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The Problem: Case Concerning the Delimitation of a Maritime Boundary on The Continental Shelf - New Ghana v. New Togo

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**THE 1981 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION
EASTERN REGIONAL FINAL***

THE PROBLEM**

*Special Agreement For Submission Of The Case - New Ghana v. New Togo****

The Foreign Minister of the Republic of New Ghana and the Foreign Minister of the Republic of New Togo, having been designated by their respective governments to negotiate and agree to the terms of a *compromis* by which there will be submitted to the International Court of Justice the controversy that has arisen concerning the location of their mutual boundary over the continental shelves adjacent to their states in the Atlantic Ocean, having agreed in accordance with the friendly and cordial sentiments that unite their two states on the following declaration:

FIRST: It is agreed between the parties to call upon the International Court of Justice to decide the following issue:

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

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***Prepared exclusively for Jessup Moot Court Competition.

principles, rules and criteria applicable to the delimitation of said boundary between the Applicant and the Respondent states in the Atlantic Ocean and how should the parties apply said principles, rules and criteria to the instant facts in order to determine the location of said boundary and their rights in the areas in dispute?

SECOND: It is agreed between the parties, for the sole purpose of this case, that the following statement of facts is true:

1. The Republic of New Ghana, Applicant, is an independent sovereign state, having gained its independence from the United Kingdom of Great Britain and Northern Ireland in 1957. It is located on the western coast of the Continent of Africa (see Map I) and includes a territory of approximately 92,100 square miles with a 300 nautical mile sea coast. Its population of approximately 11,000,000 people earn an average annual per capita income of approximately U.S. \$790. The principal products of the country are agricultural (including cacao and coffee), mining (including bauxite, diamonds, gold and manganese) and forestry (including mahogany). It claims a 12 nautical mile territorial sea and a 200 nautical mile exclusive fishery zone and sovereign rights over the resources of its adjacent continental shelf.

2. The Republic of New Togo, Respondent, is an independent sovereign state, having gained its independence from the Republic of France in 1960. It is located on the western coast of the Continent of Africa (see Map I) and includes a territory of approximately 22,000 square miles with a 50 nautical mile sea coast. Its population of approximately 2,500,000 people earns an average annual per capita income of approximately U.S. \$300. The principal products of the country are agricultural (including cacao, cassava coffee, cotton, palm kernels, oil and peanuts), fishing, and mining (phosphates). It claims a 12 nautical mile territorial sea and a 200 nautical mile exclusive fishery zone and sovereign rights over the resources of its adjacent continental shelf.

3. Because of disputes involving fishing and navigation in the New Oti River, the French and British governments entered into a treaty in 1948 establishing the boundary between the colonies which now comprise the states party to this case. The boundary 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 Ocean." At the time of that agreement both states had established territorial seas of three nautical miles in breadth around their territories, including their colonies, protectorates and trust territories. The parties to this case agree that they are bound by the 1948 boundary agreement.

4. Beginning with the colonial period and continuing to the pre-

sent, the territory of the Applicant has produced for export substantial quantities of hard minerals which have been mined in the interior of the territory. In order to facilitate this trade, a roadstead was established by the United Kingdom in 1951. This roadstead was a one mile square area which was located such that its northern boundary was four miles south of the eastern tip of Keta Island. From that date to the present all the hard minerals produced on the territory of the Applicant have been shipped down the New Oti River to the roadstead by shallow draft vessels and then transferred to large ocean going vessels. When the roadstead was established, a series of buoys were placed along the navigable channel which runs from the New Oti River to the eastern tip of Keta Island where it turned south to the roadstead. For most of its length this buoyed channel is located between one half and one nautical mile north of Keta Island. Nautical charts produced earlier by the United Kingdom and later by the Applicant cover the area in which the channel and roadstead are located. They show the aids to navigation and the roadstead as well as all other facts relevant to safe navigation in the waters south of the coast of the Applicant and the waters 25 nautical miles to the east of Keta Island. Once in 1976 and twice in 1977 the Respondent requested permission from the Applicant to use the roadstead for the transfer of ocean cargo bound for New Lomé. Permission was granted, and the cargo was transferred at the roadstead from the three ships.

5. Keta Island, part of the territory of the Applicant, is a sand island located south of Fort Oti. It is approximately 15 miles in length and of variable width not exceeding four miles. For about one half of its length it lies due south of the mainland coast of the Respondent. Its eastern tip is six nautical miles south of the mainland coastline of the Respondent. The Island is connected to Fort Oti by a one mile vehicular bridge over the water at the western end of the Island. A population of 100,000 persons lives on the island, most of whom earn their living at Fort Oti or work in the Island's beach resorts.

6. New Lomé is the capital of the Respondent; it is located on the Atlantic Ocean coast five miles east of the New Oti River. In addition to serving as the national capital, it is a major port for the Respondent's fishermen who fish in the adjacent waters. Important and valuable fin fisheries and oyster beds are located in the vicinity of New Lomé Rock, situated 25 nautical miles from the coast of the Respondent. (See Map II). Coastal ethnic groups located in what is now the territory of the Respondent have historically exploited the living resources found in the area around New Lomé Rock. Part of the area is located more than 12 nautical miles from the Rock. These groups continue to actively exploit the living resources in this vicinity.

7. New Lomé Rock is an uninhabitable rock island having an area of less than one acre exposed at mean high tide and slightly more at mean low tide. The parties to this case agree that the Island is part of the territory of the Respondent.

8. New Benin is a state located to the east of the Respondent. In 1973 New Benin commenced negotiations with its neighbors to the east and west to delimit their lateral seaward boundaries over the adjacent continental shelf. The negotiations produced agreements describing those boundaries as running "due south" from their respective land boundaries. Treaties establishing these boundaries entered into force in 1975. The location of those boundaries is illustrated on Map III by dashed lines drawn seaward from the coastline.

9. In 1973 the Applicant's Department of Natural Resources contracted with the Sea-Oil Petroleum Company of the United Kingdom to explore a ten mile square area in the Atlantic Ocean identified as Axim Block. The northern boundary of Axim Block is located 15 nautical miles south of New Lomé Rock. (See Map II). The results of that exploratory activity indicated that commercially exploitable quantities of hydrocarbons are located in that block. In 1975 the Applicant entered into a joint venture agreement with Sea-Oil to exploit the petroleum located in Axim Block. Drilling has taken place, but the area is not yet in commercial production. Beginning in 1973 and continuing to the present, newspapers of both countries have published a series of articles reporting on the developments at Axim Block. The first official communication between the parties on the subject took place in 1978 when the Respondent delivered a note to the Applicant protesting the activity at Axim Block. Prior to that date newspaper articles reported that high government officials of the Respondent expressed the opinion that the Applicant's development of the hydrocarbons at Axim Block would benefit the economics of both countries.

10. There is reason to believe that hydrocarbons may be found in the area adjacent to Axim Block. In addition, a salt dome located further south indicates that the presence of large quantities of hydrocarbons is a distinct possibility although no exploration or exploitation has yet taken place. (See Map II).

11. In 1978 the Applicant entered into domestic law "The New Ghana Ocean Resources Act" which establishes a system for regulating the exploitation of offshore living and nonliving resources. That act describes the eastern boundary of the off-shore area subject to the jurisdiction of the Applicant as "an equidistant line between the habitable land territories of New Ghana and New Togo." A map issued by the Applicant's Department of Natural Resources in 1978 shows the location of the line described in the legislation. That line is illustrated on

Map III by the dotted line drawn seaward from the coastline. In 1978 the Respondent protested the enactment of this law and the issuance of the official map.

12. The New Togo offshore boundary lines were codified by the Respondent in a 1979 domestic statute which was devoted to the establishment of a domestic regulatory authority to manage resource exploitation in the Respondent's offshore areas. The eastern offshore boundary described in the statute is identical to that described in the agreement between the Respondent and New Benin referred to in paragraph seven above. The offshore boundary with the Applicant is described as a line which runs "east from the New Oti River along the Thalweg to a point three nautical miles east of Keta Island, thence in a south-westerly direction along the southern shore of Keta Island at a distance of three nautical miles from said island until it meets a line drawn due south from the Thalweg at the mouth of the New Oti River, thence southward along said line to the limit of national jurisdiction." (See the dashed/dotted line on Map III). Precatory language in the statute states that "the line describes the ocean area which represents the western boundary of the natural prolongation of the land territory [of the Respondent] and the historic rights [of the Respondent] in the area so described." In 1979 the Applicant protested the assertion of this boundary line.

13. Studies by geologists and geomorphologists have established that the seabed and subsoil of the continental margin adjacent to the states party to this case have similar sedimentary characteristics. It has been established that the shoreline has receded over the last 2,500 years as a result of rising sea levels. Studies of silt deposits and the erosion of seabed rock formation have shown that during the earlier periods of low sea level the New Oti River had followed a course which generally ran in a south-easterly direction from the vicinity of the present river mouth into what is now ocean area (but which was land area in earlier times). The general location of the ancient bed of the New Oti River is shown on Map IV.

14. On February 1, 1980, the Respondent entered into a joint venture with a private foreign corporation to engage in the exploitation of hydrocarbon resources located in the eastern half of Axim Block during the period July 1, 1981 to June 30, 1991. The Applicant has condemned this action and has threatened to use all means available to it, including force if necessary, to prevent the activity from taking place. In the course of the Applicant's discussions with the Respondent about this matter, the Applicant has informed the Respondent that citizens of the Respondent who engage in commercial fishing or oyster-ing in areas within the jurisdiction of the Applicant after May 15, 1981

must have a valid fishing license from the Applicant and must conform to all of the Applicant's regulations.

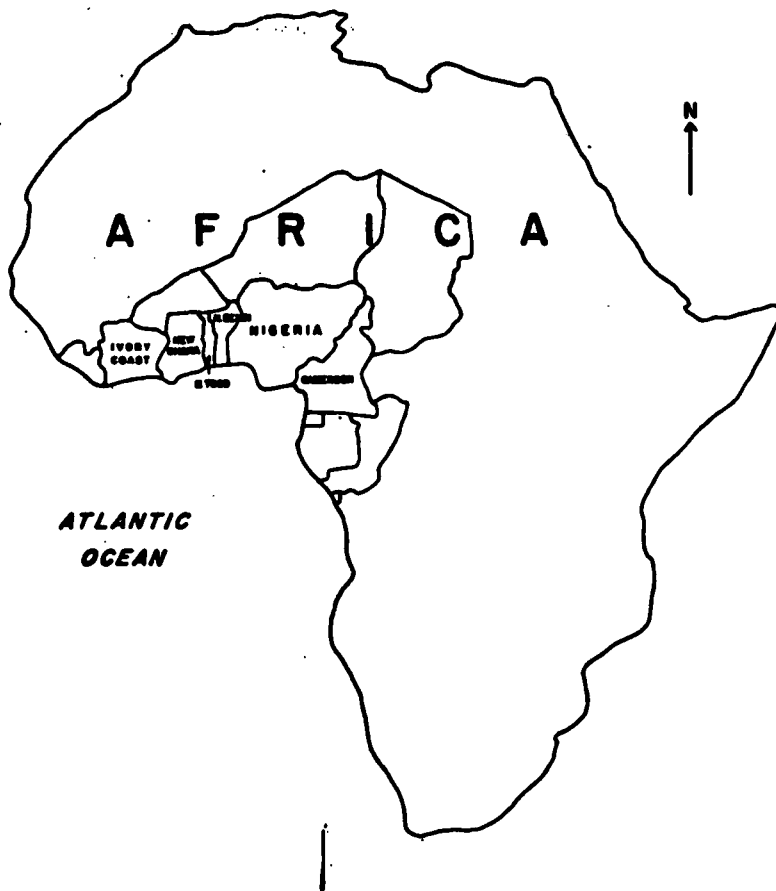
15. The Applicant has been a party to the Convention on the Continental Shelf and the Convention on the Territorial Sea and the Contiguous Zone since 1965. The Respondent has neither signed nor become a party to either convention. Both states have participated in the negotiations at the Third United Nations Conference on the Law of the Sea but have not indicated whether they would sign or become parties to the new Law of the Sea Convention which was not complete at the time that this *compromis* was executed. Both parties are members of the United Nations.

Signed this Fourth Day of September 1980.

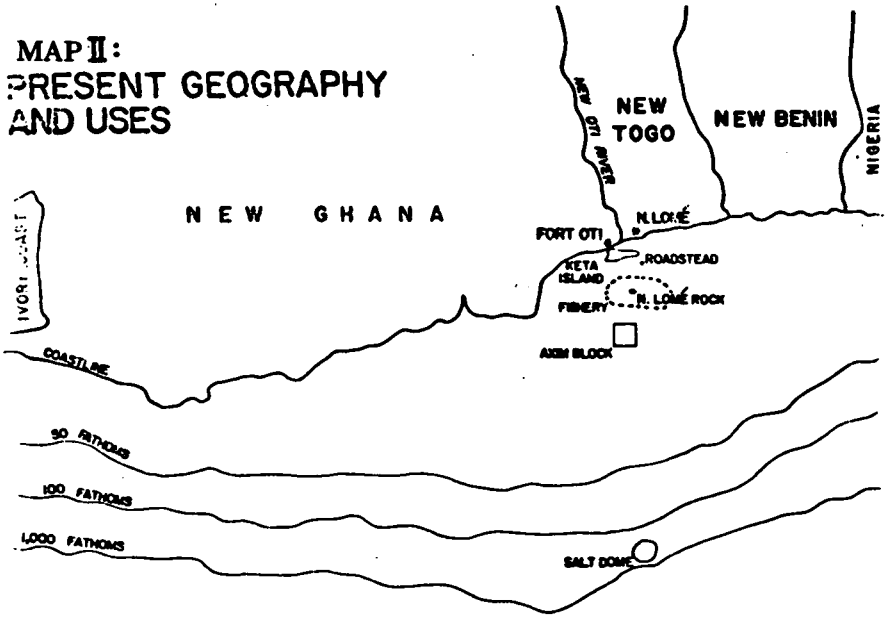
J.A. Mensah
Foreign Minister
Republic of New Ghana

Etienne Dadjio
Foreign Minister
Republic of New Togo

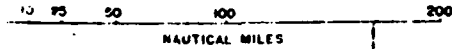
MAP I: AFRICAN CONTINENT



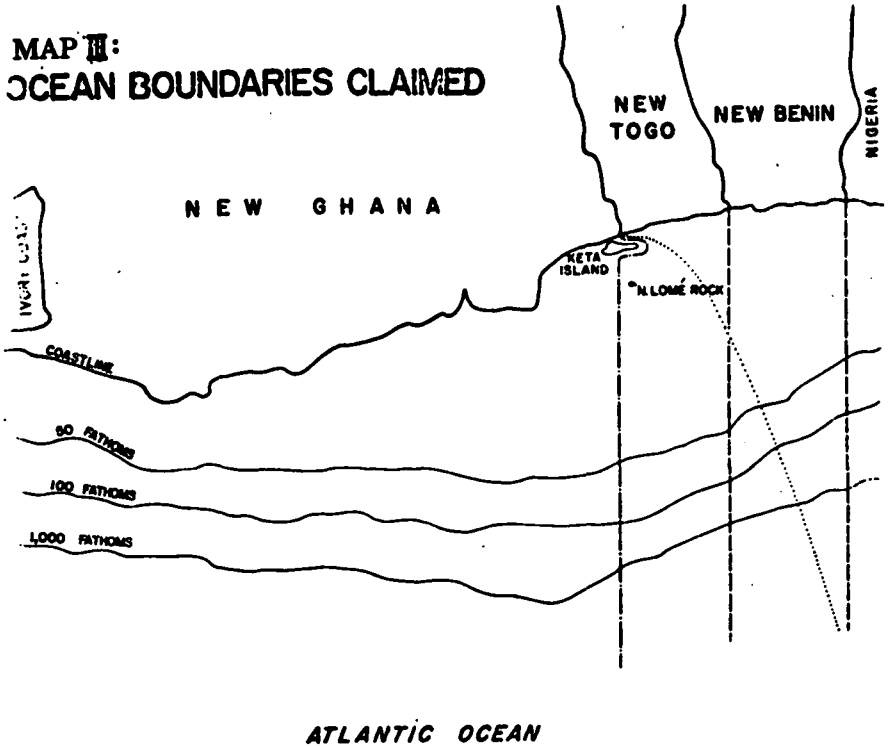
MAP II: PRESENT GEOGRAPHY AND USES



ATLANTIC OCEAN



MAP III: OCEAN BOUNDARIES CLAIMED



ATLANTIC OCEAN

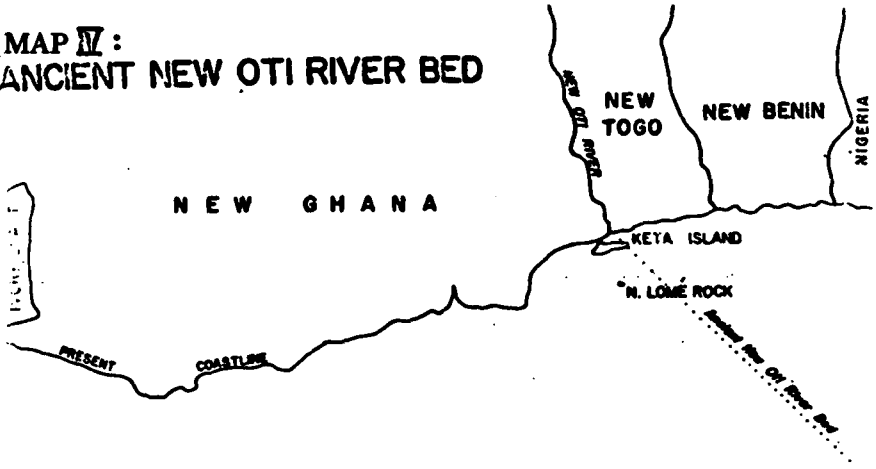


LEGEND

- 1978 Line in dispute issued by New Ghana
- 1979 Line in dispute issued by New Togo
- New Benin Treaty Lines



**MAP IV:
ANCIENT NEW OTI RIVER BED**



ATLANTIC OCEAN

