¹²² There is no provision made for the continuance of any rights which any other state may have acquired over the sedentary fisheries.

48. It is submitted that the doctrine never attained the force of a rule of international law. Although certain states have traditionally exploited certain beds,¹²³ the nature of their rights is by no means clearly defined. The rights of Sri Lanka and the Gulf States are, it is submitted, analogous to historic fishing areas in particular waters and do not carry with them rights to the seabed and subsoil. Australia has exploited pearl-fishing grounds in common with Indonesia, but was extremely hesitant in trying to enforce any such traditional rights against Japanese fishermen. When she finally did so, the method adopted was that of declaring the area part of Australia's continental shelf.¹²⁴ The only state practice in the area is therefore inconclusive.

49. It is also submitted that the theory of ownership of the seabed is inconsistent only with the long-established and accepted doctrine that the high seas belong to no one,¹²⁵ but is also inconsistent in principle with the statement of the Court in the North Sea cases¹²⁶ that sovereignty in the adjacent continental shelf vests ab initio and ipso jure.

50. It is also contended that New Togo has not in any event satisfied the requirements of acquisition of territory, that is, that a formal and exclusive claim to sovereignty be made in addition to a prior and continued exploitation. New Togo has made no such claim, and its own boundary line cuts off a considerable portion of the territorial sea and continental shelf to which it might be entitled under this doctrine.

51. New Ghana also submits that it would be extremely undesirable to accept the existence of a vested right to sedentary fisheries when no right to non-sedentary fisheries has been recognised. Further, it is inconsistent in principle, particularly in view of the fact that the definition of "sedentary" fish has caused a good deal of dispute,¹²⁷ of the artificiality of the distinction, and the impracticability of recognising the authority of one state over the seabed and that of another over the waters.

B. Non-Sedentary Fisheries

52. New Ghana submits that the concept of an exclusive fishing zone is generally accepted in international law. Not only is this established in the Fisheries Jurisdiction case,¹²⁸ but there are numerous examples of such fishery zones accepted by foreign states fishing in the zone of the state claiming a fishing zone.¹²⁹ New Ghana recognises that the Respondent has historic rights in respect of the fin fisheries within the Applicant's fishery zone. It insists however that it has the right in the interest of conservation of the living resources in the area to regulate fishing within it.¹³⁰ This clearly includes the right to license New Togolese fishermen. Such licensing and regulation is well attested in state practice.¹³¹

53. If the Applicant's rights in the EFZ are not as stated above, it submits that its Ocean Resources Act of 1978 establishes the expanded jurisdiction of an Exclusive Economic Zone. The EEZ is now generally accepted as a zone of maritime jurisdiction of the coastal state. There is considerable state practice to support this.¹³² The negotiations at UNCLOS III show overwhelming support for the EEZ.¹³³ Article 56 of the Draft Convention provides that New Ghana has sovereign rights for the exploitation of living resources. Article 62(4)(a) allows the Applicant to license foreign fishermen. The Applicant recognises that it should act with due regard to the

Respondent's historic rights, but Article 62(4) requires that New Togolese fishermen comply with the Applicant's regulations.

C. Axim Block

54. It is submitted that New Togo has no right to give concessions to exploit the hydrocarbon resources on the eastern side of the Axim Block. This area falls within New Ghana's sovereignty and would do so even on the basis of an equidistance line which completely ignored Keta Island.

55. Since 1973 New Ghana has exercised its authority in the area entering into two commercial agreements for exploration and exploitation under which actual drilling has taken place. New Togo, though aware of this activity, made no protest until 1978, and is now estopped from asserting any rights in the area. A five year period of acquiescence was sufficient to estop Nicaragua in the case concerning the Arbitral Award made by the King of Spain¹³⁴ and seems justified given the urgent necessity for developing such resources under current international conditions, and the efficiency of modern communications.

56. Further, statements made by high Government officials in New Togo, as reported in newspaper articles, indicate an acceptance of New Ghana's sovereignty. The public nature of these statements, their authoritative source, wide distribution and the lack of any immediate statement to the contrary indicate their binding status.¹³⁵

57. In the alternative if New Togo's line is accepted, it is submitted that the principle "never two straws in one glass" applies. New Togo should not unilaterally exploit its side of the block and should enter into a form of co-operation based either on revenue sharing, joint exploitation or unitization.¹³⁶

D. Use of Force

58. New Ghana submits that since the Axim Block lies entirely within its continental shelf, it is entitled to prevent any attempt by New Togo to exploit the Axim Block, "The infringement of its territory has always been considered as the most obvious justification for a State to act in its own defence".¹³⁷

E. Salt Dome

59. Although the salt dome lies beyond the 200 metre line established as the boundary of the continental shelf by Art. 1 of the 1958 Geneva Convention, it is submitted that it falls within the exploitability criterion. If that is no longer part

of international law it has been replaced by the concept of the continental margin which includes the continental rise where the salt dome is located.¹³⁸

60. In the alternative, by its Ocean Resources Act of 1978 New Ghana has established an Exclusive Economic Zone¹³⁹ which includes non-living resources such as the salt dome which fall within a distance of 200 miles from the baselines used to measure its territorial sea.

V. INTERIM MEASURES OF PROTECTION

61. The Applicant requests the Court, in the exercise of its discretion under Art. 41 of the Statute of the Court, to grant the following interim measure of protection "to preserve the substance of the rights which [the applicant] claims;"¹⁴⁰ that the Respondent desist from any drilling in the Axim Block area pending the Court's judgment on the substantive issues.

VI. CONCLUSION

62. In view of the facts and the arguments put forward in this memorial, May it please the Court to recognise and declare:

- (i) The equidistance method of delimiting boundaries of the territorial sea is a rule of customary international law and is therefore applicable between the parties.
- (ii) The equidistance method of delimiting boundaries of the continental shelf and exclusive fisheries zone is a rule of customary international law and is therefore applicable between the Parties.
- (iii) There are no special circumstances justifying a departure from the equidistance line.
- (iv) The boundary line declared by the Applicant and shown by the dotted line on Map III attached to the Compromise is the boundary line between the territory of the Parties.

VIVIENNE BATH

ANDREW BYRNES

CHRISTOPHER ERSKINE

THOMAS FAUNCE

FOOTNOTES

1. Vienna Convention on the Law of Treaties, Art. 31(1) U.N.Doc. A/CONF. 39/27, 289. Competence of the I.L.O. case, (1922) P.C.I.J., Ser.V, No. 2, 39. Cf. the discussion of "on the Atlantic" in the Beagle Channel Arbitration 17 Int'l L. Mats 634, 661 (1978).
2. The "purpose" of a treaty is a legitimate aid to its interpretation: Vienna Convention on the Law of Treaties, Art. 31(1); Administrative Tribunal of the I.L.O. case, (1956) I.C.J. 77, 98.
3. Convention on the Continental Shelf, Art. 1, 499 U.N.T.S. 311 (1958). Draft Convention on the Law of the Sea, 27 August 1980, Art. 76(1), U.N.Doc. A/CONF. 62/WP.10/Rev.3 (1980) (hereinafter "Draft Convention").
4. Competence of the General Assembly case (1950) I.C.J. 4.
5. Vienna Convention on the Law of Treaties, Art. 31(1).
6. E. BRUEL, INTERNATIONAL STRAITS: A TREATISE ON INTERNATIONAL LAW, v.1, 200-201 (1947); GIDEL, LE DROIT INTERNATION DE LA MER (1934), cited WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 4, 307 (1965).
7. 516 U.N.T.S. 205 (1958).
8. Norway v Sweden (1909) in G. WILSON, THE HAGUE ARBITRATION CASES 102 (1915).
9. Id. 125.
10. Territorial Sea Convention, Arts 14-15.
11. Infra, p.10.
12. (1805) 165 E.R. 809.
13. Subcommittee II of the Second Committee, Acts of the Hague Conference (1930) Vol. II, 212.
14. Art. 10.
15. Declaration of 15 November 1958 by the Chairman of the Revolutionary Council of the Union of Burma on the Territorial Sea of Burma, U.N.Doc. ST/LEG./SER. B./15, 49 (1970).
16. Dominican Republic: Act No. 6 of 6 September 1967 on the Territorial Sea, the Contiguous Zone and the Continental Shelf, U.N.Doc. ST/LEG./SER. B./15,76 (1970).
17. Cuba: Military Order No. 173 of 22 June 1901 U.N.Doc. ST/LEG./SER.B/15,60 (1970). Legislative Decree No. 108 of 8 January 1934, id.
18. Maritime Jurisdiction Acts, 1959 and 1964, s.4, U.N.Doc. ST/LEG./SER. B/15, 90, 91 (1970).
19. Territorial Sea and Fishing Zone Act (1965) U.N.Doc ST/LEG./SER. B/15, 102 (1970).
20. Territorial and Maritime Zones Act, No. 26 (1974), Bangladesh.
21. Treaty of Peace with Italy (1947) T.I.A.S. No. 1648, 130.
22. Id. 138.
23. Convention between Italy and Turkey for the Delimitation of the Territorial Waters between the Coasts of Anatolia and the Island of Castellorizo, 138 L.N.T.S. 243 (1933)
24. Proclamation by the President of 24 August 1973 on the extent of the Territorial Waters of the United Republic of Tanzania U.N.Doc. ST/LEG./SER. B/18, 31 (1976). Proclamation of 6 June 1969 by the President of the Republic of Kenya concerning the Territorial Sea and the Contiguous Zone of the Republic of Kenya. U.N.Doc. ST/LEG./SER. B/15, 95 (1970).
25. Treaty delimiting the Territorial Sea, July 2, 1974 in ŠEBEK, EASTERN EUROPEAN STATES AND THE LAW OF THE SEA, Vol. 2, chap. 2, 32 (1979).
26. Treaty delimiting the Continental Shelf, October 29, 1968 in ŠEBEK, supra, n.25, Vol. 2, chap. 2, 20.

27. (1969) I.C.J. 3.
28. Opposite states: Italy-Yugoslavia Agreement on the Continental Shelf, January 8, 1968, 7 INT'L L.MAT. 547 (1968); Bahrain-Saudi Arabia Continental Shelf Agreement, February 22, 1958, U.N.Doc. ST/LEG./SER. B/16, 409 (1974); Iran-Saudi Arabia Continental Shelf Boundary Agreement, October 24, 1968, U.N.Doc. ST/LEG./SER. B/18, 403 (1976); Agreement concerning the Boundary Line dividing the Continental Shelf between Iran and Qatar, September 20, 1969, U.N.Doc. ST/LEG./SER. B/16, 416 (1974); Italy-Tunisia Agreement relating to the Delimitation of the Continental Shelf between the two countries, in R. CHURCHILL, M. NORDQUIST and S. LAY, NEW DIRECTIONS IN THE LAW OF THE SEA, Vol. V, 247 (1977) (hereinafter "NEW DIRECTIONS"). Adjacent states: France-Spain Convention on the Delimitation of the Continental Shelf in the Bay of Biscay, January 27, 1974, NEW DIRECTIONS, Vol. 5 (1977); Abu Dhabi-Qatar Agreement on the Continental Shelf Boundary, March 20, 1969, *id.* 233; Continental Shelf Boundary Agreement between the German Democratic Republic and Poland, *supra*, n.26; Norway-Sweden Continental Shelf Agreement, July 24, 1968, ODA Vol. 1, 391 (1972); Colombia-Panama Agreement on Maritime Boundaries, November 20, 1976, NEW DIRECTIONS, Vol. 8, 88 (1980).
29. Art. 59, Statute of the International Court of Justice.
30. (1955) I.C.J. 4, 22-23.
31. Cp. Art. 38, Vienna Convention on the Law of Treaties.
32. Further examples in the Separate Opinion of Judge Ammoun in the Barcelona Traction case (1970) I.C.J. 305.
33. (1969) I.C.J. 3, 43.
34. Lauterpacht, Sovereignty over Submarine Areas, 27 BR.Y.B. INT'L L., 376, 394 (1950).
35. Source: Ratifications, NEW DIRECTIONS, Vol. VI, 784-789 (1977). Examples of reservation to the Geneva Convention, Venezuela - 499 U.N.T.S. 311, 353 (1964). Source for size of coastlines and shelves, L. LUCCHINI and M. VOELCKEL, LES ETATS ET LA MER, 57-65 (1977).
36. *E.g.*, Art. 2(3) UN Charter: Art. 33(1) U.N. Charter.
37. North Sea Continental Shelf Cases (1969) I.C.J. 3, 41-42.
38. *Id.* 42.
39. *Supra*, n.28.
40. Art. 12 Continental Shelf Convention.
41. France, Iran and Yugoslavia made express reservations concerning "special circumstances" & BROWN considers this to be the import of Venezuela's general reservation to Art. 6. BROWN, The North Sea Continental Shelf Cases 23 CURRENT LEG. PROBS 187, 216 (1970)
42. North Sea Continental Shelf cases *op.cit.* 44.
43. *Cf.* The S.S. Lotus (1927) P.C.I.J. Ser. A., No. 10; Asylum Case (1950) I.C.J. 266.
44. W. REISMAN and B. WESTON (Ed.); TOWARD WORLD ORDER AND HUMAN DIGNITY (1976), K. V. RAMAN, Toward a General Theory of International Customary Law, at 369.
45. MacDonald, The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the International Court of Justice 8 CANADIAN Y.B. INT'L L. 3 (1970)
46. Anglo-Norwegian Fisheries Case (1951) I.C.J. 116.
47. Channel Arbitration 54 INT'L L. REP. 6 (1977).
48. *Id.* 33.
49. North Sea Continental Shelf cases *op. cit.*
50. Report of the International Law Commission to the General Assembly (1956) 2 Y.B. INT'L L. COMM'N 272, 300.
51. Grisel; Lateral Boundaries of the Continental Shelf and the Judgment of the International Court in the North Sea Continental Shelf cases; A Critique 64 AM.J. INT'L. 562, 571 (1970).

52. Report of Aust'l Delegation, Seventh Session of UNCLOS III (1973).
53. Beauchamp, Crommelin and Thompson, Jurisdictional Problems on Canada's Offshore, 11 ALBERTA L. REV. 431, 438 (1973).
54. North Sea Continental Shelf cases op. cit. 67, separate opinion of Judge Jessup.
55. Statement by Ambassador Gauci, Chairman of Delegation of Republic of Malta, 35th Session, U.N.G.A.A. General Debate, October 8, 1980 (obtained from Maltese High Commission, Canberra).
56. R. B. FINNEGAN, R. S. JUNN & C. E. WILSON, LAW AND POLITICS IN THE INTERNATIONAL SYSTEM, 135 (1979); Phylactopoulos, Mediterranean Discord: Conflicting Greek-Turkish Claims on the Aegean Seabed, 8 INT'L L'YER 431 (1974)
57. E. BROWN, THE LEGAL REGIME OF HYDROSPACE 70-71 (1971) (hereinafter BROWN).
58. North Sea Continental Shelf cases op. cit. 31
59. Id. 66.
60. Id. 46 et seq.
61. Cited Feulner, Delimitation of the Continental Shelf Jurisdiction between States: the Effect of Physical Irregularities in the Natural Continental Shelf 17 VA J. INT'L L. 77, 86 (1976) (hereinafter Feulner).
62. North Sea Continental Shelf cases op. cit. 22.
63. Feulner op. cit. 93.
64. O'Brien (Ed.), Boundary Delimitation in the Economic Zone: the Gulf of Maine Dispute 30 ME. L. REV. 207, 239 (1979).
65. Arts 74 and 23(1) of the Draft Convention, BOWETT, THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW 188-189 (1979).
66. In Grisel, Lateral Boundaries of the Continental Shelf 64 AM. J. INT'L L. 562, 586-587 (1970).
67. North Sea Continental Shelf cases op. cit. 53.
68. Channel Arbitration op. cit. 67.
69. Id.
70. Supra fn. 25 & 26.
71. Friedmann, The North Sea Continental Shelf Cases: A Critique 64 AM. J. INT'L L. 229, (1970).
72. Id.
73. North Sea Continental Shelf cases op. cit. 49-50.
74. Id. see also Matt. 13:12
75. Draft Convention, particularly Arts 148 & 152(2).
76. (1969) I.C.J. 3, 39.
76. Channel Arbitration op. cit. 100.
77. Id. 82-83, 123, 125.
78. Santiago Declaration of August 18, 1952, U.N.Doc. ST/LEG./SER. B/6.
80. Chile: Presidential Declaration of June 23, 1947, Id. 4; Peru: Presidential Decree No. 781 concerning Submerged Continental or Insular Shelf, August 1, 1947, Id. 38; Ecuador: Decree of Congress of Ecuador, February 21, 1951; UN.Doc. ST/LEG/SER. B/6, 13 (1956)
81. Inweihed, E-Z (uneasy) Delimitation in the Semi-Enclosed Caribbean Sea: Recent Agreements between Venezuela & her Neighbours; 8 OCEAN DEV. & INT'L L. 1 (1980)
82. Channel Arbitration op. cit. 123.
83. (1969) I.C.J. 3.

84. Id. 207.
85. Channel Arbitration op. cit. 123-125.
86. Id. 96-97.
87. Id. 102.
88. Ibid.
89. Id. 123-125.
90. Iran-Saudi Arabia: Oct.24, 1968. U.N.Doc. ST/LEG./SER. B/18, 403 (1976).
91. Office of the Geographer, U.S. State Department, International Boundary Study (Ser.A, No.1, 1970), cited in C. SYMONS; THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW 190, fn.190 (1979) (hereinafter SYMONS).
92. Anglo-Danish Fishery Treaty of 1901, BR. AND FOR. ST. PAPS., Vol. 94, 29; Aaland Islands Convention 9 L.N.T.S. 217; (1921) Agreement between Denmark and Sweden (1899), cited in Symmons, 83.
93. Art. 11(2).
94. Art. 10(2).
95. Discussed in Channel Arbitration op. cit. 76.
96. Ibid.
97. Infra fn. 100, 101.
98. Agreement between United Kingdom and France regarding rights of Fisheries in Areas of the Ecrehos and Minquiers (1951) 121 U.N.T.S. 97 (1952).
99. Draft Convention Art. 121(3).
100. Preliminary Draft Articles on the Delimitation of Coastal State Jurisdiction in Ocean Space and on the Rights and Obligations of Coastal States in the Areas under their Jurisdiction, Submitted by Malta to the U.N. Seabed Committee (July 1973) U.N.Doc. A/A.C. 138/SC. II/L. 28. S. ODA, THE INTERNATIONAL LAW OF THE OCEAN DEVELOPMENT Vol. II, 266 (1975) (hereinafter Oda). Certain Specific Aspects of the Regime of Islands in the Context of Delimitation of the Marine Spaces between Neighbouring States. Submitted by Romania to the U.N. Seabed Committee (August 1973) U.N. Doc. A/A.C. 138/SC. II/L. 53; Oda, Vol. II, 250.
101. Draft Articles on Exclusive Economic Zone. Submitted by Algeria, Cameroon and fourteen other African States to the U.N. Seabed Committee (July 1973) U.N. Doc. A/A.C. 138/SC II/L. 40; Oda, Vol. II, 295.
102. Brown, Rockall and the Limits of National Jurisdiction of the UK, 2 MARINE POLICY 181 (part I) 208; 275 (Part II), 301 (1978).
103. Op. cit.
104. Id. 123-125.
105. (1969) I.C.J. 3, 36.
106. Mexico: Law Regulating the Eighth Paragraph of Article 27 of the Constitution relating to the Exclusive Economic Zone 15 INT'L L. MAT. 382, 383 (Art. 3) (1976).
107. Infra fn. 28.
108. Infra fn. 28.
109. Symmons, 184-186, Symmons, Legal Aspects of the Anglo-Irish Dispute over Rockall 26 N. IR. L. Q. 65 (1975).
110. Ibid.
111. Feulner fn. 61, 95.
112. Infra fn. 28.

113. Agreement between Sweden and Norway concerning the Delimitation of the Continental Shelf (July 24, 1968) Oda, Vol. I, 391. Japan-Republic of South Korea: Agreement concerning the Establishment of Boundary in the Northern Part of the Continental Shelf adjacent to the Two Countries, Oda, Vol. II, 92. Offshore Boundary Agreement between Abu Dhabi and Qatar NEW DIRECTIONS, Vol. V. 233. Offshore Boundary Agreement between Abu Dhabi and Dubai NEW DIRECTIONS, Vol. V. 214. Bahrain and Saudi Arabia Infra fn. 28.
114. Channel Arbitration op. cit. 123.
115. Id. 102-104.
116. Op. cit. fn. 28.
117. Op. cit. fn. 91.
118. Op. cit. fn. 113.
119. G. Gidel; quoted in Young, Sedentary Fisheries and the Convention on the Continental Shelf 55 AM. J. INT'L L. 359, 360 (1961).
120. Hurst, Whose is the Bed of the Sea? 4 BR. Y.B. INT'L L. 34, 40-43 (1923-1924) LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW, 576 (7th ed., 1948).
121. Art. 2(2).
122. Art. 2(4).
123. E.g., Sri Lanka, the Persian Gulf States. For further examples, see O'Connell, Sedentary Fisheries and the Australian Continental Shelf 49 AM. J. INT'L L. 185, 188 fn. 18 (1955).
124. Pearl Fisheries Act ACTS AUST'L P. No. 8 of 1952, No. 4 of 1953., Pearl Fisheries Act (No. 2) ACTS AUST'L P. No. 38 of 1953. Proclamation of September 10, 1953, 48 AM. J. INT'L. Supp., 102 (1954), claiming the Continental Shelf.
125. Grotius, Mare Liberum. Cited M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. IV, 501 (1965).
126. (1969) I.C.J. 3, 22.
127. See Goldie, Sedentary Fisheries and Article 2(4) of the Convention on the Continental Shelf - a Plea for a Separate Regime 63 AM. J. INT'L L. 86, 90 n. 17 (1969).
128. (1979) I.C.J. 3, 23.
129. Examples in Carros and Savini, The New International Law of Fisheries from Bilateral Agreements 3 MARINE POLICY 79 (1979).
130. Report of the African States Regional Seminar on the Law of the Sea: Yaounde 1972 U.N.Doc. A/A.C. 138/79 NEW DIRECTIONS Vol. I, 250-253; Recommendations 1(b)(1), 1(a)(3); Fisheries Jurisdiction case (1979) I.C.J. 30-31.
131. E.G., Agreements of 1975 between Iceland and the United Kingdom, and Iceland and the Federal Republic of Germany. Carros and Savini, op. cit. 84.
132. For a table of State Practice: Moore, National Legislation for the Management of Fisheries under Extended Coastal State Jurisdiction 11 J. MAR. L. COMMERCE 153, 178-182 (1980). Also Gundling, Die exklusive Wirtschaftzone 38 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZAÖVR) 616, 622-623 (1978)
133. Mirvahabi, Significant Fishery Management: Issues in the Law of the Sea Conference: Illusions and Realities 15 SAN DIEGO L. REV. 493, 497.
134. (1960) I.C.J. 192, 213; Temple of Preah Vihear (1962) I.C.J. 6, 32.
135. Nuclear Tests case (Australia v France) (1974) I.C.J. 253, 267-268.
136. Lagoni, Oil and Gas Deposits Across National Frontiers 73 AM. J. INT'L. L. 215, (1979); Onorato, Apportionment of an International Common Petroleum Deposit 26 INT'L COMP. L.Q. 324, 328 (1977); Agreement between U.K. and Norway relating to the Exploitation of the Frigg Field Reservoir Cmmd 6491, Arts 1 & 5; Supplemental Agreement to the Ems-Dollard Treaty (Netherlands-Germany) 509 U.N.T.S. 140 et seq., Art. 7 (1964) (Ems-Dollard Treaty 509 U.N.T.S. 6 (1964), signed April 8, 1960); North Sea Continental Shelf cases op. cit. 51-52.

137. D. GREIG, INTERNATIONAL LAW 878 (2nd ed., 1976).
138. Draft Convention Art. 76(1) & (3).
139. Id. Arts 55-57; Ahnoi, The Exclusive Economic Zone: an Analysis of the Concept as contained in the Revised Single Negotiating Text 14 U. GHANA L.J. 137 (1977).
140. Order of the Court, Case Concerning the United States Embassy in Tehran (1979) I.C.J. 7; reprinted in 74 AM. J. INT'L L. 266 (1980).



