
BEFORE THE
INTERNATIONAL COURT OF JUSTICE

TEAM NO. 3

THE REPUBLIC OF NEW GHANA,

Applicant

v.

THE REPUBLIC OF NEW TOGO,

Respondent

MEMORIAL FOR APPLICANT

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STATEMENT OF JURISDICTION

Pursuant to Article 36, Paragraph 2 of the Statute of the International Court of Justice, the Government of the Republic of New Ghana and the Government of the Republic of New Togo have agreed to submit to the jurisdiction of the International Court of Justice in order to reconcile their differences in this case. Both parties accept the judgment of the International Court of Justice as final. The International Court of Justice shall resolve the controversy in accordance with Paragraph 1 of Article 38 of the Statute of the International Court of Justice.

STATEMENT OF FACTS

The Parties have agreed to the statement of facts which has been filed before this Court.

QUESTIONS PRESENTED

- I. Whether the equidistance principle should be applied to determine the continental shelf boundary between New Ghana and New Togo?
- II. Whether natural prolongation is a rule of international law?
- III. Whether special circumstances exist which would merit the abandonment or modification of an equidistant boundary?
- IV. Whether New Togo, by its acquiescence in New Ghana's actions, is estopped from denying the equidistant boundary?
- V. Whether a boundary based on natural prolongation and historic rights would grant New Ghana the boundary it claims by virtue of the ancient New Oti riverbed?

SUMMARY OF ARGUMENT

I.

The equidistance principle should be applied to determine the continental shelf boundary between New Ghana and New Togo. The equidistance principle represents the most equitable method of maritime boundary delimitation. It has crystallized into customary international law through state practice as evidence of accepted international law.

II.

Natural prolongation is not a rule of international law and therefore should not be applied to delimit the continental shelf boundary between New Ghana and New Togo. The equidistance rule more closely applies equitable principles than the natural prolongation theory.

III.

In the interests of certainty and fairness, the rule of special circumstances should be as specific as possible and not open to arbitrary determination. The circumstances existing in this case do not meet the specific criteria of special circumstances, and therefore there is no bar to applying the equidistance principle.

IV.

The doctrine of estoppel does not permit Respondent to deny to Applicant the appropriateness of an equidistant boundary after it has acquiesced in Applicant's ownership of the area. International law does not permit Respondent to act inconsistently to Applicant's detriment.

V.

Even if the Court finds that natural prolongation and historic rights are the appropriate means of determining the continental shelf boundary, Applicant is still entitled to the boundary it asserts by virtue of the ancient New Oti riverbed. This riverbed represents the most natural prolongation of Applicant's territory, and must be granted full effect in the boundary delimitation.

ARGUMENT AND AUTHORITIES

I. THE EQUIDISTANCE PRINCIPLE SHOULD BE APPLIED TO DETERMINE THE CONTINENTAL SHELF BOUNDARY BETWEEN NEW GHANA AND NEW TOGO.

The Convention on the Continental Shelf (Geneva Convention) sets forth in Article 6(2):

Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.¹

The Geneva Convention, as well as the Convention on the Territorial Sea and Contiguous Zone of 1958,² articulates the general consensus of nations that the equidistance principle is the most equitable method to be used in determining the lateral maritime boundaries between two adjacent states. Furthermore, the equidistance rule has become binding international law due to prolonged use by a great number of states in recognition that the practice is accepted international law. Thus, since there are no special circumstances present in the case at bar, the equidistance principle should be applied to determine the continental shelf boundary between New Ghana and New Togo.

¹Convention on the Continental Shelf, April 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578 [hereinafter cited as Geneva Convention].

²Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639.

A. The Equidistance Principle, As Stated In The Geneva Convention, Represents The Most Equitable Method Of Delimitation.

Prior to World War II, there existed few state boundaries in ocean waters contiguous to land masses, and these involved only narrow zones.³ Until then, the concept of a continental shelf was not even accepted, and no states made such a claim. The Truman Proclamation of September 28, 1945,⁴ which in essence decreed the United States' sovereignty over the continental shelf and established the determination of lateral boundaries within equitable principles, "spearheaded a worldwide trend of expanded national jurisdiction within the maritime zones adjacent to the coastal areas."⁵ Thus, this new-found interest of states indicated the necessity of a formula for determining ocean boundaries between nations.⁶

In 1953, the International Law Commission (ILC) of the United Nations engaged the resources of a Committee of Experts who proposed five possible alternative methods of delimitation to the Commission. These included (1) equidistance; (2) line perpendicular to the general direction of the coast; (3) line perpendicular to the coast at the land boundary terminus; (4) continuation of the final azimuth of the land

³Note, Boundary Delimitation in the Economic Zone: The Gulf of Maine Dispute, 30 Maine L. Rev. 207, 210 (1978).

⁴Pres. Proc. No. 2667, 3 C.F.R. 67 (1943-48 Comp.) reprinted in [1951] 1 U.N. Leg. Ser., Laws and Regulations on the Regime of the High Seas 38.

⁵Note, supra note 3, at 211.

⁶Hodgson & Smith, Boundaries of the Economic Zone, in Law of the Sea: Conference Outcomes and Problems of Implementation 183 (J. Gamble & E. Miles eds. 1977).

frontier and (5) parallel or meridian of the terminus of the land frontier.⁷ The Commission accepted as the most equitable method the first proposal of the Committee of Experts and included the equidistance principle in its 1956 draft. The method of delimitation finally was established as a combination of three rules in the Geneva Convention: (1) negotiation between the states, (2) application of the principle of equidistance, and (3) determination of special circumstances.⁸

This concept of locating a boundary line "equidistant from the nearest points on both baselines"⁹ was first proposed by S. Whittemore Boggs in 1937, based on the median rule of boundaries in rivers and lakes.¹⁰ The rule of equidistance received "more backing than any of the other rules" suggested by the ILC Committee of Experts.¹¹ Furthermore, the ILC commentary to the 1956 draft indicated that the equidistance principle was the best formula since an equitable boundary could be reached whether the coastline was straight, curved or irregular.¹²

To ensure equitable results the Geneva Convention qualifies the use of the equidistance line when special circumstances are present.

⁷Note, supra note 3, at 212.

⁸Geneva Convention, supra note 1, art. 6.

⁹Memorandum by Benjamin H. Read, Attorney Adviser, Office of the Legal Adviser, "Delimitation of the Territorial Sea of Two Adjacent States" (July 1957), reprinted in 4 Whiteman, International Law 326-28 (1965).

¹⁰Hodgson & Smith, supra note 6, at 185.

¹¹4 Whiteman, supra note 9, at 326.

¹²Report of the International Law Commission to the General Assembly, 11 U.N. GAOR, Supp. (No. 9) 44, U.N. Doc. A/3159 (1956).

The term is not all-encompassing but has been limited to certain conditions which have been enumerated through the years. The major category is exceptional geographical circumstances, such as the configuration of the shoreline. Navigation and fishing rights have been mentioned as special circumstances, but originally were applied only in the case of territorial seas.¹³

The most recent attempt to codify the law concerning delimitation is Article 83(1) of the 1980 Draft Convention on the Law of the Sea:

The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned.¹⁴

Although this is a draft text which has not been accepted formally, it represents a high degree of consensus among nations of the world. The draft indicates the equidistance principle, where at all possible, is still the favored method of delimitation amongst states. Furthermore, there is no mention whatsoever of natural prolongation or historic rights in the 1980 Draft Convention. Thus, the equidistance principle was included overwhelmingly in the Geneva Convention as the most equitable means of boundary delimitation, and still finds favor among the Third United Nations Conference on the Law of the Sea by inclusion in the 1980 Draft Convention.

¹³E. Brown, *The Legal Regime of Hydrospace* 62-70 (1971).

¹⁴Draft Convention on the Law of the Sea, U.N. Doc. A/CONF.62/WP.10/Rev.3/Add.1 (1980) [hereinafter cited as Draft Convention].

B. The Equidistance Principle Has Become Customary International Law Through Prolonged State Practice In Recognition That Its Use Is Obligatory Under International Law.

The equidistance principle was not a novel idea when incorporated in the Geneva Convention. This formula had previously been used in maritime boundary agreements involving Yugoslavia and Italy, Denmark and Germany, and the United States and Canada.¹⁵ Through implementation in these situations and others before and after the adoption of the Geneva Convention, the equidistance principle has emerged as customary international law. Therefore, even though New Togo is not a party to the Geneva Convention or the Convention on the Territorial Sea and Contiguous Zone, the Respondent is bound by their principles.

According to Hudson, the traditional requirements for establishment of a new customary rule of international law include:

(a) concordant practice by a number of States with reference to a type of situation falling within the domain of international relations; (b) continuation or repetition of the practice over a considerable period of time; (c) conception that the practice is required by, or consistent with, prevailing international law; and (d) general acquiescence in the practice by other states.¹⁶

In bilateral treaties between parties and non-parties to the Geneva Convention or two non-parties, the equidistance principle often has been applied in boundary formation. Norway in agreements with Denmark,¹⁷

¹⁵4 Whiteman, supra note 9, at 326.

¹⁶Z. Slouka, International Custom and the Law of the Sea 2 (1968).

¹⁷Agreement Concerning the Delimitation of the Continental Shelf, December 8, 1965, Norway-Denmark, reprinted in U.N. Doc. A/AC.135/10/Rev.1 (1968).

Sweden (with modifications)¹⁸ and the United Kingdom,¹⁹ has followed the equidistance rule. The boundaries between Italy and Yugoslavia,²⁰ Bahrein and Saudi-Arabia,²¹ and Iran and Saudi Arabia²² are based on the equidistance principle. The coastal region of the continental shelf of Germany and Denmark²³ is established according to the equidistance rule. A boundary agreement between the United States and Mexico applied the equidistance method, with minor modifications.²⁴

In unilateral state legislation passed since 1960 four states (Denmark, Finland, Malaysia, and the Soviet Union) have acknowledged specifically the equidistance principle of the Geneva Convention.²⁵ Two (the Netherlands and Sweden) have referred generally to the

¹⁸Agreement Concerning the Delimitation of the Continental Shelf, July 24, 1968, Norway-Sweden, reprinted in North Sea Continental Shelf Cases, 1 I.C.J. Pleadings 554 (1969).

¹⁹Agreement Relating to the Delimitation of the Continental Shelf, March 10, 1965, Norway-United Kingdom, [1965] Gr. Brit. T.S. No. 71 (Cmd. 2757).

²⁰Agreement on the Delimitation of the Continental Shelf, January 8, 1968, Italy-Yugoslavia, reprinted in 7 Int'l Legal Materials 547 (1968).

²¹Agreement on the Delimitation of Adjacent Parts of the Continental Shelf, February 22, 1958, Bahrein-Saudi Arabia, reprinted in 28 I.C.L.Q. 519 (1958).

²²Agreement Concerning the Delimitation of the Submarine Areas October 24, 1968, Saudi Arabia-Iran, 696 U.N.T.S. 189.

²³Agreement Concerning the Delimitation, in the Coastal Regions, of the Continental Shelf, June 9, 1965, Denmark-Federal Republic of Germany, 570 U.N.T.S. 91.

²⁴Treaty to Resolve Pending Boundary Differences, November 23, 1970, United States-Mexico, art. V, 23 U.S.T. 373, T.I.A.S. No. 7313.

²⁵See Survey of National Legislation concerning the Sea-Bed and the Ocean Floor, U.N. Doc. A/AC.135/11 at 28, 31, 41, 58 [hereinafter cited as Survey].

Convention,²⁶ and Norway and Italy have referred to the median line.²⁷ Uruguay²⁸ and Iraq²⁹ have decreed to follow the equidistance principle in "adherence to international practice."³⁰ The fact that several of these states find themselves with a smaller continental shelf area under the equidistance principle reflects their belief that the principle is obligatory under international law. Thus, the history discussed above indicates that over nearly a quarter century, the rules of Article 6(2) of the Geneva Convention have been accepted as well-established, binding principles of international law.³¹

Other authorities concur in the role the doctrine of the continental shelf and equitable boundary delimitation now plays in international law:

[T]here is no existing principle or rule of international law which is opposed to what, for the sake of brevity, may be called here the doctrine and the practice of the continental shelf and . . . the latter has now, in any case, become part of international law by unequivocal positive acts of some states, including the leading Maritime Powers, and general acquiescence on the part of others.³²

²⁶Id. at 44, 49.

²⁷Id. at 46, 38.

²⁸8 Int'l Legal Materials 1071 (1969).

²⁹See Survey, supra note 25, at 36-37.

³⁰Id.

³¹E. Brown, supra note 13, at 60-61.

³²Lauterpacht, Sovereignty over Submarine Areas, 27 Brit. Y. B. Int'l L. 376, 376-7 (1950).

. . . the doctrine of the continental shelf . . . is not yet a norm of general customary international law, but in view of the practice of a number of states, the lack of protests, and the general consent of writers. . . it can be considered as a new norm of customary international law in fieri, in states nascendi.³³

It is submitted that the [equidistance principle] has now been accepted in State practice as being the rule the application of which will ensure that, failing agreement between the parties, a delimitation will be carried out in accordance with the 'equitable principles' referred to in the Truman Proclamation.³⁴

Thus, the equidistance principle is customary international law due to prolonged use by many states as evidence of accepted international law.

II. NATURAL PROLONGATION IS NOT A RULE OF INTERNATIONAL LAW AND THEREFORE SHOULD NOT BE APPLIED.

Despite the impressive array of authorities, proclamations and agreements which establishes the equidistance principle as customary international law, the International Court of Justice in the North Sea Continental Shelf Cases³⁵ apparently held to the contrary. However, the North Sea cases are distinguishable from the instant case. Those cases involved a large number of coastal states, one with a markedly concave coastline, situated within a small area. Those factors created a special circumstance which, if not taken into consideration, would have resulted in grievous inequities to the several nations. Here,

³³Kunz, Continental Shelf and International Law: Confusion and Abuse, 50 A.J.I.L. 828, 832 (1956).

³⁴E. Brown, supra note 13, at 62.

³⁵[1969] I.C.J. 3.

the lateral boundary involves only two adjacent states with straight coastlines situated on an expansive seabed area, which does not constitute a special circumstance that would cause the use of the equidistance method to result in inequity.

The Court in refusing to apply the equidistance method speculated that the delimitation principles of the Geneva Convention are appropriate only in the determination of the continental shelf boundary of two adjacent states.³⁶ The Court could find no evidence that the drafters of Article 6 considered the unique problems which may occur in the delimitation of the boundaries of three or more states on the same coastline.³⁷ The Court emphasized that paragraph 2 of Article 6 of the Geneva Convention refers to delimiting boundaries between "two" adjacent states while paragraph 1 relates to median lines between "two or more" opposite states.³⁸ Therefore, the equidistance rule of the Geneva Convention can be applied to the case at bar consistent with the Court's analysis in the North Sea cases. The decision in the North Sea cases to apply the principle of natural prolongation to determine the disputed boundaries drew largely on the Truman Proclamation.³⁹ However, neither the Truman Proclamation nor subsequent practice suggests that the "concept of natural appurtenance has any bearing on the question of lateral delimitation. The concept of natural prolongation belongs to the problem of the seaward extensions

³⁶Id. at para. 54.

³⁷Id.

³⁸Id.

³⁹Id. at para. 101.

of the Continental Shelf, not to its delimitation as between opposite or adjacent States."⁴⁰ The shelf may be a prolongation of a land mass as a whole, but the shelf boundary cannot be said to be determined by the political boundaries of the adjacent states. Furthermore, S. W. Boggs, Special Advisor on Geography to the U.S. State Department, wrote the equidistance principle "would provide the 'equitable principles' for accord between the United States and a neighbor state which are referred to in the [Truman Proclamation]."⁴¹

A more recent case dealing with this problem is the Anglo-French Continental Shelf Case,⁴² in which the Permanent Court of Arbitration was requested to delimit the boundary in question based upon the applicable rules of international law. The Court refers to the International Court of Justice's reliance on the natural prolongation theory but continues:

far as delimitation is concerned, however, this conclusion states the problem rather than solves it. The problem of delimitation arises precisely because in situations where the territories of two or more states abut on a single continuous area of continental shelf, it may be said geographically to constitute a natural prolongation of the territory of each of the States concerned.

⁴⁰E. Brown, supra note 13, at 49.

⁴¹Boggs, Delimitation of Seaward Areas under National Jurisdiction, 45 A.J.I.L. 262 (1951).

⁴²The United Kingdom of Great Britain and Northern Ireland and the French Republic, Delimitation of the Continental Shelf, Court of Arbitration Decision, June 30, 1977; reprinted in S. Oda, The International Law of the Ocean Development. Basic Documents (Supp. Oct. 1978) [hereinafter cited as Anglo-French Case].

Consequently, it is rather in the rules of customary law discussed in the North Sea Continental Shelf cases and which are specifically directed to delimitation that guidance may be sought regarding the principles to be applied in determining the boundary of the continental shelf in such situations.⁴³

This statement has been interpreted to indicate that the "concept of natural prolongation is really irrelevant to the problem of lateral delimitation."⁴⁴ Furthermore, the Court emphasizes that, following Article 6 of the Geneva Convention and equitable principles of customary law, the "force of the cardinal principle of 'natural prolongation of territory' is not absolute, but may be subject to qualification in particular situations."⁴⁵ Most important, the Court in essence recognizes the equidistance principle as customary international law by stating, "the equidistance-special circumstances rule and the rules of customary law have the same object--the delimitation of the boundary in accordance with equitable principles."⁴⁶ Therefore, although the International Court of Justice found the special circumstances in the North Sea required the application of other principles, the equidistance rule more closely applies equitable principles than the natural prolongation theory, as suggested by the Anglo-French case.

⁴³Id. at para. 79.

⁴⁴Brown, The Anglo-French Continental Shelf Case, 16 San Diego L. Rev. 461, 480 (1979).

⁴⁵Anglo-French Case, supra note 42, para. 191.

⁴⁶Id. at para. 70.

III. THERE ARE NO SPECIAL CIRCUMSTANCES SURROUNDING THE CONTINENTAL SHELF DELIMITATION BETWEEN NEW GHANA AND NEW TOGO WHICH WOULD MERIT THE ABANDONMENT OR MODIFICATION OF AN EQUIDISTANT BOUNDARY.

The equidistance method of boundary delimitation requires modification or abandonment if special circumstances exist which result in an inequitable delimitation. However, it must be emphasized that the purpose of the equidistance-special circumstances rule is not to rectify inequities of geography, but to ensure the most equitable delimitation possible based upon objective justifications.⁴⁷ As noted by the delegates to the First United Nations Conference on the Law of the Sea (UNCLOS I), the concept of special circumstances is more limited in scope and less open to arbitrary resolution than the general principle of equity.⁴⁸ In the interests of certainty and fairness, the rule determining the existence of special circumstances should be as specific as possible. "The clearer the ad hoc rule, the more automatic its application, the less the seed of discord is sown."⁴⁹

A. Keta Island, Because Of Its Economic Importance, Its Geographical Identity With New Ghana's Mainland, And Other Factors, Should Be Given Full Effect In Delimiting The Continental Shelf Boundary.

International law gives effect to islands in determining maritime boundaries.⁵⁰ The Geneva Convention⁵¹ and the 1980 Draft Convention on the Law of Sea⁵² incorporate this idea by granting islands a

⁴⁷ [1969] I.C.J. 3, para. 88, 91.

⁴⁸ 6 UNCLOS I OR 106, 143 (1958).

⁴⁹ [1951] I.C.J. 3, 256.

⁵⁰ Hodgson, Islands: Normal and Special Circumstances in Law of the Sea: The Emerging Regime of the Oceans 137-99 (J. Gamble & G. Pontecorvo eds. 1973).

⁵¹ Geneva Convention, supra note 1, art. 1.

⁵² Draft Convention, supra note 14, : 121.

territorial sea, a contiguous zone and a continental shelf. The state practice of measuring the outward limits of maritime zones from islands, rather than the mainland, also reflects this precept of international law.⁵³

Nonetheless, there are instances in which it would be inequitable to take into consideration an island when determining a maritime boundary. Delegates to UNCLOS I and UNCLOS III proposed that each island should be considered on its individual merits.⁵⁴ Factors such as geographical configuration, distance from the mainland, political status, economic importance, and population should be analyzed in determining whether the presence of an island constitutes a special circumstance. These proposals have been followed by the Permanent Court of Arbitration in the Anglo-French case.⁵⁵

The economic importance of Keta Island to New Ghana is significant. Almost one-tenth of New Ghana's population lives and works on Keta Island. Such an important aspect of New Ghana's economy cannot be ignored. As stated by the Court of Arbitration in the Anglo-French case, the stronger the economic value of an island, the less susceptible it is to being categorized as a special circumstance.⁵⁶

⁵³See, e.g. Fisheries Case, United Kingdom v. Norway, [1951] I.C.J. 3 (Court upheld Norway's practice of measuring territorial sea from island basepoints).

⁵⁴See United Kingdom Proposal, U.N. Doc. A/CONF.13/C.4/SR.32 (1958); Romanian Draft Articles, U.N. Doc. A/CONF.62/C.2/L.53 (1974).

⁵⁵Anglo-French Case, supra note 42.

⁵⁶Id. at para. 184.

Keta Island is only one mile from the mainland. In a landmark work on delimitation of seaward areas,⁵⁷ often cited by the International Law Commission and the delegates to UNCLOS I,⁵⁸ a noted geographer recommended that where the mass of water lying between an island and its mainland does not exceed the land mass of the island, as in the present case, the island should be considered as part of the mainland in drawing a lateral boundary. The Channel Islands involved in the Anglo-French case were deemed a special circumstance due to their great distance from the British Coast.⁵⁹ Keta Island, situated closely to New Ghana, is distinguishable. Its geographical identity with the mainland dictates that it be given full effect in drawing an equidistant boundary.

As reflected in Article 1 of the Geneva Convention,⁶⁰ Keta Island is entitled to a continental shelf area under international law. The Court of Arbitration noted the importance of allowing an island its continental shelf area.⁶¹ A delimitation other than an equidistant boundary will deprive Keta Island of the continental shelf area it is entitled to under international law.

In view of these factors, Keta Island should be given full effect in the delimitation of the continental shelf between Applicant and Respondent. To do otherwise would not be an objective application of

⁵⁷Boggs, supra note 41.

⁵⁸See, e.g. [1953] 1 Y. B. Int'l L. Comm'n 128, n. 4.

⁵⁹Anglo-French Case, supra note 42, para. 199.

⁶⁰Geneva Convention, supra note 1, art. 1.

⁶¹Anglo-French Case, supra note 42, para. 197.

equitable principles, but an unjustifiable attempt to rectify the inequities of geography. Such an approach would constitute a decision ex aequo et bono, to which New Ghana has not consented as required by Article 38(2) of the Court's statute.⁶²

B. The Continental Shelf Boundary Agreement Between New Benin And New Togo Should Not Be Considered A Special Circumstance.

In the North Sea cases, the International Court of Justice stated that one of the factors to be taken into consideration in negotiating a continental shelf delimitation was "any other continental shelf delimitations between adjacent States in the same region."⁶³ In that case, the Court was considering simultaneously drawn boundaries. Whether existing boundaries should be granted the same consideration does not necessarily follow. "[T]here seems to be no justification for asserting the relevance of the boundary between State B and C to delimitation of the boundary between A and B."⁶⁴

The Court of Arbitration has interpreted the Court's statement in the North Sea cases to apply only to simultaneously drawn boundaries. In refusing to consider a third boundary that was not under its consideration the Court of Arbitration remarked:

The Court's decision, it scarcely needs to be said, will be binding only as between the Parties to the present arbitration and will neither be binding upon nor create rights or obligations for any third State. . . .⁶⁵

⁶² Statute of the International Court of Justice, June 26, 1945, art. 38, para. 2 T.S. No. 993, 3 Bevens 1153, 1976 Y.B.U.N. 1052.

⁶³ [1969] I.C.J. 3, para. 101.

⁶⁴ Brown, supra note 44, at 523.

⁶⁵ Anglo-French case, supra note 42, para. 28.

No customary international law supports the proposition that the New Togo-New Benin boundary should be considered a special circumstance which modifies the use of an equidistance boundary. "[A] court would be seeking equity, rather than applying equitable principles, if it sought to adjust adjacent boundaries in order to correct the problems caused by a formerly negotiated boundary."⁶⁶

C. The Concept Of Proportionality Between The Coastline Of Two Adjacent States And Their Respective Continental Shelf Areas Is Not A Special Circumstance Which Requires Modification Of An Equidistant Boundary.

In the North Sea cases the Court isolated the length of the adjacent states' coastlines as an important criterion in delimiting their continental shelf boundaries.⁶⁷ The Court stated that the shelf areas should reflect to a reasonable degree the lengths of the adjacent coasts.⁶⁸ Lack of proportionality was construed as a special circumstance in that dispute because several nations, one with a markedly concave coastline, and a small seabed area were involved. Disproportionality should not constitute a special circumstance in this case, which involves only two adjacent states on a straight coastline and an expansive seabed area. The Court in the Anglo-French case refused to regard proportionality as a rule of international law applicable in all cases:

⁶⁶Christie, Coastal Energy Impact Program Boundaries on the Atlantic Coast: A Case Study of the Law Applicable to Lateral Seaward Boundaries, 19 Va. J. Int'l L. 841, 859 (1979).

⁶⁷[1969] I.C.J. 3, para. 98.

⁶⁸Id.

In particular, this Court does not consider that the adoption in the North Sea Continental Shelf cases of the criterion of a reasonable degree of proportionality between the areas of continental shelf and the lengths of the coastlines means that this criterion is one for application in all cases.⁶⁹

International legal authorities also have viewed with skepticism the proposition that proportionality is a rule of international law:

[T]he Court isolates one factor--length of coast--and uses this as the criterion of equitable apportionment. Why not use population, per capita income, land area, dependence of industry on Shelf natural resources, relative poverty of land resources?⁷⁰

Therefore, this Court should not deem the lack of proportionality between Respondent's coastline and its continental shelf as a special circumstance barring the use of the equidistance method.

D. The Historical Exploitation By Ethnic Groups Of Sedentary Fisheries In The Area Around New Lome Rock Does Not Constitute A Special Circumstance.

The Convention on the Territorial Sea and Contiguous Zone explicitly states that historic title is to be considered a special circumstance which may require modification or abandonment of an equidistant boundary.⁷¹ In marked contrast, the Geneva Convention fails to include historic title as a special circumstance in continental shelf delimitations.⁷² This distinction is based upon the

⁶⁹ Anglo-French case, supra note 42, para. 99.

⁷⁰ E. Brown, supra note 13, at 50.

⁷¹ Convention on the Territorial Sea and Contiguous Zone, supra note 2, art. 12.

⁷² Geneva Convention, supra note 1, art. 6.

long-standing international legal principle of the freedom of the high seas.⁷³ Whereas international law did recognize the possibility of securing exclusive, historic rights in fisheries within the territorial sea, it was impossible to obtain exclusive fishery rights beyond that limit. The concept that the high seas, including the seabed below, were free to all prohibited a claim of property rights in the high seas.

The fishing rights which Respondent has acquired are similar to those asserted by the United Kingdom before the International Court of Justice in the Fisheries Jurisdiction Case.⁷⁴ In that case, Iceland unilaterally extended its fishery zone to 50 miles beyond its baseline, into an area in which England had established nonexclusive rights in the fishery resources. As in the present case, the English strongly depended on these resources for their livelihood. Nonetheless, the Court held that England's rights could not preclude an extension of Iceland's fishery zone boundary, but only required Iceland to permit British fishing vessels to continue to fish in the area for a limited period. Thus, under the principles of international law, Respondent's fishery rights are not exclusive and cannot be asserted to circumvent an equidistant boundary.

E. The Presence Of New Lomé Rock Does Not Constitute A Special Circumstance In Delimitation Of The Continental Shelf.

New Lomé Rock is incapable of sustaining habitation and does not support any economic activities on its surface area. Unlike Keta Island's relationship to New Ghana, it is not geographically identifiable

⁷³1 Calvo, *Droit International* 481 (1896); Lauterpacht, *supra* note 32, at 399-415.

⁷⁴United Kingdom v. Iceland, [1974] I.C.J. 3.

with Respondent's mainland. International law generally views rocks as unimportant for continental shelf delimitation as reflected in the Geneva Convention, which limits continental shelf area to islands.⁷⁵

The 1980 Draft Convention restates this rule of law even more specifically:

"Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."⁷⁶

Thus, under international law, New Lome Rock should have no relevance in the delimitation of the continental shelf boundary between Applicant and Respondent.

F. The Mineral Deposit Located In The Axim Block Does Not Constitute A Special Circumstance.

The International Court of Justice in the North Sea cases referred to the presence of a mineral deposit in a boundary area as a possible special circumstance to be considered in applying the equidistance method.⁷⁷ The Court was concerned about the preservation of the unity of a deposit in which one party has acquired rights.⁷⁸ The equidistant boundary drawn by New Ghana leaves the unity of the Axim Block mineral deposit undisturbed; therefore, the deposit does not constitute a special circumstance.

The asserted boundary of New Togo dissects the Axim Block mineral deposit in direct contravention of the Court's announcement that the unity of a mineral deposit in which one of the parties has rights should

⁷⁵ Geneva Convention, supra note 1, art. 1.

⁷⁶ Draft Convention, supra note 14, art. 121, para. 3.

⁷⁷ [1969] I.C.J. 3, para. 97.

⁷⁸ Id.

be preserved. New Ghana acquired its rights in the mineral deposit through extensive exploration activities and the commencement of development activities, and has incurred substantial expenses and binding legal obligations as a result of its activities. New Togo did not protest the authority exercised by New Ghana in the Axim Block. Allowing New Togo at this time to divest New Ghana of its rights in the Axim Block would be inequitable and prejudicial to New Ghana. The equidistant boundary drawn by New Ghana is the best means to preserve the unity of the Axim Block mineral deposit and to protect New Ghana's acquired rights in these resources.

IV. NEW TOGO, BY ITS ACQUIESCENCE IN NEW GHANA'S ACTIONS, IS ESTOPPED FROM DENYING THE EQUIDISTANT BOUNDARY.

Even if this Court determines that equidistance is not the appropriate rule of international law to apply in delimiting the continental shelf boundary between Applicant and Respondent, the principle of estoppel operates to preclude Respondent from denying its application. The doctrine of estoppel is one of the general principles of law recognized by civilized nations applicable by the International Court of Justice in conformity with its Statute.⁷⁹ The essential aim of estoppel is to prevent a party from benefitting from its own inconsistency to the detriment of another party who has in good faith relied upon a representation of fact made by the former party. Representation of fact can occur through a spoken or written statement, conduct, or acquiescence as represented by an absence of protest.⁸⁰

⁷⁹Statute of the International Court of Justice, supra note 62, art. 28, para. 1, subpara. c.

⁸⁰See, e.g. Fisheries Case, United Kingdom v. Norway, [1951] I.C.J. 3, (United Kingdom estopped from denying Norwegian claims).

In 1951 the colonial government of New Ghana established a roadstead four miles south of the eastern tip of Keta Island, in an area now claimed by New Togo. New Ghana citizens have used the roadstead frequently and continuously since that date. The government published charts showing the roadstead's location and use. New Togo had full knowledge of these acts, and at no time protested these acts as an infringement upon New Togo's territory. New Togo verified its belief that the roadstead was rightfully under the authority of Applicant by requesting the permission of Applicant to use the roadstead.

Similarly, Respondent failed to protest the exploration activities conducted by New Ghana in the Axim Block. New Togo had full knowledge of these acts they now claim occurred in their territory and went as far as to express its belief that Respondent's activities would be beneficial to both countries. New Ghana relied on this acquiescent conduct of New Togo, thereby incurring great expense and entering into a binding legal contract with a development company.

The binding effect of acquiescent acts is set out in the 1909 Grisbardana Case between Norway and Sweden.⁸¹ In that case, the Tribunal noted that Sweden had stationed a light boat and a large number of beacons in the disputed area without any protest from the Norwegians. Norway's acquiescence in these acts estopped them from denying a boundary which gave Sweden the area in which it had acted. In the 1951 Fisheries Case,⁸² the International Court of Justice

⁸¹Norway v. Sweden, [1916] 1 Hague Ct. Rep. (Scott) 121 (1909).

⁸²[1951] I.C.J. 3.

construed the failure of the United Kingdom to protest Norway's open usage of straight baselines as acquiescence in such conduct. Thus, the United Kingdom was precluded from denying the boundary which arose from such use.

The principle of estoppel does not allow Respondent to deny New Ghana ownership of the areas delimited by an equidistant boundary in which New Ghana has exercised authority. International law demands consistency in conduct where the result of inconsistency would be to prejudice another party, as would be the result here.

V. EVEN IF EQUIDISTANCE IS NOT CUSTOMARY INTERNATIONAL LAW AND NEW TOGO IS NOT ESTOPPED FROM DENYING AN EQUIDISTANT BOUNDARY, A BOUNDARY BASED ON NATURAL PROLONGATION AND HISTORIC RIGHTS WOULD GRANT NEW GHANA THE BOUNDARY IT CLAIMS BY VIRTUE OF THE ANCIENT NEW OTI RIVERBED.

Should the appropriate boundary between the parties be determined upon the basis of natural prolongation and historic rights, this Court still must find a boundary similar to the one drawn under equidistance methods by virtue of the ancient New Oti riverbed. The International Court of Justice set forth the natural prolongation theory in its North Sea cases:

What confers the ipso jure title which international law attributes to the coastal State in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal State already has dominion--in the sense that, although covered with water, they are a prolongation or continuation of that territory, an extension of it under the sea. From this it would follow that whenever a given submarine area does not constitute a natural--or the most natural--extension of the land territory of a coastal State, even

though that area may be closer to it than it is to the territory of any other State, it cannot be regarded as appertaining to that State. . . .⁸³

The most natural prolongation of the continental shelf area of New Togo is not the southerly boundary which it claims, but the indenture of the ancient New Oti riverbed. The importance of the New Oti natural configuration is illustrated by its use in determining the interior land boundary between New Togo and New Ghana. This feature is obviously a natural boundary marker which has separated the peoples of the two countries since ancient times. Since the New Oti Riverbed is the most natural geological boundary of the land mass, it continues the natural prolongation of New Ghana into the continental shelf area. As the Court stated, it is the most natural extension of land territory which must be followed under the natural prolongation theory. The Court supported its theory by noting the indenture off the coast of Norway which delimited Norway's continental shelf.⁸⁴ The southerly boundary claimed by New Togo is an unnatural, man-made prolongation. If the Court applies a natural prolongation theory, it must do so according to the method prescribed in the North Sea cases. The most natural prolongation of the land territories of New Togo and New Ghana follows, as it does on land, the ancient riverbed of the New Oti River.

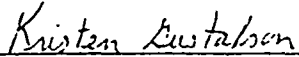
⁸³[1969] I.C.J. 3, para. 43.

⁸⁴Id. para. 45.

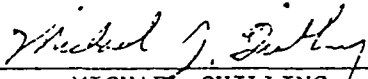
CONCLUSION

For the reasons stated above, it is respectfully requested that this honorable Court issue a declaration stating that the equidistance principle is the appropriate method of delimitation to be used in determining the continental shelf boundary between Applicant and Respondent.

RESPECTFULLY SUBMITTED:



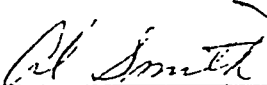
KRISTEN GUSTAFSON



MICHAEL QUILLING



THEODORE POUND



AL SMITH