

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 RESPONDENT

TEAM NO. 160

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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 the said principles, rules and criteria to the instant facts in order to determine the location of said boundary and their rights in the area in dispute?

SUMMARY OF ARGUMENT

New Togo submits that its oceanic boundary with New Ghana is as declared in its 1979 resource management statute, and as depicted by the dotted-dashed line on Map III attached to the compromis. New Togo submits that this line is in accordance with international law.

The compromis gives this Court jurisdiction to declare the principles appropriate to a delimitation of the Parties' continental shelves, territorial seas and exclusive fishing zones.

New Togo's line achieves an equitable balancing of both States' interests. It is easily drawn and administered. It incorporates the island territories of each State within their respective maritime zones. It gives Keta Island and the roadstead reduced weight but limits the just entitlement of New Lome Rock and the Respondent's historic fishing rights in compensation.

New Togo considers it appropriate to divide this boundary line into three segments:

Segment AB - from the mouth of the New Oti River (Point A) to a Point B three miles east of the eastern tip of Keta Island.

Segment BC - from Point B to the point south of Keta Island where the line drawn south from the thalweg at the mouth of the New Oti River meets the line drawn from Point B, three nautical miles from the southern shore of Keta Island (Point C).

Segment CD - from Point C due south to the limits of national jurisdiction (Point D).

The territorial sea along Segment AB is in accordance with international law in that it follows the thalweg between Keta Island and the mainland, thus allowing both States access to internal waters. It is also in conformity with the 1948 treaty made between the U.K. and France and agreed by both Parties to be binding.

Keta Island should be confined to a three-mile enclave in Segment BC. It is important for New Togo's national interests that she maintain control of the territorial sea due south of the New Togolese coastline. Although equidistance is the rule for territorial sea delimitations, Keta Island is a special circumstance in that it protrudes into what would otherwise be New Togo's territorial sea. It

should therefore be confined to a semi-enclave within New Togolese waters. The roadstead cannot be claimed by New Ghana, as it would be in New Togo's territorial waters.

As regards the delimitation of the Segment CD, the principle to be applied is that of equitable principles. Both State practice and the decisions of international courts support this view. The recent discussions at UNCLOS III also lead to this conclusion. The equidistance line is inappropriate in this delimitation, due to peculiar features of local geography.

The area claimed by the Respondent is the natural prolongation of its land territory. The old bed of the New Oti River does not constitute a natural boundary as it is not an interruption of the shelf. The line drawn due south by New Togo is in conformity with State practice and practicability.

It would be inequitable for the Applicant to be permitted to use Keta Island as a basepoint for a delimitation or to claim shelf. Keta Island creates an unjustifiable distortion in the line which should be remedied. New Togo is entitled to a share of shelf in proportion to the length of its coastline, which the use of Keta Island makes impossible. Similarly, it fails to take account of New Togo's border with its neighbour, New Benin.

New Togo's line involves a balancing of interests. In return for an enclave around Keta Island, the Respondent is surrendering part of the territorial sea to which New Lome Rock is undoubtedly entitled, and sovereign rights over part of the sedentary fishery beds which carry with them a continental shelf entitlement. It is pointed out however that New Togolese fishermen retain their historic rights to fish in those areas, both for oysters and for fin fish.

New Togo is entitled to exercise sovereign rights over her half of the Axim Block, which includes the right to grant concessions. There can be no question of estoppel or acquiescence in the Applicant's claims. Similarly, the salt dome is situated on the Respondent's shelf, and the Respondent is able to exercise sovereign rights in that area under international law.

The Applicant's threat of force is totally unjustifiable in international law. The Court should therefore act to recognise and preserve New Togo's rights.

NEW TOGO - ARGUMENTI. JURISDICTION

1. New Togo 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 and the continental shelf utilises the same baselines as those used for the measurement of the territorial sea.⁴ To neglect the territorial sea would lead to an unreasonable interpretation of the treaty.⁵

II. THE TERRITORIAL SEAA. Segment AB - From the New Oti River to 3 Miles East of Keta Island (See Map 1)

3. This segment is governed by the 1948 UK-France Treaty (which both parties agree to be binding on them). The treaty states that the boundary "runs in a southerly direction following the middle of the navigable channel of the New Oti River south to the Atlantic". The Atlantic Ocean is only reached at the open sea, a point which can conveniently be fixed as Point B. Prior to this, the area of sea is like a gulf or a strait. Thus the boundary would follow the middle of the navigable channel from the mouth of the New Oti River to point B. Such an interpretation is supported by the decision in *Louisiana v. Mississippi*⁶ in which it was held that in a similar gulf situation the treaty delimited the boundary to the limit of the waters "enclosed" by the gulf and did not stop at the equivalent river mouth.

4. The extension of the 1948 treaty to the territorial sea can also be supported by the attitude of the Court in the *Beagle Channel Arbitration*.⁷ The subsequent conduct of the parties is also evidence that this is the correct construction of the treaty.⁸

The Applicant has placed a series of buoys along the thalweg in the segment AB and these buoys have been marked on maps issued by the Applicant.

5. Even if the treaty does not delimit the segment AB, customary international law justifies the thalweg as the boundary of the territorial sea in cases of straits or narrow passages lying between two States.⁹ Where the land frontier is formed by a river, it is considered correct to let the "exterior thalweg follow the interior thalweg".¹⁰

6. If the treaty does not apply and the above no longer represents customary international law, it is submitted that Art. 12 of the Geneva Convention on the Territorial Sea and the Contiguous Zone¹¹ represents customary international law. Art. 12 posits the equidistance or median line as the normal boundary in the case of opposite and adjacent States, but allows two important exceptions, historic title and special circumstances. The problem of access to the New Oti River is a "special circumstance" within Art. 12 requiring deviation from a median line boundary. The International Law Commission in its discussion of the question saw the existence of a navigable channel as a special circumstance.¹² New Togo is a developing country, and the Court should take note of its future need for access to a major marine highway to its hinterland. The Court in the Beagle Channel arbitration considered that "the desirability of each Party so far as possible to navigate in its own waters"¹³ was an important factor in fixing a boundary line between the territorial waters of Argentina-Chile and in fact justified a departure from a strict equidistance line.

B. Segment BC - From 3 Miles East of Keta Island to Point C South of Keta Island

7. While current State practice permits a territorial sea of up to 12 Miles,¹⁴ nonetheless in the Segment BC New Ghana is not entitled to extend its territorial sea beyond 3 miles from the southern shore of Keta Island. The rule for territorial sea delimitations enshrined in Article 12 of the Territorial Seas Convention is part of customary international law, supported by the few instances of treaties delimiting the territorial sea.¹⁵ This inference is given further weight by the fact that the provisions of Article 12 have been adopted by UNCLOS III and have remained unchanged in the period 1958-1980, thus evincing a considerable State consensus that Article 12 represents international law.¹⁶

8. This rule prima facie applies the equidistance line but with the significant exception of "special circumstances". As the same terminology is used in Article 6

of the Continental Shelf Convention, guidance can be obtained from this Court's comment on what constituted special circumstances.¹⁷ The Court recognised that similar problems arise in delimiting both the territorial sea and the continental shelf, though the effects may be more marked in the case of a continental shelf delimitation. The Court drew attention to the fact that the application of the equidistance method can lead to results that appear on the face of them to be extraordinary, unnatural or unreasonable. Clearly the special circumstances exception is to alleviate such results. The International Law Commission, in its commentary on Art. 6 of the Continental Shelf Convention, considered that special circumstances would include "any exceptional configuration of the coast, as well as the presence of islands or of navigable channels".¹⁹

9. In the present case, New Togo submits that Keta Island is indeed such a special circumstance and that to use it as a basepoint would produce a large bulge in an area which would otherwise properly comprise part of New Togo's territorial sea in the area south of its coastline. It is also clear that New Togo's security and navigation requirements may be taken into account when deciding whether to deviate from an equidistance line.²⁰ The line claimed by the Applicant cuts the Respondent off from the navigable channel in this segment and has serious security implications for the Respondent in the area of vital importance to it due south of its coast. Even the right of innocent passage through the Applicant's territorial waters would not guarantee the freedom of access necessary in certain circumstances (e.g. submarines) necessary for the Respondent's defence.²¹

10. The line BC can be further supported by the fact that New Lome Rock is entitled to a territorial sea of its own, a fact which the Applicant appears to have ignored in drawing its boundary. Although there has been much discussion of the continental shelf entitlements of small islands,²² it is indisputable that a small island can have a territorial sea. The fact that New Lome Rock is uninhabitable is irrelevant to its territorial sea entitlement; definitions of islands from the 1930 Hague Codification Conference²³ to Art. 10 of the 1958 Territorial Sea Convention²⁴ include a formation such as New Lome Rock and allow it a territorial sea. Even Art. 121(3) of the Draft Convention does not purport to deny a rock its territorial sea.

11. Thus the territorial sea of 12 miles around New Lome Rock and lying south of the line BC to a distance 12 miles from the Respondent's mainland would be in close proximity to each other. Under these circumstances, it would serve practicality and convenience for the territorial sea around New Lome Rock to be linked to that generated by the Respondent's mainland.²⁵ There would appear to be no reason in principle why such an assimilation should not take place.²⁶

12. Such an assimilation would include the area of the roadstead, which the Applicant claims as part of its territorial waters. Any claim by the Applicant to the roadstead must rely on Art. 9 of the Territorial Sea Convention. This Article applies, however, only to the case where a roadstead is wholly or partly outside a State's territorial sea, not where the area claimed lies within the territorial waters claimed by another State.²⁷

13. The Respondent submits that there are some examples of enclosing islands in a semi-enclave where to give them full effect would distort an otherwise fair boundary.²⁸ It is for this reason that New Togo considers that a 3-mile territorial sea on the southern side of Keta Island is appropriate, as well as being justified further by considerations relating to the continental shelf delimitation (infra, p.10). Although the Applicant may argue that this constitutes an unjustifiable truncation of Keta Island's territorial sea, the Respondent sees this as merely one aspect of a delimitation which balances the interests of both parties. On the western side of New Lome Rock, the Respondent has foregone part of its territorial sea entitlement, which can be seen as a set-off in relation to Keta Island's reduced territorial sea.

III. SEGMENT CD - THE CONTINENTAL SHELF

A. Delimitation must be according to Equitable Principles

14. The Respondent submits that this line represents the furthest extent west of the area in which it can exercise sovereign rights over the continental shelf and exclusive fishing rights. A State's continental shelf rights extend from the limit of the territorial sea to the outer limit of the continental shelf. The doctrine of the continental shelf, initiated in 1945 by the Truman Proclamation,²⁹ has become part of customary international law. The fundamental principle of the concept of the continental shelf is that the continental shelf is the natural prolongation or continuation of the land territory or domain, or land sovereignty of the coastal state.³⁰ This area must not

encroach upon the natural prolongation of another State.³¹ As the Geneva Convention is not binding between the parties, customary international law applies. The two most authoritative statements in present customary law are the decision of this Court in the North Sea case³² and the decision of the Court in the UK-France Channel Arbitration.³³ Although judicial decisions of such nature are not binding on this Court,³⁴ it is submitted that these two decisions are the best evidence available of the current state of the law.

15. It is indisputable that current international law requires delimitation of the continental shelf between adjacent or opposite States to be "in accordance with equitable principles".³⁵ The concept of delimitation according to equitable principles has prevailed over the theory that Art. 6 of the Geneva Convention (the equidistance-special circumstances rule) was a mandatory rule of customary international law.³⁶

16. Although some publicists are of the opinion that the practical results of applying equidistance will be the same as that of a delimitation in accordance with equitable principles,³⁷ it is submitted that the concept of equitable principles is considerably wider than Art. 6.³⁸ Equitable principles may transcend the merely geographical and geological features of the area concerned and take account of historical, political, economic and strategic factors in a region.³⁹ To broaden the range of considerations taken into account in delimiting an area of continental shelf is a far more rational method of dealing with conflicting claims.

17. The rule of equitable principles is well established in State practice as the norm in offshore boundary delimitations. The concept dates back to the Truman Proclamations of 1945. It is embodied in the UNCLOS III negotiating texts and there are many examples of State practice which can be seen to be in accordance with this general rule (see below).⁴⁰ Equity as a general concept is assuming an immense importance in international law.⁴¹ Its role in the Law of the Sea is but another facet of this development.

18. Equitable principles involves the use of any method (including where appropriate the use of an equidistance line) which produces an equitable result.⁴² The result must be reasonable⁴³ and is invariably a function of the particular geographical situation.⁴⁴ Any equitable delimitation must take into account, inter alia, the natural prolongation of the land territory, the geological configuration of the shelf,

the geographical configuration of the coastline and the unity of deposits in the region.⁴⁵

B. The Shortcomings of the Equidistance Method

19. The shortcomings of seeing the equidistance method as the rule for delimitation of the continental shelf are revealed by an examination of the circumstances in which an equidistance line, far from producing a satisfactory delimitation, can produce extraordinary and inequitable results.

20. The equidistance method cannot be applied when local geographical complications would lead to conflict with the principle of natural prolongation. Such a result is more likely when the line is a lateral one between adjacent States and a large maritime zone is being extended seawards.⁴⁶ This is exactly the situation in the present case. The Respondent submits that Applicant's boundary based on the equidistance line permits a prolongation of the coastline (Keta Island) to distort the boundary as it proceeds out to sea.

21. A further case in which the equidistance method is inequitable is the instance where the coast has a concave configuration. The Court in the North Sea cases considered that the pronounced concavity of the German coastline was a factor which precluded the application of the equidistance method in delimiting Germany's continental shelf in the North Sea.⁴⁷ A similar consideration looms large in the present delimitation. Not only is the Gulf of Guinea a concave feature, but the coastline in the immediate vicinity of the parties is also concave. Accordingly the distortion which would be produced by the application of equidistance in the whole region would be even further compounded in the area in dispute (see Map 2). Clearly, therefore, the equidistance rule is totally unsuited to the present case.

22. It is this limited utility of the equidistance method that has led to the considerable and continuing support by States for the equitable principles rule. Clearly a rule of customary international law at the time of the North Sea cases, the rule has been lent considerable weight by this Court's decision in those cases, which in turn has influenced the practice of States. For example, legislation of many of the Persian Gulf States embraces the concept of delimitation according to equitable principles.⁴⁸ There has been continuing support from many States at UNCLOS III for Arts. 74 and 83.⁴⁹

c. Limited State Practice Supporting Equidistance

23. To argue that because many States have concluded boundary agreements which have applied an equidistance or median line, equidistance is a rule of international law is ill-conceived. First, such an argument ignores the boundary agreements which have not applied equidistance. Secondly, it disregards the fact that the equitable principles rule is broad enough to encompass the equidistance rule as one of the specific methods to achieve a delimitation in accordance with equitable principles. This court specifically mentioned equidistance as one of the methods which may be used.⁵⁰ Arts. 74 and 83 of the Draft Convention envisage the use of equidistance where appropriate. Thus to argue that equidistance is a part of customary law is to confuse the mechanics of the operation with its purpose and guiding philosophy, to confound the subset with the set.

24. This theoretical framework can be justified by an examination of State practice. Quite apart from the cases where equidistance was not applied, the agreements where it was used concerned areas where geographical or geological configurations were relatively "simple" and not such as to expose the limitations of the equidistance method.⁵¹ A number of the delimitations have been between opposite rather than adjacent States where the median line is most likely to be appropriate.⁵² In the cases involving adjacent States there were no distorting features present similar to those in the present case.⁵³

25. This contention is supported by reference to the Australian-Indonesian Agreement of 9 October 1972 delimiting the continental shelf between the two opposite countries.⁵⁴ Although one would have expected the boundary to be a median line, the boundary line in effect runs through the middle of the Timor Trough, a line lying much closer to the Indonesian coast than the Australian coast. In this case the concept of natural prolongation prevailed over a rigid application of the equidistance method, as Australia considered that the Timor Trough comprised the boundary between the respective continental shelves of the countries.⁵⁵ This accords with the view expressed in the North Sea cases where the court considered that taking into account the natural prolongation of the land territory served the goal of a delimitation in accordance with equitable principles.⁵⁶

26. The assertion that equidistance is a rule of customary international law for continental shelf boundaries founders on the juridical concept of the continental shelf. The equidistance method assumes proximity is the test of whether a particular area of shelf appertains to a State. The International Court, while conceding the proximity is a factor to be considered, held that it is not the conclusive factor; it is the legal concept of adjacency which defines the continental shelf.⁵⁷ Adjacency and proximity are, however, not the same.⁵⁸

27. Thus the contention that equidistance embodies a rule of customary international law is ill-conceived. It does not accord with the juridical nature of the continental shelf; it ignores the considerable State practice which supports the "equitable principles" rule; it disregards decisions of the International Court and the Arbitration Court in the UK-France Channel Arbitration; it attempts to extrapolate a general rule from a number of relatively uncomplicated delimitations; and, finally, it fails to see that equidistance is not an independent rule of law but rather a particular method of delimitation subsumed within the general concept of equitable principles.

28. Although in some circumstances equidistance may be the method by which a delimitation in accordance with equitable principles is achieved, the view that the results of the use of this method can never be inequitable because the equidistance principle is by definition the only equitable method of delimitation is untenable.⁵⁹

29. Having established that the delimitation of the continental shelf must be in accordance with equitable principles, it is necessary to consider the various factors which may be considered in effecting such a delimitation. The Respondent submits that the Applicant's claim is based on a view which totally disregards factors which are fundamental to a boundary in accord with equitable principles, while the Respondent's own boundary takes into account these factors.

IV. THE APPLICATION OF EQUITABLE PRINCIPLES

A. Natural Prolongation

30. The International Court of Justice has held that "there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures, and more often than not it is the balancing-up of all such considerations that will produce this result rather than a reliance on one to the

exclusion of all others".⁶⁰ The Court then referred to special aspects of geography and geology which could be relevant, but in a manner which clearly indicated that such considerations were not meant to be exhaustive.⁶¹ The equitable principles rule, in the opinion of some publicists, allows the balancing of factors other than the purely geographical.⁶²

31. The area claimed by the Respondent is the natural prolongation of its land territory. Although the International Court considered natural prolongation to be a fundamental basis of the continental shelf doctrine,⁶³ the precise nature and extent of this term is unclear.⁶⁴ The Respondent submits that the "natural prolongation" concept is of particular relevance in determining the seaward extent of the continental shelf (e.g. the Australia-Indonesia Continental Shelf Agreement).⁶⁵

32. The concept of natural prolongation may also be relevant in the case of a lateral boundary if there is present on the continental shelf a geological feature such as a deep fault which can truly be said to constitute a break in the shelf.⁶⁶ In the light of the fact that the Hurd Deep was not considered to be a factor interrupting the continental shelf in the English Channel,⁶⁷ there would not appear to be any feature in the present case that would constitute a break in the shelf in the area claimed by the Respondent. The continental shelf off the coast is revealed by geological studies to consist of similar sedimentary deposits and would appear to be fairly uniform along the coast. The old New Oti river bed is clearly not an interruption in the shelf. Such channels or slight depressions do not constitute a break in the shelf; see, for example the Venezuelan Law on the Territorial Sea of July 23, 1956 which states this specifically in s. 4.⁶⁸

33. The Respondent submits that the natural prolongation of its land territory must bear some relation to the configuration of the coast. In the area of the Gulf of Guinea a configuration of the continental shelf follows approximately the line of the coast.⁶⁹ Thus it is clear that the natural prolongation of the parties' continental shelves is to the south from the land boundary.

34. The old New Oti river bed cannot be said to mark the natural prolongation of the Applicant's continental shelf. It is merely a slight depression in the continental shelf which is considerably thicker than the depth of the old river bed, and bears no relation to the geological structure of the shelf.

B. New Togo's Line Justified by Precedent

35. New Togo's boundary is a modified rhumb line proceeding due south from point C and allowing Keta Island a semi-enclave. Such a line can be supported by reference to similar lines in other boundary agreements as well as by analogy with the method of drawing a line perpendicular to the general direction of the coast, which, it is submitted, would produce a result similar to a rhumb line in this case.

36. Maritime boundaries which follow a parallel of latitude or a meridian of longitude are commonplace, particularly in circumstances like the present where other States in the region have employed such a line. For example, in South America nearly all the States with common borders on the Pacific or Atlantic coasts employ lines proceeding west or east respectively.⁷⁰ The African States of Gambia and Senegal have employed straight lines proceeding due west,⁷¹ as have Senegal and Guinea-Bissau.⁷²

Thus it is clear that the New Togo line is justified according to international law, particularly in view of the fact that the New Benin/New Togo and the New Benin/Nigeria boundaries employ a rhumb line. A number of U.S. States, in delimiting their lateral continental shelf boundaries by applying, inter alia, the rules of international law under the Coastal Energy Impact Program,⁷³ have adopted a due eastern line of constant latitude: Maryland/Virginia, Virginia/North Carolina, and Georgia/Florida.⁷⁴

37. The line can further be supported by reference to another common method of boundary delimitation, the perpendicular to the coast. The line perpendicular to the general direction of the coast in this case would suffer from none of the disadvantages which led to its rejection by the Committee of Experts,⁷⁵ as the general direction of coast in the immediate region is east-west, so that a perpendicular would run due south corresponding closely to the Respondent's line. A perpendicular line was employed in the Grisbadarna Arbitration between Sweden and Norway,⁷⁶ and also in the U.S.S.R. and Poland delimitation of 1968 in the Bay of Gdansk.⁷⁷ Uruguay and Brazil adopted the same method in delimiting their territorial waters in their Agreement of the Chuy River Bank of 1972, the boundary being "a line running from the present Chuy Light in a direction nearly perpendicular to the general line of the coast".⁷⁸

C. The use of Keta Island as a Basepoint is Inequitable

38. Against this reasonable line the Applicant sets a line which gives full effect to Keta Island, which cuts the Respondent off from a considerable share of its continental shelf entitlement. The area claimed by the Applicant relies on the contention that part of the area claimed is the natural prolongation of Keta Island. The Respondent submits that this claim cannot be supported, and that Keta Island cannot be considered to have a continental shelf appertaining to it nor should it be used as a basepoint in a lateral delimitation.

39. It is submitted that Keta Island is situated on the continental shelf adjacent to the mainland and is so close to the mainland as to constitute an adjunct to it. In these circumstances it would be absurd to contend that the physical separation of Keta Island from the mainland enables Keta Island to claim its own continental shelf entitlement on the eastern side independent to that of the mainland of New Ghana. As with the Scilly Isles in the Channel Arbitration,⁷⁹ the island is an extension of the mainland only, analogous to a promontory which chances to protrude onto the shelf of another State.

40. Physically, it is contended, Keta Island should be considered incapable of generating a continental shelf. The juridical concept of natural prolongation does not extend to a structure which is by nature unstable, and liable to alter in shape or extent. For example, 30 per cent of a beach 20 miles long near Cox's Bazaar in Bangladesh disappeared between 1975 and 1979. Two small inhabited sand islands in the same area continually change shape. Long Island, off the coast of Virginia, is being eroded away and can only be saved by dumping sand on it. Smith Island in Chesapeake Bay is only just above the water line and is in danger of being swamped.⁸⁰ It would be to defy the rules of equity to make a continental shelf delimitation of such importance to both parties dependent on such an unstable feature.

41. Similarly, it would be inequitable and contrary to the majority of State practice in this area to allow Keta Island to be used as a basepoint. Although Art. 76(1) of the Draft Convention measures the continental shelf from the basepoints of the territorial sea, it is submitted that this applies to the seaward measurement of the shelf, and is not intended to deal with the difficult problem of delimitation, particularly between adjacent States. This is covered by Art. 6 of the 1958 Convention

and Art.76 of the Draft Convention, the rule of customary law which relies on equity. In this situation, it would be inequitable to allow Keta Island to be used as a basepoint, due to the distortion which such use would cause to the boundary line. To determine whether the use of Keta Island would so distort the boundary as to constitute a special circumstance which should be compensated for, the easiest method is to plot a boundary disregarding the presence of Keta Island and compare it with a shelf boundary using Keta Island as a basepoint. A comparison between the two lines shows that the effect of Keta Island is to cut off New Togo from all the continental shelf beyond a certain point south. The consequence is that the shelf of a State lying west of New Togo extends far to the east of New Togo.⁸¹ Such a consequence has no relation to either equity or natural prolongation. It "will manifestly result in a substantial diminution of the area of the continental shelf which would otherwise accrue to"⁸² New Togo.

42. The International Court referred to such a situation arising from the inequitable application of the equidistance method where this would

cause areas which are the natural prolongation or extension of the territory of one State to be attributed to another, when the configuration of the latter's coast makes the equidistance line swing out laterally across the former's coastal front, cutting it off from areas situated directly before that front.⁸³

43. The discounting of Keta Island can further be supported by reference to the court's comments in the UK-France Arbitration. The effect of Keta Island can be compared both to that of the Channel Islands, which were on the wrong side of a hypothetical median line,⁸⁴ and would, if given full effect, have deprived France of much of her continental shelf,⁸⁵ and the Scilly Isles,⁸⁶ which were equated with a long promontory belonging to an adjacent State contributing an element of distortion. In this situation it is submitted that a semi-enclave is the equitable solution, as to give Keta Island even reduced effect would still be to deprive New Togo of a substantial proportion of its shelf.

44. There is some State practice to the effect that even comparatively large islands within the territorial waters of a State should not be used as basepoints for determining the delimitation of maritime zones, even by the equidistance method. The Republic of Ireland does not recognise the Western Isles of Scotland nor Islay

as basepoints for the mainland maritime zones of Scotland;⁸⁷ the U.S.S.R. refuses to recognise the Swedish island of Götland as a basepoint for delimiting the continental shelf in the Baltic Sea.⁸⁸ The Torres Strait shelf boundary disregards islands on both sides.⁸⁹ Similarly, Canada refuses to recognise French claims that the islands of St Pierre and Miquelon, which lie just off the Canadian coast are entitled to their own continental shelf of 200 mile radius. This French claim encroaches upon shelf areas which would otherwise clearly belong to Canada as an appurtenance of the Canadian mainland.⁹⁰

45. There is substantial State practice to support the use of enclaves, even for heavily populated and important islands. The Channel Islands are contained in an enclave: Sylt, a sand island linked to the German mainland by a causeway and protruding in front of the Danish mainland, is partially enclosed in an enclave.⁹¹ Populated islands in the Torres Strait are given a territorial sea enclave of 3 miles and no continental shelf.⁹² The examples of the Italian-Tunisian Agreement⁹³ and the Italian-Yugoslavian Agreement⁹⁴ can also be cited.

D. Other Factors

46. The concept of proportionality between the length of the coasts and the area of continental shelf has an "intimate connection" with natural prolongation and is "a factor to be taken into account in appreciating the effects of geographical features on the equitable or inequitable character of the delimitation".⁹⁵ The disproportion between the area of continental shelf allocated to Germany and the other parties when their coasts were of the same length was an effect which had to be remedied.

47. The same principle should apply here. The Respondent claims that it is entitled to a share of the continental shelf reasonably proportionate to the length of its coast. This is not a "question of rendering a State with an extensive coastline similar to that of a State with a restricted coastline",⁹⁶ but merely the avoidance of a massive disproportion.

48. Even without taking Keta Island into account, the application of equidistance gives the Applicant more than 63,000 sq. miles of continental shelf as compared with less than 700 sq. miles for the Respondent.⁹⁷ The ratio of the length of the coastline is 6:1; that of the continental shelf areas claimed by the Applicant is greater than 90:1. The boundary claimed by the Respondent is a modest attempt to redress this

inequitable imbalance.

49. As discussed above,⁹⁸ a concave coast such as that existing in the present case leads to an unreasonable exaggeration of entitlement if equidistance is used (see Map 7) and this must be remedied as far as possible. The appropriate remedial effect can be best ensured by the Respondent's line.

50. The unity of any deposits in the area is also a factor to be considered.⁹⁹ Judge Jessup referred to the desirability of joint exploitation of deposits in an area.¹⁰⁰ In the Persian Gulf area, in delimiting their shelves, Qatar and Abu Dhabi deliberately diverted a median line to pass through the middle of an oil deposit lying near to the potential boundary.¹⁰¹ Although the Respondent does not rely on such an example to justify its line, such a consideration lends support to the general equitable nature of the Respondent's line.

51. Other boundary delimitations in the area are also an important consideration recognised by the International Court¹⁰² and in the Channel Arbitration,¹⁰³ and in State practice.¹⁰⁴ The treaty establishing the New Togo/New Benin boundary is already in force, and it must be taken into account in any equitable delimitation. The Applicant's line purports to restrict the Respondent's continental shelf to a small triangle and cuts it off from areas adjacent to its coast, a result neither reasonable nor equitable. As the boundary with New Benin has been established in accordance with equitable principles there can be no question of the Applicant's claiming that, as the Respondent has surrendered an area to which it was entitled, the Applicant should not be bound to take the New Benin boundary into account.

E. New Lome Rock

52. Although the Applicant may argue that the Respondent's line is an unjustifiable encroachment upon its continental shelf due to the reduced effect given to Keta Island, the Respondent sees this as merely one aspect of a delimitation which balances the interests of both parties and strives for simplicity.¹⁰⁵ The Applicant's line completely ignores New Lome Rock's continental shelf and the Respondent's fishing rights, while the Respondent is giving up part of New Lome Rock's continental shelf to the west with its valuable oyster beds.

53. That the Respondent can claim a continental shelf around New Lome Rock, extending well into the area west of the line CD, is clear. Art. 1 of the Continental

Shelf Convention, which is part of customary international law,¹⁰⁶ recognises the rights of islands to a continental shelf. This Convention does not distinguish between rocks and islands thus continuing long-established State practice of including rocks in the definition of islands so long as they are above water at high tide.¹⁰⁷ There are examples of States today claiming continental shelves around rocks. Britain claims a continental shelf around Rockall;¹⁰⁸ and Japan claims a shelf around the Senkaku Islands.¹⁰⁹ Although the efforts of some States have resulted in a distinction being drawn between rocks and islands in Art. 121(3) of the Draft Convention this only demonstrates that Art. 121(3) is a departure from current customary law. Until this highly contentious part of the Draft Convention achieves widespread acceptance, it is submitted that rocks can continue to have continental shelves. In addition, New Lome Rock is in a different class from islands such as Rockall. It is situated near to the coast, is the centre of very important fishing grounds, and has been under New Togolese control and occupation for a long time.

F. Overall Equitable Nature of the Respondent's Line

54. It is accepted that factors other than merely geographical factors may be taken into account in a continental shelf delimitation.¹¹⁰ In view of the fact that New Togo is by far the poorer country, its average per capita income being approximately forty per cent of that of New Ghana, and that it is specially dependent on both the fin fisheries and oyster beds, it is just and equitable that its area of the continental shelf should at least partly compensate for this and not take away more from a country that has little.

IV. EXCLUSIVE FISHING ZONE/EXCLUSIVE ECONOMIC ZONE

A. Principles Governing the Boundary

55. As it appears to be accepted at UNCLOS that the continental shelf and exclusive economic zone delimitation should employ similar methods,¹¹¹ the Respondent submits that the continental shelf boundary be extended to include the living resources of the superjacent waters. That the EEZ and continental shelf boundaries should be identical is grounded in common sense and practical convenience. New Togo submits that the same rules of delimitation which apply to the EEZ should apply to its exclusive fishing zone (EFZ), as the EFZ was the precursor of the EEZ, and that its line should delimit both its continental shelf areas and its EFZ.

Exceptions to the practice of having the same line are rare and involve regional peculiarities not apparent here.¹¹²

56. Bowett points out that in some circumstances the considerations of equity in the case of continental shelf resources may demand a different boundary than the different considerations of equity in relation to an economic zone.¹¹³ The Respondent submits that this is not so in the present case. Considerations of equity demand that New Togo be given control over most of its sedentary fishery grounds by giving it the continental shelf, while its fin fishery rights dictate the same result in respect of the superjacent waters. Thus New Togo's dependence on its fisheries, not a major industry of the Applicant, and its relative poverty are factors of equal weight in both the continental shelf delimitation and that of the exclusive fisheries zone.

B. Sedentary Fishery Rights

57. New Togo submits that it has fishing rights in the area west of New Lome Rock and beyond the boundary it claims in respect of the pearl fisheries and the fin fisheries.

58. There is a history of legal opinion that pearl fisheries and other such sedentary fisheries can be owned by the State which effectively controls them and has established a history of long usage of them.¹¹⁴ In the discussion during the 1st U.N. Conference on the Law of the Sea, arguments centred around the nature of the fish which should be included in the sedentary fishery rights, but the rights of the State to ownership were undisputed.¹¹⁵ Art. 2(4) of the 1958 Convention on the Continental Shelf expressly recognised the possibility of ownership of such rights by including sedentary organisms in the definition of the resources of the seabed.

59. There is significant State practice to support this.¹¹⁶ Sri Lanka has traditionally claimed the right to the pearl fisheries in the areas off its coast.¹¹⁷ Similarly, the States around the Persian Gulf have always agreed that they own the pearl fisheries in the Gulf as against any outsiders.¹¹⁸ In 1952-3 the Australian government acted to preserve what it regards as its traditional rights in pearl fisheries (shared with Indonesia) against Japanese fishermen, in the belief that rights over that area had been established by long usage.¹¹⁹

60. New Togo has acquired property in the sedentary fisheries around New Lome Rock either on the basis of long established usage by its tribal groups or by

occupation in the absence of opposing claims from New Ghana. This right is in no way attacked by the development of a doctrine of the continental shelf. The doctrine as presented by Gidel and Hurst considerably predates the continental shelf doctrine, as is noted in the Abu Dhabi Arbitration.¹²⁰ It is therefore submitted that the right which had vested in New Togo could not subsequently be taken away, particularly without any specific agreement between States to that effect. The International Law Commission in its comments on this made quite clear that the existing historical fishing rights of nationals of other States must be respected.¹²¹

61. It is also submitted on the basis of O'Connell's contentions that if, as the International Court has held, the rights to the continental shelf exist ab initio and ipso jure, they must be deemed to date back to time immemorial, and there is nothing to prevent another State from acquiring rights to part of that shelf by prescription.¹²² New Togo submits that this is what it has done.

62. New Togo has made clear that it is prepared not to insist on its strict right in this area as part of balancing the reduced territorial sea around Keta Island.

C. Non-sedentary Fisheries

63. The Applicant has not declared an Exclusive Economic Zone. Its Ocean Resources Act 1978 applies to living and non-living resources consistent with the practice of a number of States which have sought to protect their interests by the establishment of a fisheries zone in conjunction with their continental shelf rights.¹²³ Such practice confirms the view that the EEZ is not yet an established concept in international law.¹²⁴ Thus the applicant cannot rely on the provisions of UNCLOS III to prevent the New Togolese tribal fishermen from fishing within New Ghanaian territory.

64. The Applicant does not derive any such right from its declaration of a 200-mile exclusive fishery zone. It is clear that by the use of the term "exclusive" a State cannot thereby exclude nationals of other States who have acquired fishing rights in the area claimed, "particularly where such rights result from a situation of economic dependence and long-term reliance on certain fishing grounds".¹²⁵ In the present case the Respondent's fishermen have fished habitually in the area for many years and would appear to be in an identical position to the British and German fishermen discussed in the Fisheries Jurisdiction case.¹²⁶ The fin fisheries are extremely important to these people and to the Respondent's economy.

65. State practice confirms the view that even where an "exclusive" fishery zone is declared, allowance must be made for traditional or customary fishing rights, often of more recent origin than those involved here.¹²⁷ The European Fisheries Agreement of 1964 which established a 12 mile EEZ allowed countries continued access to the outer 6-mile belt if they had fished in the area in the previous 10 years.¹²⁸ When Canada and the USA declared 12-mile exclusive fishery zones (1964 and 1966) they concluded treaties with those countries which had historic rights to ensure the continuation of those rights.¹²⁹

66. It is clear that the Applicant must allow access to the citizens of the Respondent who have traditionally exploited the fin fisheries in the area around New Lome Rock. Conservation and the economic dependence of the littoral States have been the basic rationale of the evolution of the Exclusive Fishery Zone;¹³⁰ neither of these here would justify the exclusion of the Respondent's citizens. While the Respondant recognises that the Applicant may validly regulate the fishing areas by means of licences, it insists that the procedure of licensing should not be carried out in such a manner as to exclude the Respondent's citizens from the area, as this would amount to an abuse of rights.

V. RIGHTS IN THE AREA

A. Axim Block

67. New Togo submits that an equitable delimitation of the continental shelf will result in sovereign rights in the eastern half of the Axim Block and the surrounding area being vested in New Togo. New Togo therefore has the right to grant concessions for both exploration and exploitation. In the event of joint exploitation being held to be the appropriate means of development,¹³¹ New Togo is entitled to share equally in making decisions about development and in profits from such development.

68. It is submitted that New Togo is not estopped from claiming its sovereign rights in the area. A protest to New Ghana was made in 1978, only 5 years after concessions for exploration were initially granted. Acquiescence or "sleeping on" rights can take place only after a lengthy period of time. The reports of newspapers can hardly be said to represent the true views of the New Togolese government, and demonstrate in fact that there was a general belief that New Togo was to share in the benefits of development - which can only refer to the profits. The statements made by

certain officials to the newspapers can hardly be said to have been made "formally" or to the "international community" so as to accord with the principles in the Nuclear Tests case,¹³² which, in any event, is a much criticised decision.¹³³ Nor is there any evidence that the position of the officials was such as to lead to any conclusion that they were empowered to bind the government. For New Ghana to be able to rely on estoppel, it must have detrimentally changed its position.¹³⁴ There is no evidence that it has done so, relying on New Togo's assurances. Any expenditure made can easily be replaced by an adjustment in a profit-sharing agreement. It cannot be claimed that New Ghana could acquire ownership of the shelf by proceeding to drill there. Sovereignty vests ipso jure and ab initio.¹³⁵

B. Salt Dome

69. 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.¹³⁶

C. Use of Force

70. New Togo submits that New Ghana is not entitled to use force to prevent New Togo from exploiting its share of the Axim Block.

(a) Part of the Axim Block lies within New Togo's continental shelf. New Togo is therefore entitled to exploit its part of the oil deposits (having due regard to the rights of New Ghana to its share). Thus New Ghana's threatened use of force is not self-defence of New Ghana's territory.

(b) The use of force would therefore constitute a violation of New Togo's territorial integrity. This is contrary to Article 2(4) of the Charter of the United Nations.

(c) New Togo concedes that the area around the Axim Block is also claimed by New Ghana. However, New Togo submits that both parties are obliged to resolve their dispute peacefully, in accordance with Article 2(3) of the United Nations Charter.

VI. INTERIM MEASURES OF PROTECTION

71. The Respondent asks the Court to exercise its discretion under Art. 41 of the Statute of the Court to grant the following interim measures to "preserve the substance of the [Respondent's] rights":¹³⁷

- (A) that the Applicant should not use aggression to enforce its alleged rights in the Axim Block area;
- (B) that the Applicant desist from unilateral exploitation of the Axim Block until the Court hands down judgment on the substantive issues.

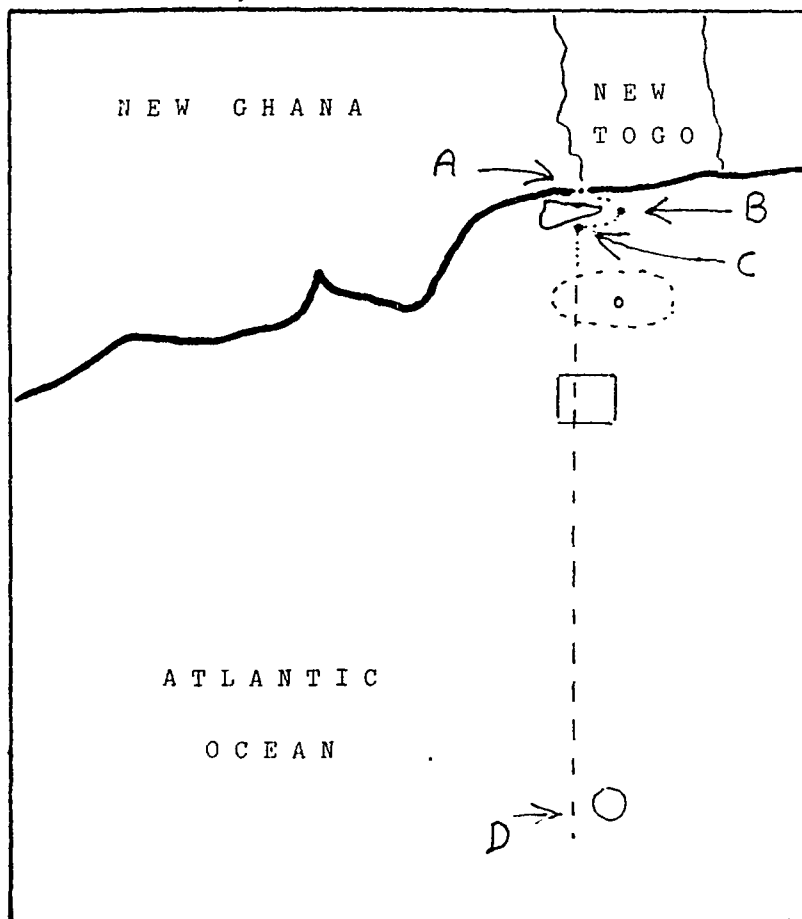
VII. CONCLUSION

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

- (1) The method of delimiting boundaries of the territorial sea, continental shelf and exclusive fishery zone in customary international law is delimitation according to equitable principles employing the equidistance line where appropriate.
- (2) The boundary line declared by the Respondent and shown by the dotted-dashed line on Map III attached to the Compromis is the boundary line between the Parties.

MAP I:

THE SEGMENTS AB, BC and CD OF NEW TOGO BOUNDARY LINE



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VIVIENNE BATH

Andrew Byrnes

ANDREW BYRNES

Chris Erskine

CHRISTOPHER ERSKINE

Tom Faunce

THOMAS FAUNCE

FOOTNOTES

1. Vienna Convention on the Law of Treaties, U.N.Doc. A/CONF. 38/27 (1969), Art. 31(1) (hereinafter "Vienna Convention"); Competence of the I.L.O. case (1922) P.C.I.J., Ser. B, No. 2, 39.
2. The "purpose" of a treaty is a legitimate aid for its interpretation. Vienna Convention, Art. 31(1).
3. Convention on the Continental Shelf 499 U.N.T.S. 312 (1958), Art. 1; Draft Convention on the Law of the Sea, U.N.Doc. A/CONF. 62/WP.10/Rev.3, August 27, 1980, Art. 76(1) (hereinafter "Draft Convention").
4. E.g. Draft Convention, Art. 76(1).
5. Competence of the General Assembly case (1950) I.C.J. 4, 8; Case concerning the Polish Postal Service in Danzig (1925) P.C.I.J., Ser. B, No. 11, 39.
6. (1905) 202 U.S. 1, 42 (U.S. Supreme Court).
7. Argentina v Chile, Beagle Channel Arbitration, 17 INT'L L. MAT. 632, 673 (1978).
8. Vienna Convention, Art. 31(3)(b); Competence of the I.L.O. case, *supra*, n.1, 39, 4.
9. MOORE, DIGEST OF INTERNATIONAL LAW, Vol. 1, 658 (1906); H. LAUTERPACHT, OPPENHEIM'S INTERNATIONAL LAW, 510-511 (8th ed. 1955); COLOMBOS, INTERNATIONAL LAW OF THE SEA, 169 (4th ed. 1959); Treaty between Great Britain and the Sultan of Johore, 1928, 18 & 19 Geo. V. c.23; Sweden/Denmark, Declaration concerning the boundaries in the Sound, 1932, U.N.Doc. ST/LEG./SER. B/6, 792 (1957); Argentina/Uruguay, Treaty concerning the La Plata River, 13 INT'L L. MAT. 251 (1974); FDR-GDR, Maritime Boundary Agreement, July 2, 1974, SEBEK, THE EASTERN EUROPEAN STATES AND THE DEVELOPMENT OF THE LAW OF THE SEA, Vol. 2, Chap. 2, 30. See generally, Karl, Islands and the Delimitation of the Continental Shelf: a Framework for Analysis 71 AM. J. INT'L L. 642, 652, n.37 (1974).
10. LAPRADELLE, LA FRONTIERE 217 (1928), cited A. CUKWURAH, THE SETTLEMENT OF BOUNDARY DISPUTES IN INTERNATIONAL LAW 76 (1967); cf. U.S.A.-Great Britain 1871 San Juan maritime boundary, cited Louisiana v Mississippi (1905) 202 US 1, 51; Re Devoe Manufacturing Co. (1883) 108 U.S. 401.
11. 516 U.N.T.S. 205 (1958). See M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 4, 307-310 (1965).
12. 2 Y.B. INT'L L. COMM'N 216 (1953), U.N.Doc. A/CN.4/SER.A 1953/Add.1.
13. *Supra*, n.7, 673.
14. As of July 1979, 27 coastal States claimed less than 12 miles, 75 claimed 12 miles, 5 claimed 12-50 miles, and 16 claimed 51-200 miles. Source: Moore, National Legislation for the Management of Fisheries under Extended Coastal State Jurisdiction 11 J. MAR. L. COMMERCE 153, 178-182 (1980).
15. *Adjacent: Italy/Trieste, Treaty of Peace with Italy, February 10, 1947, T.I.A.S. No. 1648, 138; Trieste/Yugoslavia, id., 139. Opposite: Italy/Turkey, January 4, 1932, 138 L.N.T.S. 243.*
16. Cf. Draft Convention, Art. 15.
17. North Sea Continental Shelf cases (1969) I.C.J. 3, 20.
18. *Id.* 49.
19. *Supra*, n.12; 2 Y.B. INT'L L. COMM'N 300 (1956).
20. Beagle Channel Arbitration, *supra*, n.7, 673. Cf. the French argument in the Channel Arbitration (UK v France), 54 INT'L L. REP. 6, 88 (1979) (hereinafter "Channel Arbitration").
21. Territorial Sea Convention, Arts 14-17, particularly Art. 14(6); Draft Convention, Arts 17-26, particularly Art. 20.
22. *Infra*, p. 15.
23. Art. 17 of the Draft Report prepared by the Second Committee of the Hague Conference (1930): "Every island has its own territorial sea. An island is an area of land, surrounded by water, which is permanently above high-water mark", in S. ROSENNE, LEAGUE OF NATIONS CONFERENCE FOR THE CODIFICATION OF INTERNATIONAL LAW, Vol. 4, 1410 (1975).
24. An identical definition to Art. 10 is contained in Art. 121(3) of the Draft Convention.
25. Cf. Beagle Channel Arbitration, *supra*, n.7, 673.
26. Cf. Basis of Discussion, Second Committee of the Hague Conference in ROSENNE, *supra* n.23, 1403.
27. Cf. MACDOUGALL and BURKE, THE PUBLIC ORDER OF THE OCEANS 423 (1962), cited WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 4, 271 (1965).

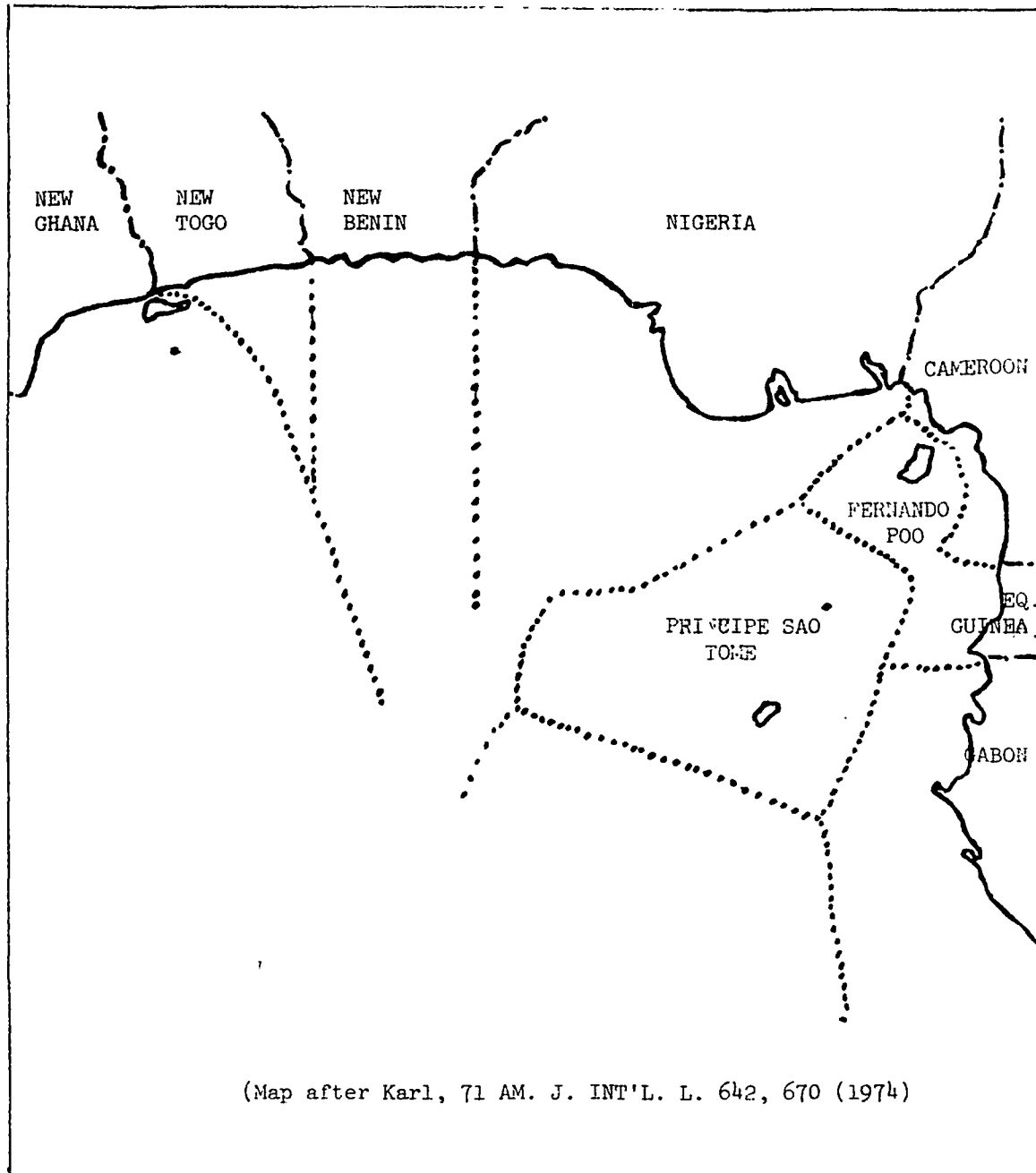
28. Macao is enclaved behind China's straight baselines, and is thus entirely within China's internal waters. The Hong Kong island of Lan Tao is partly enclaved along its shoreline (i.e. with no territorial sea) - D. BOWETT, THE LEGAL REGIME OF ISLANDS IN INTERNATIONAL LAW, 291 (1979).
29. 13 DEPT STATE BULL. No. 327, September 30, 1945, 484-485.
30. (1969) I.C.J. 3, 47.
31. Id. 53.
32. (1969) I.C.J. 3.
33. 54 INT'L L. REP. 6 (1977); 18 INT'L L. MAT. 397 (1979).
34. Art. 59, Statute of the International Court of Justice.
35. Klemm, Abgrenzungsprobleme verschiedener seerechtlich definierter Räume, 38 ZEITSCHRIFT FÜR AUSLÄNDISCHES UND ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZaöVR) 512, 554 (1978).
36. Channel Arbitration 54 INT'L L. REP. 6, 60 (1979).
37. Klemm, supra n.35, 534 fn. 86.
38. E. BROWN, THE LEGAL REGIME OF HYDROSPACE 62 (1971); Brown, It's Scotland's Oil? 2 MARINE POLICY 3, 12 (1978).
39. Klemm, supra n.35, 533; Channel Arbitration, supra n.36, 160.
40. USA/Venezuela, Maritime Boundary Treaty 1978, in R. CHURCHILL, M. NORDQUIST AND S. LAY, NEW DIRECTIONS IN THE LAW OF THE SEA, VIII, 84 (hereinafter NEW DIRECTIONS) USA/Mexico, Maritime Boundary Treaty 1978, id. 63; Bahrain/Iran, Continental Shelf Boundary Agreement, June 17, 1971, U.N.Doc. ST/LEG./SER. B/16, 423 (1974); Iran/U.A.E., Continental Shelf Boundary, August 13, 1974, NEW DIRECTIONS, V, 242; Haiti/Cuba, Agreement Regarding the Delimitation of Maritime Boundaries, id., VIII, 69 (1977); France/Tonga, Convention relating to Delimitation of Economic Zones, January 11, 1980, 84 REVUE GENERALE DU DROIT INTERNATIONAL REPUBLIC (R.G.D.I.P.); Dominican Republic/Venezuela, Treaty delimiting Marine and Submarine Areas, 1979, NEW DIRECTIONS, VIII, 80 (1980); Iran/Oman, Continental Shelf Boundary Agreement, id. V, 235 (1975); Iran/Qatar, Continental Shelf Boundary Agreement 1974, NEW DIRECTIONS, V, 226; India/Sri Lanka Maritime Boundaries Agreement, id. V, 376.
41. (1969) I.C.J. 3, 48; see also the Separate Opinion of Judge Ammoun, (1969) I.C.J. 3, 136-142; Individual Opinion of Judge Hudson in The Diversion of Water from the Meuse case (1937) P.C.I.J. Ser. A/B, No. 70, 76-77; V. DEGAN, L'EQUITE ET LE DROIT INTERNATIONAL 39-40 (1970).
42. (1969) I.C.J. 3, 23, 49.
43. Id.
44. Channel Arbitration, 54 INT'L L. REP. 6, 61 (1977).
45. (1969) I.C.J. 3, 51-52.
46. Id. 17-18.
47. Id. 36-37.
48. E.g. Act on the Exploration and Exploitation of the Natural Resources of the Continental Shelf of Iran, June 19, 1955, U.N.Doc. ST/LEG./SER. B/16, 151 (1974); cf. BROWN, THE LEGAL REGIME OF HYDROSPACE, 51-52 (1971); (1969) I.C.J. 3, 140.
49. Jacovides, Three Aspects of the Law of the Sea, 3 MARINE POLICY 278, 285-286 (1979) Adede, Toward the Formulation of the rule of delimitation of sea boundaries between States with adjacent or opposite coasts, 19 VA. J. INT'L L. 207, 211-213 (1979).
50. (1969) I.C.J. 3, 49. According to the Secretariat of UNCLOS III, of 34 delimitations between opposite States, 29 are based on equidistance, but of 23 delimitations between adjacent States only 9 apply equidistance; cited in Caflisch, Les Zones Maritimes sous Jurisdiction Nationale, 88 R.G.D.I.P. 68, 88, n.47 (1980).
51. O'Brien (ed.), Boundary Delimitation in the Economic Zone: the Gulf of Maine Dispute 30 ME. L. REV. 207, 210 (1979).
52. Supra, fn. 40.
53. Adjacent: France-Spain, January 1974, NEW DIRECTIONS V, 251 (1977); Abu Dhabi/Qatar March 20, 1969, id. 223.
54. NEW DIRECTIONS, IV, 91 (1975), U.N. Doc. ST/LEG./SER. B/18, 441 (1976).
55. AUST'L Y. B. INT'L L. 145-146 (1970-73).
56. Klemm, supra, n.35, 542-543.
57. (1969) I.C.J. 3, 30-31.
58. Id. 31.
59. Id. 23-24.
60. Id. 50.
61. Id. 50-51.

62. Brown, It's Scotland's Oil? 2 MARINE POLICY 3, 12 (1978).
63. (1969) I.C.J. 3, 47.
64. Klemm, supra, n.35, 542.
65. Supra, n.54.
66. Such as the Norwegian Trough: (1969) I.C.J. 3, 32.
67. Channel Arbitration, 54 INT'L L. REP. 6, 68 (1977).
68. Cited Menon, The Commonwealth and the Development of the Sea - an Overview, 58 REVUE DE DROIT INTERNATIONAL PUBLIC 39, 54 (1980).
69. THE TIMES ATLAS OF THE WORLD, Plate 2 (1967).
70. E.g. Colombia/Ecuador, Maritime Boundary, August 23, 1975, NEW DIRECTIONS, V, 12 (1977); Brazil/Uruguay, Boundary Agreement, July 21, 1972, id. 9; Art IV, Declaration of Santiago (Chile, Ecuador and Peru) 1952, U.N. Doc. ST/LEG./SER. B/6, 723 (1956).
71. Agreement Delimiting Maritime Boundaries, June 4, 1975, NEW DIRECTIONS, VIII, 104 (1980).
72. BOWETT, supra, n.28, 179.
73. 16 U.S.C. s. 1456a(b) (1976).
74. Christie, CEIP Boundaries on the Atlantic Coast: A Case Study of the Law Applicable to Lateral Seaward Boundaries 19 VA. J. INT'L L. 841, 861.
75. The ascertainment of the general direction of the coast and the scale of the map to be used are the main problems: 2 Y.B. INT'L L. COMM'N 272 (1956).
76. 4 AM. J. INT'L L. 226 (1910); 11 R. INT'L ARB. AWARDS 147.
77. March 18, 1958, 340 U.N.T.S. 89 (1959).
78. July 21, 1972, NEW DIRECTIONS, V, 9 (1977).
79. Channel Arbitration, supra, n.121.
80. Information provided by Bureau of Mineral Resources, Canberra.
81. See Maps attached to Compromis.
82. A/CONF 62/WP. 10/REV. 3 (1980); Channel Arbitration op. cit. 101; cf the island of Fernando Poo off the coast of Cameroon, Karl, supra, fn. 9, 663-670.
83. (1969) I.C.J. 31-32.
84. Channel Arbitration op. cit. 93.
85. Id. 96.
86. Id. 121.
87. 380 PAR. DEB. H.L. (5th Sep.) 7-8 (1977).
88. Rousseau, Chronique des Faits Internationaux 79 REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC 1099, 1190 (1977) (hereinafter R.G.D.I.P.).
89. Treaty between Australia and Papua-New Guinea on Sovereignty and Maritime Boundaries, December 18, 1978, 18 INT'L L. MAT. 29, Annex 5 and Map (1979).
90. Beauchamp, Crommelin and Thompson, Jurisdictional Problems in Canada's Offshore, 11 ALBERTA L. REV. 431, 447 (1973); BOWETT 208.
91. Germany-Denmark, North Sea Delimitation, 10 INT'L L. MAT. 603, 606 (1971).
92. Australia-Papua-New Guinea supra, Annex 3, p. 6 et seq.
93. Italy-Tunisia, supra, fn.52.
94. Agreement between Italy and Yugoslavia 1957, T.I.A.S. No. 1648, 138.
95. (1969) I.C.J. 52.
96. Id. 49-50.
97. L. LUCCHINI and M. VOELCKEL, LES ETATS ET LA MER 61-65 (1977).
98. P. 6, para. 21.
99. (1969) I.C.J. 3, 51-52.
100. Separate Opinion, id. 82-83. See Lagoni, Oil and Gas Deposits Across National Boundaries, 73 AM. J. INT'L L. 215, 243 (1979).
101. Qatar/Abu Dhabi, March 20, 1969; NEW DIRECTIONS, V, 223 (1977); U.N.Doc. ST/LEG./SER. B/16, 403 (1974); Amin, Customary rules of delimitation of the continental shelf: the Gulf States practice, 11 J. MAR. L. COMMERCE 509, 519-520 (1980).
102. (1969) I.C.J. 3, 54.
103. 54 INT'L L. REV. 6, 36-38 (1977).
104. E.g. Agreement between Indonesia, Malaysia and Thailand, December 21, 1971, U.N. Doc. ST/LEG./SER. B/18, 429 (1976).
105. For simplification of a boundary line, see U.S.-Mexico Boundary Delimitations, cited O'Brien (ed.), Boundary Delimitation in the Economic Zone: The Gulf of Maine Dispute 30 ME. L. REV. 204, 215, 216 (1979).

106. (1969) I.C.J. 3, 39; Channel Arbitration op. cit. 439; contra Klemm, supra n.35, 547.
107. C. SYMMONS, THE MARITIME ZONES OF ISLANDS IN INTERNATIONAL LAW 136 (1979).
108. Brown, Rockall and the limits of National Jurisdiction of the United Kingdom, 2 MARINE POLICY 181 (1978); Symmons, Legal Aspects of the Anglo-Irish Dispute over Rockall, 26 N. IR. L. Q. 65 (1975).
109. SYMMONS (supra fn. 107) 136; (Okuhara, The Territorial Sovereignty over the Senkaku Islands and the Surrounding Continental Shelf, 15 JAPANESE ANN. INT'L L. 97, 105 (1971)).
110. Supra, p. 5, n.39.
111. Draft Convention, Arts 74 and 83.
112. E.g. Treaty between Australia and Papua-New Guinea. Supra, fn.89.
113. BOWETT, 188.
114. VATTEL, LE DROIT DE GENS; GIDEL, DROIT INTERNATIONAL PUBLIC DE LA MER, both cited in Young, Sedentary Fisheries and the Convention on the Continental Shelf 55 AM. J. INT'L L. 359, 360 (1961); Recent writings; Hurst, Whose is the Bed of the Sea? 4 BR. Y. B. INT'L L. 34 (1923-1924); O'Connell, Sedentary Fisheries and the Australian Continental Shelf 49 AM. J. INT'L L. 185 (1953).
115. Whiteman, Conference on the Law of the Sea: Convention on the Continental Shelf, 52 AM. J. INT'L L. 629, 638-640 (1958).
116. E.g. Australia, Bahrain, Ireland, Malaysia, Mexico, Panama, the Philippines, Sri Lanka and Venezuela. See Arrow, The Proposed Regime for the Unilateral Exploitation of Deep Seabed Mineral Resources by the U.S. 21 HARV. INT'L L. J. 337, 359 (1980).
117. 163 PARL. DEB. H. C. (5th ser.) 1261-62; 164 PARL. DEB. H.L. (5th ser.) 1417-18 (1923).
118. O'Connell, supra, fn.114, 188, n.18.
119. 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 in 48 AM. J. INT'L L. Supp. 102 (1954).
120. 1 INT'L & COMP L. Q. 247, 256 (1952).
121. (1953) 1 Y. B. INT'L L. COMM'N 347; 2 Y. B. INT'L COMM'N 214.
122. O'Connell, supra, n.89, 197.
123. E.g. Guyana Maritime Boundaries Act 1977; The Fishing Territory of the Kingdom of Denmark Bill, cited in Moore, National Legislation for the Management of Fisheries under Extended Coastal State Jurisdiction, 11 J. MAR. L. COMMERCE 153, 156 (1980), U.N. Doc. ST/LEG./SER. B/19, 68.
124. Moore, supra, 155. See also Fleischer, The Right to a 200-mile Ex.Ec.Zone or a Special Fishery Zone 11 SAN DIEGO L. REV. 548 (1977).
125. Fisheries Jurisdiction Case (1974) I.C.J. 3, 30.
126. Id. 28.
127. The following agreements, cited in Carros and Savini The New International Law of Fisheries emerging from bilateral agreements 3 MARINE POLICY 79, 84 (1979) refer specifically to traditional or habitual fishing rights: Canada and Spain, June 10, 1976; Mexico and Cuba, July 26, 1976; Norway and Poland, May 24, 1977; U.S.S.R. and Japan, December 16, 1977; see also the Report of the Regional Seminar of African States, July 20, 1972, held in Yaoundé, 12 INT'L L. MAT. 210, 211 (1973).
128. 581 U.N.T.S. 57 (1964).
129. Jaenicke, Die dritte Seerechtskonferenz der Vereinten Nationen 38 ZAÖ VR 438, 466, n.50 (1978).
130. (1974) I.C.J. 3, 27; WHITEMAN, Vol. 4, 954-956.
131. (1979) I.C.J. 3, 6, para. 28; reprinted in 74 AM. J. INT'L L. 266 (1980).
132. (1974) I.C.J. 253.
133. E.g. D. GREIG, INTERNATIONAL LAW 454 (2nd ed., 1975).
134. Case concerning the Temple of Preah Vihear (1962) I.C.J. 3, 6.
135. North Sea Continental Shelf cases (1969) I.C.J. 3, 22.
136. Draft Convention, Art. 76(1) & (3).
137. Order of the Court, case concerning the U.S. Embassy in Tehran (1979) I.C.J. 7, para. 28 reprinted in 74 AM. J. INT'L L. 266 (1980).

MAP II

THE EFFECTS OF THE APPLICATION OF THE EQUIDISTANCE METHOD IN THE GULF OF GUINEA USING ISLANDS AS BASEPOINTS



(Map after Karl, 71 AM. J. INT'L. L. 642, 670 (1974))