

1981

# Memorial, for the Government of New Ghana

Follow this and additional works at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law)

Part of the [Law Commons](#)

---

## Recommended Citation

(1981) "Memorial, for the Government of New Ghana," *NYLS Journal of International and Comparative Law*: Vol. 2 : Iss. 3 , Article 5.  
Available at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law/vol2/iss3/5](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol2/iss3/5)

This THE 1981 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION - EASTERN REGIONAL FINAL is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

**IN THE INTERNATIONAL COURT OF JUSTICE**

**\* \* \* \* \***

**Pleadings**

**\* \* \* \* \***

**THE CONTINENTAL SHELF DELIMITATION CASE  
(NEW GHANA v. NEW TOGO)**

**MEMORIAL ON THE MERITS  
OF THE DISPUTE  
SUBMITTED BY THE GOVERNMENT OF  
NEW GHANA\***

**\* \* \* \* \***

**Spring 1981 The 1981 Philip C. Jessup International Law Moot Court  
Competition**

**Team Seven:  
Elizabeth S. Benson Laurie K. Chisolm  
Mark A. Conrad Margaret A. Enloe  
Svetlana V. Petroff**

---

**\*Copyright 1981 by the Association of Student International Law Societies. Reprinted by permission.**

**TABLE OF CONTENTS****INDEX OF AUTHORITIES****JURISDICTION****STATEMENT OF FACTS****QUESTIONS PRESENTED****SUMMARY OF ARGUMENT****ARGUMENT & AUTHORITIES**

**I. NO PRIOR INTERNATIONAL AGREEMENTS AFFECT  
THE DELIMITATION OF THE CONTINENTAL  
SHELF ADJACENT TO NEW GHANA AND NEW  
TOGO**

**A. THE 1948 TREATY ESTABLISHES NO  
OFFSHORE BOUNDARY BETWEEN NEW  
GHANA AND NEW TOGO**

1. *According to the Textual Approach, the 1948 Treaty Establishes an Internal Boundary Between New Ghana and New Togo Only*
2. *According to the Teleological Approach, the 1948 Treaty Establishes an Internal Boundary Between New Ghana and New Togo Only*
3. *No Subsequent State Practice Indicates that the 1948 Treaty was Extended to Establish an Offshore Boundary Between New Ghana and New Togo*

**B. THE LATERAL CONTINENTAL SHELF  
BOUNDARY BETWEEN NEW GHANA AND NEW  
TOGO IS TO BE DETERMINED WITHOUT  
REFERENCE TO THE 1975 TREATIES  
BETWEEN NEW TOGO, NEW BENIN AND  
NIGERIA**

1. *Under General Principles of International Law, New Ghana Cannot Be Bound by Agreements to Which It Is Not a Party*

2. *The 1975 Treaties are Not Relevant Considerations Affecting the Lateral Continental Shelf Delimitation Between New Ghana and New Togo*
3. *The 1975 Treaties Are Not Sufficient Evidence of State Practice to Compel a Similar Boundary Delimitation Between New Ghana and New Togo*
- II. *UNDER BOTH CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW, THE MEDIAN/EQUIDISTANCE PRINCIPLE IS APPLIED TO DELIMIT THE CONTINENTAL SHELF BETWEEN ADJACENT STATES UNLESS THERE IS A FINDING OF SPECIAL CIRCUMSTANCE WHICH WARRANTS A DEVIATION*
- III. *KETA ISLAND MUST BE GIVEN "FULL EFFECT" IN DELIMITING THE SHELF*
  - A. *SINCE THE BASELINES FROM WHICH CONTINENTAL SHELVES ARE DELIMITED INCLUDE ISLANDS, IT VIOLATES TREATY AND CUSTOMARY LAW TO EXCLUDE KETA ISLAND FROM THIS BASELINE*
  - B. *SINCE KETA ISLAND LIES IN SUCH CLOSE PROXIMITY TO ITS MAINLAND, CUSTOMARY INTERNATIONAL LAW MANDATES THAT IT BE GIVEN FULL EFFECT*
  - C. *SINCE THE SIZE, LOCATION, POPULATION AND ECONOMIC TIES OF KETA MAKE IT AN INTEGRAL PART OF THE MAINLAND, IT MUST BE GIVEN FULL EFFECT*
- IV. *THERE ARE NO SPECIAL CIRCUMSTANCES WITHIN THE DISPUTED AREA REQUIRING DEVIATION FROM THE EQUIDISTANT LINE*
  - A. *THERE ARE NO GEOGRAPHICAL FEATURES CONSTITUTING A SPECIAL CIRCUMSTANCE*
    1. *There Are No Significant Concavities, Convexities or Substantial Sinuositities Requiring Deviation From the Equidistant Line*
    2. *Because the Projection of Keta Island Does Not Constitute a "radical, unnatural or unreasonable distortion," of the Equidistant Line It Is Not a Special Circumstance Requiring Deviation*

3. *There Is No Rule or Criterion in General Acceptance by Which New Togo May Be Deemed a Geographically Disadvantaged State*
- B. INEQUITABLE ALLOCATION OF MINING RESOURCES DOES NOT CONSTITUTE A SPECIAL CIRCUMSTANCE**
1. *International Law Does Not Require an Equitable Allocation of Resources*
  2. *Unity of Deposits and New Ghana's Commitment to Exploration Compel Its Continued Control*
  3. *New Togo Has Violated Its Duty to Negotiate in Good Faith*
- C. RESPONDENT'S FISHING ACTIVITIES AROUND NEW LOMÉ ROCK DO NOT REQUIRE DEVIATION FROM THE EQUIDISTANT LINE**
1. *New Togo's Fishing Activity Will Not Be Impaired by New Ghana's Delimitation*
  2. *New Ghana Is In Need of the Fishing Area*
  3. *New Ghana Is in a Better Position to Preserve the Ecological Balance of the Fisheries in the Area*
- V. EVEN IF THIS COURT REJECTS THE EQUIDISTANCE PRINCIPLE FOR DELIMITING THE CONTINENTAL SHELF, EQUITABLE PRINCIPLES REQUIRE THE MAINTENANCE OF THE EQUIDISTANT LINE DRAWN BY NEW GHANA**
- A. THE EQUIDISTANT LINE IS MANDATED BY THE THEORY OF NATURAL PROLONGATION**
- B. THE LINE DRAWN BY NEW TOGO FAILS TO CONSIDER ALL THE RELEVANT FACTORS REQUIRED BY EQUITABLE PRINCIPLES**
1. *No Account Was Taken of the Roadstead or Charts Issued by New Ghana*
  2. *Since Keta Island Is Entitled to Its Own Continental Shelf, the Three-Mile Bank Which New Togo Has Drawn Violates Customary International Law*

- C. THE EQUIDISTANCE PRINCIPLE,  
FUNDAMENTAL TO THE ACHIEVEMENT OF  
EQUITABLE RESULTS, SHOULD BE APPLIED  
TO THE FACTS OF THIS CASE
- VI. *THE GRANTING OF INTERIM RELIEF BY THIS  
COURT WOULD BE INAPPROPRIATE*
- VII. *PRAYERS FOR APPROVAL OF THE APPLICATION  
AND FOR NECESSARY ORDERS*

## INDEX OF AUTHORITIES

## A. TREATIES AND OTHER INTERNATIONAL AGREEMENTS

1. European Fisheries Convention, [1976] Gr. Brit. T.S. No. 35 (Cmd.\_\_\_\_\_).
2. Treaty Between New Benin and New Togo, *entered into force* 1975.
3. Treaty Between New Benin and Nigeria, *entered into force* 1975.
4. Vienna Convention on the Law of Treaties, *done* May 22, 1969, U.N. Conf. Doc. A/CONF. 39/27 (*entered into force* Jan. 27, 1980).
5. Convention on Transit Trade of Landlocked States, [1965] 597 U.N.T.S. 42.
6. Convention on the Continental Shelf, *done* Apr. 29, 1958, 1 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.
7. Convention on Fishing and Conservation of the Living Resources of the High Seas, *done* Apr. 29, 1958, 1 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.
8. Convention on the High Seas, *done* Apr. 29, 1958, 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.
9. Convention on the Territorial Sea and the Contiguous Zone, *done* Apr. 29, 1958, 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.
10. Treaty Between United Kingdom and France (1948).
11. Statute of the International Court of Justice, Oct. 24, 1945, 19 U.S.T. 5450, T.I.A.S. No. 6529.
12. United Nations Charter.
13. Convention and Statute on the Freedom of Transit, [1921] 7 L.N.T.S. 11.

## B. CASES

1. Aegean Sea Continental Shelf Case, Interim Protective Order of Sept. 11, 1976, [1976] I.C.J. 3.
2. Case of Temple of Preah Vihear, [1962] I.C.J. 16.
3. Fisheries Jurisdiction Case (United Kingdom v. Iceland) [1974] I.C.J. 3.
4. Fisheries Jurisdiction Case (United Kingdom v. Norway), [1951] I.C.J. 116
5. Grisbadarna Case (Norway v. Sweden), 1 Hague Ct. Rep. (Scott) 121 (1916).
6. North Sea Continental Shelf Cases [1969] I.C.J. 3.

7. North Sea Continental Shelf Cases (Pleadings), Counter Memorial of Denmark, I.C.J. Pleadings 259 (1968).
  8. United Kingdom-France Delimitation of the Continental Shelf Arbitration Agreement, Decision of June 30, 1977, *reprinted in* 18 Int'l Legal Materials 397 (1979).
- C. **STATUTES**
1. Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1811 (Supp. 1979).
- D. **TREATISES**
1. J. Andrassy, *International Law and the Resources of the Sea* (1970).
  2. I. Brownlie, *Principles of Public International Law* (3d ed. 1979).
  3. E. Brown, *The Legal Regime of the Hydrospace* (1971).
  4. B. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953).
  5. C. J. Colombus, *The International Law of the Sea* (6th rev. ed. 1967).
  6. Food and Agricultural Organization, *World Food Survey* (1946).
  7. M. McDougal & W. Burke, *The Public Order of the Oceans* (1962).
  8. L. McNair, *The Law of Treaties* (2d rev. ed. 1969).
  9. D. O'Connell, *1 International Law* (2d ed. 1970).
  10. L. Oppenheim, *International Law* (8th ed. H. Lauterpacht 1955).
  11. G. Schwarzenberger, *1 International Law as Applied by International Courts and Tribunals* (1957).
  12. G. Tunkin, *Theory of International Law* (1974).
  13. M. Whiteman, *4 Digest of International Law* (1965).
- E. **ESSAYS**
1. Hodgson, *Islands: Normal and Special Circumstances*, in *Law of the Sea: The Emerging Regime of the Oceans* (J. Gamble & G. Pontecorvo eds. 1974).
- F. **JOURNALS**
1. 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 (1979).
  2. Amin, *Customary Rules of Delimitation of the Continental Shelf: The Gulf States Practice*, 11 J. Mar. L. & Com. 509 (1980).



3. Blecher, *Equitable Delimitation of Continental Shelf*, 73 Am. J. Int'l L. 60 (1979).
4. Brown, *The Anglo-French Continental Shelf Case*, 16 San Diego L. Rev. 461 (1979).
5. Delin, *Shall Islands Be Taken Into Account When Drawing the Median Line According to Article 6 of the Convention on the Continental Shelf?*, 41 Nordisktidskrift for Int'l Rel. 205 (1971).
6. Ely, *Seabed Boundaries Between Coastal States: The Effect to be Given Islets as "Special Circumstances"*, 6 Int'l Law. 219 (1972).
7. Fitzmaurice, *The Law and Procedures of the International Court of Justice: Treaty Interpretation and Certain Other Treaty Points*, 33 Brit. Y.B. Int'l L. 203 (1957).
8. Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea*, 8 Int'l & Comp. L.Q. 73 (1959).
9. Goldie, *The North Sea Continental Shelf Cases — A Ray of Hope for the International Court*, 16 N.Y.L.F. 325 (1970).
10. Gross, *The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean*, 71 Am. J. Int'l L. 31 (1977).
11. Hodgson & Smith, *The Informal Single Negotiating Text (Committee II): A Geographical Perspective*, 3 Ocean Dev. & Int'l L. 225 (1976).
12. Jacovides, *Three Aspects of the Law of the Sea: Islands, Delimitation and Dispute Settlement*, 3 Marine Pol'y 278 (1979).
13. Karl, *Islands and the Delimitation of the Continental Shelf: A Framework for Analysis*, 71 Am. J. Int'l L. 642 (1977).
14. Keith, *Succession to Bilateral Treaties by Seceding States*, 61 Am. J. Int'l L. 521 (1967).
15. MacGibbon, *Estoppel in International Law*, 7 Int'l & Comp. L. 468, 473 (1958).
16. Merrills, *The United Kingdom-France Continental Shelf Arbitration*, 10 Cal. W. Int'l L.J. 314 (1980).
17. Nelson, *Equality and the Delimitation of Maritime Boundaries*, 11 Iranian Rev. Int'l Rel. 197 (1978).
18. Padwa, *Submarine Boundaries*, 9 Int'l & Comp. L.Q. 628 (1960).

19. Swan, *The Gulf of Maine Dispute: Canada and the United States Delimit the Atlantic Continental Shelf*, 10 Nat. Resources Law. 405 (1977).
20. Weissberg, *Maps as Evidence in International Boundary Disputes: A Reappraisal*, 57 Am. J. Int'l L. 781 (1963).
21. Whiteman, *Conference on the Law of the Sea: Convention on the Continental Shelf*, 52 Am. J. Int'l L. 629 (1958).
22. Note, *Method and Basis of Seaward Delimitation of Continental Shelf Jurisdiction*, 17 Va. J. Int'l L. 107 (1976).

**G. OTHER INTERNATIONAL LEGAL MATERIALS**

1. U.N. Press Release, *Montevideo Declaration on the Law of the Sea*, NV/185 (June 9, 1970), reprinted in 64 Am. J. Int'l L. 1021 (1970).
2. Informal Composite Negotiating Text (ICNT/Rev. 3), U.N. Doc. A/CONF. 62/W.P. 10 (Sept. 22, 1980).
3. International Covenant on Civil and Political Rights, U.N. General Assembly Resolution 2200A (XXI), 21 U.N. GAOR, Supp. No. 16 (A/6316), U.N. Doc. A/RES/2200A (Dec. 16, 1966).

**H. MISCELLANEOUS SOURCES**

1. Presidential Proclamation No. 2668, 10 Fed. Reg. 12304 (1945), reprinted in 59 Stat. 885 (1945).

### *JURISDICTION*

The parties submit the present dispute to this Court by special agreement. Article 36(1) of the Statute of the International Court of Justice provides that "the jurisdiction of the Court comprises all cases which the parties refer to it . . . ." Therefore, this Court has jurisdiction to resolve the issues presented in this dispute.

### *STATEMENT OF FACTS*

The parties have agreed to the Statement of Facts filed with this Court.

### *QUESTIONS PRESENTED*

- I Whether any prior international agreements affect the delimitation.
- II Whether, absent special circumstances, the primary rule of international law governing the delimitation is the equidistance principle.
- III Whether Keta Island must be given full effect in the delimitation.
- IV Whether there are any special circumstances requiring deviation from the equidistant line.
- V Whether application of the equidistance principle yields an equitable delimitation.

### *SUMMARY OF ARGUMENT*

Although New Ghana and New Togo, having agreed to be bound by the 1948 treaty between their respective colonial powers, are obliged under the doctrine of *pacta sunt servanda* to adhere to the treaty provisions, those provisions are not relevant to a continental shelf delimitation between the two States and, therefore, do not affect it. Similarly, the 1975 treaties between New Togo, New Benin and Nigeria, to which New Ghana is not a party, do not affect the delimitation between New Ghana and New Togo.

The equidistance principle is the primary rule for continental shelf delimitation in both customary and conventional international law. The general suitability of the principle in most contexts has been confirmed by its incorporation into the 1958 Geneva Law of the Sea Conventions, the opinions of eminent jurists, long-standing state practice and the writings of noted publicists. Application of the principle to the instant controversy is justified by the equitable solution which it achieves under the facts of the present case.

Inclusion of islands in the baseline for delimitation of a continental shelf boundary is required by both customary and conventional international law as evidenced in the preparatory work and principles of the 1958 Geneva Conventions, the opinions of international tribunals and state practice. The economic and political integration of Keta Island into the mainland territory of New Ghana further entitles the island to full effect in delimitations of the continental shelf.

There are no special circumstances within the disputed area requiring deviation from the equidistant line; no unusual geographical configurations exist which might radically distort the delimitation. Nor do respondent's fishing activities necessitate reconsideration of the equidistant boundary. Furthermore, any inequitable allocation of mineral resources is not a special circumstance recognized by international law as requiring a delimitation which yields a fair apportionment of shelf deposits. On the contrary, the preservation of the unity of existing deposits is a factor for consideration which here compels maintenance of the equidistant line drawn by New Ghana.

Application of the equidistance principle yields an equitable delimitation. Therefore, taking all relevant factors into consideration, equitable principles require maintenance of the equidistant line.

## ARGUMENT AND AUTHORITIES

- I. *NO PRIOR INTERNATIONAL AGREEMENTS AFFECT THE DELIMITATION OF THE CONTINENTAL SHELF ADJACENT TO NEW GHANA AND NEW TOGO.*
- A. *THE 1948 TREATY ESTABLISHES NO OFFSHORE BOUNDARY BETWEEN NEW GHANA AND NEW TOGO.*

While States cannot be automatically bound by the agreements of their colonial powers by virtue of the doctrine of state succession,<sup>1</sup> New Ghana and New Togo, having agreed to be bound by the 1948 treaty, are obliged under the doctrine of *pacta sunt servanda*<sup>2</sup> to acknowledge the applicability of the treaty provisions to the area which it is intended to control. The treaty is limited in scope, however, establishing only an internal boundary which stops at the mouth of the New Oti River. It is, therefore, irrelevant to a continental shelf delimitation between the two States.

1. *According to the Textual Approach, the 1948 Treaty Establishes an Internal Boundary Between New Ghana and New Togo Only.*

The textual approach to treaty interpretation adopted by this Court<sup>3</sup> requires that a treaty be interpreted in accordance with its plain and ordinary meaning. The treaty states that the boundary between New Ghana and New Togo "runs in a southerly direction following the middle of the navigable channel of the New Oti River south to the Atlantic Ocean."<sup>4</sup> The specific reference to the river itself, and not to any seaward extension thereof, indicates that the boundary thus

---

1. Keith, *Succession to Bilateral Treaties by Seceding States*, 61 AM. J. INT'L L. 521 (1967). See also I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 665-66 (3d ed. 1979) [hereinafter cited as BROWNLIE]; G. TUNKIN, *THEORY OF INTERNATIONAL LAW* (1974).

2. BROWNLIE, *supra* note 1, at 595. See also B. CHENG, *GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 112 (1953); L. MCNAIR, *THE LAW OF TREATIES* 493 (2d rev. ed. 1969) [hereinafter cited as MCNAIR].

3. Fitzmaurice, *The Law and Procedures of the International Court of Justice: Treaty Interpretation and Certain other Treaty Points*, 33 BRIT. Y.B. INT'L L. 203, 218 (1957); see also BROWNLIE, *supra* note 1, at 605; 1 G. SCHWARTZENBERGER, *INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS* 501 (1957) [hereinafter cited as SCHWARTZENBERGER].

4. Treaty Between United Kingdom and France (1948) [hereinafter cited as UK-France Treaty].

drawn is confined to the landmasses of the two States. Moreover, the boundary is described as running "to," not "into," the ocean, lending further corroboration for this interpretation.

2. *According to the Teleological Approach, the 1948 Treaty Establishes an Internal Boundary Between New Ghana and New Togo Only.*

The teleological approach by which a treaty is interpreted in light of its objective and purpose<sup>5</sup> supports the foregoing textual interpretation. Since the objective of the 1948 treaty was the establishment of a boundary between the two States for the purpose of settling disputes over fishing and navigation rights in the New Oti River,<sup>6</sup> it follows that the boundary designated by the treaty is an internal one which stops at the river's mouth.

3. *No Subsequent State Practice Indicates that the 1948 Treaty was Extended to Establish an Offshore Boundary Between New Ghana and New Togo.*

While subsequent state practice may be used to supplement treaty interpretation,<sup>7</sup> no actions taken by New Ghana since the 1948 internal boundary was established suggest that it was extended in practice beyond the mouth of the New Oti River. While it is true that a series of buoys was later placed along the navigable channel beyond the mouth of the river, this was done as an aid to safe navigation only, and not to establish an offshore boundary between the two States.

Furthermore, the boundary in the river was defined in terms of the *thalweg* — the middle of the navigable channel. As the emphasis of the *thalweg* principle is on equal access to navigable waters for the purpose of navigation, it has no applicability to territorial or high sea areas where the right of innocent passage and freedom of navigation exist for all States, including New Togo.<sup>8</sup> It is for this reason, in fact, that a delimitation along the channel is unnecessary to New Togo's use of the area. In addition, it is not within the purview of the compromise that a boundary in the waters between Keta Island and the mainland be determined.

---

5. McNAIR, *supra* note 2, at 114, 366; see Vienna Convention on the Law of Treaties, done May 22, 1969, U.N. Conf. Doc. A/CONF. 39/27 (entered into force Jan. 27, 1980).

6. UK-FRANCE Treaty, *supra* note 4.

7. BROWNIE, *supra* note 1, at 608; Schwartzberger, *supra* note 3, at 517.

8. Fitzmaurice, *Some Results of the Geneva Conference on the Law of the Sea*, 8 INT'L & COMP. L.Q. 73, 91 (1959).

Accordingly, in the absence of any offshore boundary agreement between them, New Ghana was justified in issuing the 1978 Ocean Resources Act describing the boundary with New Togo as an equidistant line between their habitable land territories.<sup>9</sup> Therefore, it is the point at which this equidistant line, drawn from the mouth of the New Oti River through the territorial sea, enters the continental shelf as defined in Article 1 of the Territorial Sea Convention<sup>10</sup> from which this Court must delimit the continental shelf boundary in dispute.

**B. THE LATERAL CONTINENTAL SHELF BOUNDARY BETWEEN NEW GHANA AND NEW TOGO IS TO BE DETERMINED WITHOUT REFERENCE TO THE 1975 TREATIES BETWEEN NEW TOGO, NEW BENIN AND NIGERIA.**

1. *Under General Principles of International Law, New Ghana Cannot Be Bound By Agreements to Which It Is Not a Party.*

It is a well recognized principle of international law that a State cannot be bound without its consent by virtue of its national sovereignty and the equality of all States.<sup>11</sup> Therefore, New Ghana, not being a party to the 1975 treaties between New Benin and its neighbors respecting their continental shelf boundaries, is not bound by those agreements.

2. *The 1975 Treaties are Not Relevant Considerations Affecting the Lateral Continental Shelf Delimitation Between New Ghana and New Togo.*

Not only do the 1975 treaties fail to bind New Ghana, but they also fall short of constituting a relevant consideration to be taken into account when drawing the lateral continental shelf boundary between New Ghana and New Togo.<sup>12</sup> Those treaties describe the boundaries as

---

9. Convention on the Territorial Sea and the Contiguous Zone, done April 29, 1958, 2 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter cited as Territorial Sea Convention].

10. Territorial Sea Convention, *supra* note 9, art. 1. See also Hodgson & Smith, *The Informal Single Negotiating Text (Committee II): A Geographical Perspective*, 3 OCEAN DEV. & INT'L L. 225, 252 (1976) [hereinafter cited as Hodgson & Smith].

11. See also Certain German Interests in Polish Upper Silesia, [1926] P.C.I.J., ser. A, No. 7; 1 D. O'CONNELL, *INTERNATIONAL LAW* 246 (2d ed. 1970); BROWNIE, *supra* note 1, at 601.

12. North Sea Continental Shelf Cases, [1969] I.C.J. 3, para. 101(D)(3)[hereinafter cited as *North Sea cases*].

running "due south" from the mutual land boundaries of the parties. Yet there is no indication whatsoever of the principles or factors which played a part in the delimitation. Consequently, the fact that those boundaries run due south lends no persuasive force to a similar delimitation in the instant dispute.

3. *The 1975 Treaties Are Not Sufficient Evidence of State Practice to Compel a Similar Boundary Delimitation Between New Ghana and New Togo.*

Article 38(1)(b) of the Statute of the International Court of Justice empowers this Court to apply "international customs as evidence of a general practice accepted as law." However, the practice of but three States can hardly be deemed sufficient evidence of such a general practice. Therefore, the agreements of these States have no effect on the lateral delimitation of the continental shelf between New Ghana and New Togo. Since there are no prior agreements relevant to the continental shelf boundary between New Ghana and New Togo, delimitation is to be effected by application of the equidistance principle.

II. *UNDER BOTH CONVENTIONAL AND CUSTOMARY INTERNATIONAL LAW, THE MEDIAN/EQUIDISTANCE PRINCIPLE IS APPLIED TO DELIMIT THE CONTINENTAL SHELF BETWEEN ADJACENT STATES UNLESS THERE IS A FINDING OF SPECIAL CIRCUMSTANCES WHICH WARRANTS A DEVIATION.*

The primary rule for maritime boundary delimitation in both conventional and customary law is the equidistance principle.<sup>13</sup> This principle is widely confirmed by authoritative law found in the 1958 Geneva Law of the Sea Conventions<sup>14</sup> as well as by the opinions of eminent jurists,<sup>15</sup> long-standing state practice<sup>16</sup> and the writings of

---

13. See Amin, *Customary Rules of Delimitation of the Continental Shelf: The Gulf States Practice*, 11 J. MAR. L. & COM. 509, 525 (1980) [hereinafter cited as Amin]; Karl, *Islands and the Delimitation of the Continental Shelf: A Framework for Analysis*, 71 AM. J. INT'L L. 642, 652 (1977) [hereinafter cited as Karl].

14. Convention on the Continental Shelf, done Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311 [hereinafter cited as Continental Shelf Convention]; Territorial Sea Convention, *supra* note 9, art. 12.

15. See *North Sea cases*, *supra* note 12, at 156 (Koretzky, J., dissenting opinion), 175 (Tanaka, J., dissenting opinion), 205 (Morelli, J., dissenting opinion), 232 (Lachs, J., dissenting opinion), 249-50 (Sorenson, J., dissenting opinion).

16. See Counter Memorial of Denmark, 1 *North Sea Continental Shelf Cases*, I.C.J. Pleadings 259 (1968).



noted publicists.<sup>17</sup>

Article 6(2) of the Continental Shelf Convention states:

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.

Furthermore, the travaux préparatoires of Article 6 support the claim that the median/equidistance [hereinafter "equidistance"] principle was preferred and regarded as the general rule.<sup>18</sup> Thus, it is not surprising that the same principle is also used in Article 12(1) of the Territorial Sea Convention for the construction of lateral boundaries over the territorial sea.

The importance which treaty and customary international law have historically attached to equidistant boundaries is well understood against the two policy goals it promotes: first, that of minimizing the occasions for disputes between States and the violence that may accompany them;<sup>19</sup> and second, that of achieving a fair delimitation of territories between adjacent States since equidistance will ordinarily involve a roughly equal distribution of space.<sup>20</sup> These policies are easily advanced by the equidistance principle because its application is straightforward and based on empirical facts rather than equitable considerations which tend to be vague and subjective.<sup>21</sup> This Court observed in the *North Sea* cases that "it would probably be true to say that no other method of delimitation has the same combination of practical convenience and certainty of application."<sup>22</sup>

More significantly, in a dispute between the United Kingdom and

---

17. *E.g.*, E. BROWN, *THE LEGAL REGIME OF THE HYDROSPACE* 62 (1971); Padwa, *Submarine Boundaries*, 9 INT'L & COMP. L.Q. 628, 652 (1960).

18. 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, 214 (1979) [hereinafter cited as Adede]. See also Brown, *The Anglo-French Continental Shelf Case*, 16 SAN DIEGO L. REV. 461, 505 (1979) [hereinafter cited as Brown].

19. European Fisheries Convention, 1976 Gr. Brit. T.S. No. 35 (Cmd. ), art. 7.

20. See Karl, *supra* note 13, at 653.

21. See Adede, *supra* note 18, at 214. See also *North Sea* cases, *supra* note 12, at 256 (Sorenson, J., dissenting opinion).

22. *North Sea* cases, *supra* note 12, at para. 23.

France,<sup>23</sup> the Court of Arbitration [hereinafter Arbitration Court] questioned whether delimitation governed by the Geneva Convention would lead to a different result than delimitation according to customary law. For practical purposes, the Court reasoned, the provisions of Article 6 and principles laid down in the *North Sea* cases could be regarded as coextensive.<sup>24</sup> "The equidistance-special circumstances rule and the rules of customary international law have the same object — the delimitation of the boundary in accordance with equitable principles."<sup>25</sup>

As recognized by the Arbitration Court, the use of the equidistance principle as a legal norm has been overwhelmingly reflected in state practice;<sup>26</sup> even where States are not parties to the Geneva Conventions the "median line" is considered to constitute the customary international rule for shelf delimitations and some States, as in the Gulf Region, have separately declared their complete adherence to the principle within their municipal legislation.<sup>27</sup> In cases of undefined continental shelf boundaries, the equidistance principle has been universally accepted as the starting point for negotiations.<sup>28</sup>

While this Court may not have found sufficient evidence of state practice to view Article 6 as expressive of customary international law at the time of its decision in 1969, because of the great reliance placed upon the equidistance principle by both the Arbitration Court<sup>29</sup> and subsequent state practice, Article 6 may now be deemed to have passed into the general corpus of international law and should, therefore, govern the instant dispute.<sup>30</sup>

It should be noted that fifty-three States are parties to the Continental Shelf Convention.<sup>31</sup> Certainly, their adherence to Article 6 as a presumptive rule of customary law provides further confirmation of its legal status. In contrast, current lack of consensus at the Third United

---

23. United Kingdom-France Delimitation of the Continental Shelf Arbitration Agreement, Decision of June 30, 1977, reprinted in 18 INT'L LEGAL MATERIALS 397 (1979) [hereinafter cited as Anglo-French Arbitration].

24. See Merrills, The United Kingdom-France Continental Shelf Arbitration, 10 CAL. W. INT'L L.J. 314, 328 (1980) [hereinafter cited as Merrills].

25. Anglo-French Arbitration, *supra* note 23, at para. 75.

26. Anglo-French Arbitration, *supra* note 23, at para. 249.

27. Amin, *supra* note 13, at 525.

28. *Id.*

29. Anglo-French Arbitration, *supra* note 23, at para. 65, 75.

30. Blecher, *Equitable Delineation of Continental Shelf*, 73 AM. J. INT'L L. 60, 69-70 (1979). See also Swan, *The Gulf of Maine Dispute: Canada and the United States Delimit the Atlantic Continental Shelf*, 10 NAT. RESOURCES LAW. 405, 446-47 (1977).

31. See Treaties in Force; a list of Treaties and other International Agreements of the United States in Force on Jan. 1, 1978 (Wash. 1978) 358-59.

Nations Conference on Law of the Sea [hereinafter UNCLOS III] with respect to offshore boundary delimitations<sup>32</sup> makes it unmistakably clear that there is no unanimity on "equitable principles" as a primary principle. Undoubtedly, the Informal Composite Negotiating Text [hereinafter ICNT] does not have the force of law, and in the area of boundary delimitations, where there continues to be great dispute, it provides little, if any, persuasive authority.<sup>33</sup>

Additionally, the concept of "equitable principles" enunciated by this Court in the *North Sea* cases is neither a compulsory rule of international law, nor binding on the instant dispute; Article 59 of the Statute of this Court provides that "[t]he decision of the Court has no binding force except between the parties in respect of that particular case."<sup>34</sup>

Regardless of which standard for continental shelf delimitation this Court chooses to rely upon, geographical and other relevant factors of this case justify application of the equidistance principle as a means of achieving an equitable solution between New Ghana and New Togo.<sup>35</sup>

### III. KETA ISLAND MUST BE GIVEN "FULL EFFECT" IN DELIMITING THE SHELF.

Since the equidistant line is the commonly accepted starting point for delimitation,<sup>36</sup> a threshold issue this Court must decide is whether the coast of Keta Island, and in particular its eastern tip, is entitled to recognition as a baseline for the calculation of this boundary. To simply argue that the delimitation should disregard the presence of Keta would be inconsistent with the preparatory work and principles of the 1958 Geneva Conventions,<sup>37</sup> as well as contrary to the Anglo-French Arbitration case and state practice which unquestionably reveal that even small islands are

---

32. Adede, *supra* note 18, at 213.

33. Informal Composite Negotiating Text (ICNT/Rev. 3), U.N. Doc. A/CONF. 62/W.P. 10 (Sept 22, 1980) [hereinafter cited as ICNT]. See Fisheries Jurisdiction Case (United Kingdom v. Iceland), [1974] I.C.J. 3, para. 53. See also Anglo-French Arbitration, *supra* note 23, at para. 48.

34. Statute of the International Court of Justice, October 24, 1945, 19 U.S.T. 5450, T.I.A.S. No. 6529, art. 59.

35. Anglo-French Arbitration, *supra* note 23, at para. 148.

36. Nelson, *Equality and the Delimitation of Maritime Boundaries*, 11 IRANIAN REV. INT'L REL. 197, 217-18 (1978).

37. See Delin, *Shall Islands Be Taken Into Account When Drawing the Median Line According to Article 6 of the Convention on the Continental Shelf*, 41 NORDISK-TIDDSKRIFT FOR INT'L REL. 205, 207-12 (1971) [hereinafter cited as Delin].

used as basepoints in continental shelf delimitations.<sup>38</sup>

- A. SINCE THE BASELINES FROM WHICH CONTINENTAL SHELVES ARE DELIMITED INCLUDE ISLANDS, IT VIOLATES TREATY AND CUSTOMARY LAW TO EXCLUDE KETA ISLAND FROM THIS BASELINE.

According to Article 6, the boundary is measured from the same baseline from which the territorial sea is measured.<sup>39</sup> The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast,<sup>40</sup> a line which would follow the sinuosities of an island situated within the territorial belt of the mainland.<sup>41</sup> Since Keta Island is well within the 12-mile territorial belt of New Ghana, the baseline from which the territorial sea, and thus the continental shelf, is to be measured, would *prima facie* entitle its coast to recognition as a component of the baseline.<sup>42</sup>

The straight baseline system used in the *Anglo-Norwegian Fisheries* case<sup>43</sup> and now accepted as both conventional and customary international law, establishes that much more extreme geographical configurations than that represented by Keta Island are made part of the baseline. Thus, even if it were contended that Keta Island is an irregular feature, it would nonetheless be included within the baseline.

Finally, despite numerous proposals to establish a separate "regime of islands"<sup>44</sup> neither Article 6, nor Article 83 of the ICNT makes any distinction between islands — other than rocks — and the mainland. Therefore, Keta should be used as a basepoint and given full effect.

- B. SINCE KETA ISLAND LIES IN SUCH CLOSE PROXIMITY TO ITS MAINLAND CUSTOMARY INTERNATIONAL LAW MANDATES THAT IT BE GIVEN FULL EFFECT.

The Arbitration Court dealt with two groups of islands: those in

---

38. See *Anglo-French Arbitration*, *supra* note 23, at para. 243. See also Ely, *Seabed Boundaries Between Coastal States: The Effect to be Given Islets "Special Circumstances"*, 6 INT'L LAW. 219, 227-30 (1972) [hereinafter cited as Ely].

39. Continental Shelf Convention, *supra* note 14, art. 6.

40. Territorial Sea Convention, *supra* note 9, art. 3.

41. See C. J. COLOMBOS, *THE INTERNATIONAL LAW OF THE SEA* 121 (6th rev. ed. 1967).

42. Ely, *supra* note 38, at 231-32.

43. Fisheries Jurisdiction Case (United Kingdom v. Norway), [1951] I.C.J. 116.

44. Jacovides, *Three Aspects of the Law of the Sea: Islands, Delimitation and Dispute Settlement*, 3 MARINE POL'Y 278, 281-83 (1979).

the English Channel located near the coast of France, and those projecting out into the Atlantic. In considering the Channel Islands the Court queried whether they might be regarded as an extension of the British mainland,<sup>45</sup> but concluded that such an interpretation "would be as extravagant legally as it manifestly is geographically."<sup>46</sup>

The analysis strongly suggests that the Court would have given these islands a much greater effect on the boundary line had they been considered an extension of the mainland. Since Keta is only between one and six miles from New Ghana's mainland coast and unlike the Channel Islands is on the "right side" of the equidistant line, it is clearly an extension of the mainland of New Ghana and must be given significant effect in determining the boundary.

In the second area delimited by the Court which involved the French island of Ushant and the Scilly Isles the Court used the latter as basepoints, giving them "half effect," while according full effect to Ushant.<sup>47</sup> Clearly, if Ushant, whose nearest point to the coast of France is ten miles was thus treated, then Keta, whose nearest point is less than a mile from the mainland and whose minor projections eastward cannot be likened to the Scillies' 31 mile westward extension, should also be given full effect.<sup>48</sup>

Numerous agreements between States show that islands have been used as basepoints<sup>49</sup> and publicists have written extensively on what effect they should have on the shelf delimitations.<sup>50</sup> One authority has stated: "A . . . group of islands that should have full effect on continental shelf boundaries are those which relate geographically to the mainland in such a way as to constitute a cohesive part thereof. Regardless of size, these islands are situated so as to be linked geographically to the land."<sup>51</sup>

From the foregoing, it is clear that regardless of its size, Keta Island, which is so close to the mainland that a one mile bridge spans the distance, should be given full effect.

---

45. Anglo-French Arbitration, *supra* note 23, at para. 189.

46. Anglo-French Arbitration, *supra* note 23, at para. 190.

47. Anglo-French Arbitration, *supra* note 23, at para. 251. See also Blecher, *supra* note 30, at 82 (1979).

48. Anglo-French Arbitration, *supra* note 23, at para. 4.

49. See Ely, *supra* note 38, at 227-30.

50. See generally Delin, *supra* note 37; Ely, *supra* note 38; Karl, *supra* note 13.

51. Hodgson, *Islands: Normal and Special Circumstances*, in *LAW OF THE SEA: EMERGING REGIME OF THE OCEANS* 137, 182-83 (J. Gamble & G. Pontecorvo eds. 1974).

C. SINCE THE SIZE, LOCATION, POPULATION AND ECONOMIC TIES OF KETA MAKE IT AN INTEGRAL PART OF THE MAINLAND, IT MUST BE GIVEN FULL EFFECT.

In addition to Keta Island's close proximity to the mainland, it is fairly large and has a dense population of 100,000. Of these, a substantial number commute by the vehicular bridge to Fort Oti, the capital of New Ghana, where they earn their living. It is also reasonable to infer that many from the mainland enjoy Keta's beach resorts. This comingling and dependence on the mainland indicate a strong economic integration. Additionally, political unity is implied by the fact that Keta Island is part of the territory of the Applicant. Similar factors were relied on in the *Anglo-French Arbitration* to determine that Ushant was an integral part of the French mainland and thus entitled to full effect.<sup>52</sup>

IV. THERE ARE NO SPECIAL CIRCUMSTANCES WITHIN THE DISPUTED AREA REQUIRING DEVIATION FROM THE EQUIDISTANT LINE.

The clear implication of the equidistance-special circumstances rule applied by the Arbitration Court is that the equidistant line will be used unless it is found that special circumstances require a deviation from it.<sup>53</sup> The Court emphasized, however, that a consideration of special circumstances will not justify a settlement of disputes *ex aequo et bono*.<sup>54</sup> Nor was the compromise submitted pursuant to Article 38(2) of this Court's Statute. Thus, this dispute must be settled "within the rules of law."<sup>55</sup> Furthermore, even though this Court in *North Sea* stated that there is no legal limit to the factors which may be considered,<sup>56</sup> the tendency towards a restrictive interpretation of special circumstances prevails in state practice and should be preferred.<sup>57</sup> As noted in *North Sea*; "[I]t is not the function of equity in the delimitation of the continental shelf completely to refashion geography," nor "to create a situation of complete equity where nature and geog-

---

52. Merrills, *supra* note 24, at 348.

53. Anglo-French Arbitration, *supra* note 23, at para. 249.

54. Brown, *supra* note 18, at 486.

55. Anglo-French Arbitration, *supra* note 23, at para. 245 (citing *North Sea cases*, *supra* note 12, at para. 88); see also Merrills, *supra* note 24, at 347.

56. *North Sea cases*, *supra* note 12, at para. 93.

57. *North Sea cases*, *supra* note 12, at 219 (Sorenson, J., dissenting opinion).

raphy have established an inequity."<sup>58</sup> Among the special circumstances typically considered are geographical features, mineral resources and fisheries resources; a consideration of each will reveal that in the instant case they do not constitute special circumstances.

**A. THERE ARE NO GEOGRAPHICAL FEATURES CONSTITUTING A SPECIAL CIRCUMSTANCE.**

1. *There Are No Significant Concavities, Convexities or Substantial Sinuosities Requiring Deviation From the Equidistant Line.*

The *North Sea* cases held that account should be taken of the general configuration of the parties' coasts<sup>59</sup> with emphasis placed on any concavities or convexities which might have a marked effect on the delimitation using the equidistance method.<sup>60</sup> The coastlines of New Ghana and New Togo, have only minor sinuosities. Furthermore, the concave portion running southwest of Keta Island for approximately 50 miles, like the concave coast of the Federal Republic of Germany in *North Sea*,<sup>61</sup> would normally decrease the area delimited to New Ghana.<sup>62</sup>

2. *Because the Projection of Keta Island Does Not Constitute a "Radical, Unnatural or Unreasonable Distortion" of the Equidistant Line It Is Not a Special Circumstance Requiring Deviation.*

Since for both policy and factual reasons a finding of special circumstances is justified only when a high degree of unusual geographic configuration would cause the equidistant line to impose "great injustice upon the parties,"<sup>63</sup> Keta Island should not be thus labeled. In the *North Sea* cases this Court stated that geographical circumstances were "special" only if their presence caused a "disproportionately distorting effect."<sup>64</sup> Similarly, in the *Anglo-French Arbitration* the Court rejected the application of the equidistance principle which would pro-

---

58. *Anglo-French Arbitration*, *supra* note 23, at para. 249.

59. *North Sea* cases, *supra* note 12, at para. 101.

60. Blecher, *supra* note 30, at 65.

61. See *North Sea* cases, *supra* note 12, at para. 5-9, and maps incorporated therein.

62. *Id.* But see notes 94-100 and accompanying text, *infra*.

63. J. ANDRASSY, *INTERNATIONAL LAW AND THE RESOURCES OF THE SEA* 95 (1970).

64. *North Sea* cases, *supra* note 12, at para. 57.

duce a "radical distortion of the boundary creative of inequity."<sup>65</sup> Mere distortion, therefore, is not sufficient, since the natural prolongation of New Ghana's landmass extends along the Ancient New Oti River Bed (see Part V [A] *infra*), the equidistant line drawn does not produce a "radical distortion," nor one which is "extraordinary, unnatural or unreasonable."<sup>66</sup>

Any assertion that the area of the continental shelf which lies closer to New Togo should also fall within New Togo's territory is entirely misplaced; this Court clearly pointed out that "proximity" is only one factor to be considered whereas the concept of natural prolongation is fundamental to boundary delimitation.<sup>67</sup>

While the use of the eastern tip of Keta Island as a basepoint extends the line of delimitation in a south-easterly direction, thereby reducing the proportion of continental shelf which might otherwise accrue to New Togo, precise calculations of the length of New Ghana's and New Togo's coasts should not be used as a basis for altering the equidistant line on the theory that New Togo has a right to an area one sixth the size delimited to New Ghana.<sup>68</sup> The criterion of a reasonable degree of proportionality had particular relevance only in the situation of three adjoining States on a concave coast as exhibited in the *North Sea* cases.<sup>69</sup> Furthermore, New Togo's very small coast line is not reason to "apportion" to it substantially greater shelf rights; the Court's fundamental task, as repeatedly stated is that of delimiting the continental shelf rather than apportioning it.<sup>70</sup>

3. *There Is No Rule or Criterion in General Acceptance by Which New Togo May Be Deemed a Geographically Disadvantaged State.*

International law recognizes the concept of geographic disadvantages only in the case of land-locked States.<sup>71</sup> Since New Togo has a

---

65. Anglo-French Arbitration, *supra* note 23, at para. 199; see also Adede, *supra* note 18, at 253-54.

66. *North Sea* cases, *supra* note 12, at para. 24.

67. *Id.* at para. 41-43; see also Anglo-French Arbitration, *supra* note 23, at para. 80-82.

68. See *North Sea* cases, *supra* note 12, at para. 91; Anglo-French Arbitration, *supra* note 23, at para. 100-250.

69. *North Sea* cases, *supra* note 12, at para. 91.

70. *North Sea* cases, *supra* note 12, at para. 20; Anglo-French Arbitration, *supra* note 23, at para. 249.

71. See Convention on the High Seas, done April 29, 1958, art. 3, 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82. See also Convention on Transit Trade of Landlocked States, [1965] 597 U.N.T.S. 42; Convention and Statute on the Freedom of Transit, [1921] 7 L.N.T.S. 11.



coast and free access to the sea, it cannot claim to be geographically disadvantaged.

**B. INEQUITABLE ALLOCATION OF MINING RESOURCES DOES NOT CONSTITUTE A SPECIAL CIRCUMSTANCE.**

**1. *International Law Does Not Require an Equitable Allocation of Resources.***

The *North Sea* cases decisively rejected any notion that the continental shelf should be equitably divided between coastal States.<sup>72</sup> As stated by Judge Jessup:

There is no rule of international law which requires States surrounding any area . . . to delimit their respective sections of the continental shelf in such a way as to apportion to each state a "fair share" of the mineral sources on or in that shelf.<sup>73</sup>

Accordingly, New Togo cannot claim that the actual or likely existence of hydrocarbons in the areas of Axim Block and the salt dome constitutes a special circumstance requiring deviation from a presumptive equidistant boundary.

In the alternative, following the requirements of Article 1 of the Continental Shelf Convention rather than those specified in the ICNT,<sup>74</sup> it is questionable whether the salt dome even falls within an area which may be considered part of the continental shelf margin.<sup>75</sup> Clearly the salt dome lies beyond the 200 meter depth and the facts indicate that no exploitation has yet taken place. Accordingly, if the salt dome is beyond the continental shelf, it cannot be considered a special circumstance, and would be open to exploitation by all States.

**2. *Unity of Deposits and New Ghana's Commitment to Exploration Compel Its Continued Control.***

An additional factor in shelf delimitation enunciated by this Court

---

72. See Goldie, *The North Sea Continental Shelf Cases — A Ray of Hope for the International Court*, 16 N.Y.L.F. 325, 331 (1970).

73. *North Sea cases*, *supra* note 12, at 78.

74. ICNT, *supra* note 33, art. 76, 81. See also Hodgson & Smith, *supra* note 10, at 253.

75. Hodgson & Smith, *supra* note 10, at 225. See generally *Method and Basis of Seaward Delimitation of Continental Shelf Jurisdiction*, 17 VA. J. INT'L L. 107, 114 (1976).

in the *North Sea* cases is the unity of any deposits.<sup>76</sup> The Court observed that when "the same deposit lies on both sides of the line dividing a continental shelf between two States . . . a problem immediately arises on account of the risk of prejudicial or wasteful exploitation. . . ."<sup>77</sup>

If the line of delimitation proposed by New Togo were accepted, a division of the unity of hydrocarbon deposits already known to exist on Axim Block would result. Yet, this is the very outcome against which the Court cautioned; the risk of wasteful exploitation would certainly become a reality in view of the exploration and drilling already undertaken by New Ghana since 1973.

This result is even more compelling when it is remembered that ever since 1973, newspaper articles expressing the opinion of some of New Togo's high governmental officials, caused New Ghana to reasonably rely upon the approval and acquiescence of the Respondent in its activities at Axim Block.<sup>78</sup>

Furthermore, present circumstances are appropriate for the application of the well-established principle of international law which stresses the need to refrain from modifying a state of things that has existed for a long time.<sup>79</sup> With reference to the *Grisbadarna* principle, Judge Jessup commented in *North Sea* that "considering the rapidity of the progress of exploitation in the petroleum industry . . . no restrictive limit should be placed on the elapsed time."<sup>80</sup> While acknowledging that drilling and exploration are not to be assimilated to "historic title",<sup>81</sup> he suggested that the parties "might well bear in mind" the provisions of the Anglo-Norwegian Treaty of 1897 that "such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall . . . require."<sup>82</sup>

Therefore, even though exploration of Axim Block began only eight years ago, in the interests of fairness, the efficient exploitation of resources and the maintenance of a settled state of things, the equidistant line drawn by New Ghana should be confirmed as the correct continental shelf boundary between New Ghana and New Togo.

---

76. *North Sea cases*, *supra* note 12, at para. 97.

77. *Id.*

78. *Id.* at para. 30. See MacGibbon, *Estoppel in International Law*, 7 INT'L & COMP. L.Q. 468, 473 (1958).

79. *Grisbadarna Case* (Norway v. Sweden), 1 Hague Ct. Rep. (Scot) 121, 130 (1916).

80. See *North Sea cases*, *supra* note 12, at para. 80 (Jessup, J., separate opinion).

81. *Id.*

82. *Id.*

3. *New Togo Has Violated Its Duty to Negotiate in Good Faith.*

In recognition of New Togo's protest at Axim Block, lodged a full three years after New Ghana entered into a joint venture agreement with a British company, New Ghana has deferred commercial production in the area. New Togo, on the other hand, knowing the area was in dispute, has already entered into a joint venture with another foreign corporation to exploit the eastern half of Axim Block. This action by New Togo clearly violates one of the basic tenets underlying the legal regime of the continental shelf — that parties are obliged to enter meaningful negotiations with a view to arriving at an agreement.<sup>83</sup> Clearly, New Togo should not be allowed to take advantage of its prior acquiescence nor of New Ghana's exploration efforts by now claiming that Axim Block and the salt dome constitute special circumstances.

C. RESPONDENT'S FISHING ACTIVITIES AROUND NEW LOMÉ ROCK DO NOT REQUIRE DEVIATION FROM THE EQUIDISTANT LINE.

1. *New Togo's Fishing Activity Will Not Be Impaired by New Ghana's Delimitation.*

The fact that New Lomé Rock is within the continental shelf of New Ghana and is not to be used as a basepoint (see Part II *supra*) does not suggest that the citizens of New Togo would be precluded from fishing in the area around the rock.<sup>84</sup> New Ghana's claim of an exclusive fisheries zone [EFZ] comports with emerging state practice and is, for purposes of this discussion, analogous to a claim of an exclusive economic zone [EEZ]. Accordingly, while Article 58 of the ICNT provides that in giving other States access to a claimed EEZ, the controlling State is to take into account all relevant factors, including the need to minimize economic dislocation of States whose nationals have habitually fished in the zone. Thus, while New Ghana's right to regulate its fisheries zone complies with the emerging trend toward giving coastal States sovereign rights over exploiting, exploring, and managing both sedentary and migratory species,<sup>85</sup> New Ghana will certainly permit New Togo to engage in commercial fishing and oystering when the appropriate licenses are obtained.

---

83. *Id.* at para. 85. See also Goldie, *supra* note 72, at 359.

84. See Karl, *supra* note 13, at 661.

85. See ICNT, *supra* note 33, art. 56(1)(a).

## 2. *New Ghana Is In Need of the Fishing Area.*

An overriding principle of international law is that a nation has primary responsibility to care for its people.<sup>86</sup> Since the population of New Ghana is more than four times that of New Togo, access to a greater supply of resources is essential. Any assertion that the greater per capita income and agricultural production of New Ghana obviates the need for fish as an important supplemental source of good nutrition is totally without merit.<sup>87</sup> Indeed, many developing nations with large populations, such as New Ghana, rely on these food sources for the survival of their people. Accordingly, New Ghana's access to the living resources of its exclusive zone should not be restricted in any way.

## 3. *New Ghana Is In a Better Position to Preserve the Ecological Balance of the Fisheries in the Area.*

From the earliest national proclamations regarding rights in the continental shelf, two interrelated themes have recurred: (1) the orderly exploitation and conservation of shelf resources in ways conducive to the common interests of all peoples, but (2) in a manner which provides adequate self-protection for the coastal State.<sup>88</sup> Conservation of marine resources, in particular is a principle of law recognized by many States<sup>89</sup> and reflected as well in a number of multilateral agreements.<sup>90</sup>

Conservation has been defined as the method to obtain "the optimum sustainable yield from the resources so as to secure a maximum supply of food."<sup>91</sup> Article 61 of the ICNT provides that "a coastal state shall determine the allowable catch in the EEZ, taking into account the

86. See International Covenant on Civil and Political Rights, art. 2(1), U.N. General Assembly Resolution 2200A (XXI), 21 U.N. GAOR, Supp. No. 16 (A/6316), U.N. Doc. A/RES/2200A (Dec. 16, 1966).

87. Food and Agriculture Organization, World Food Survey 12 (1946), noted in M. McDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS* 455 & n.23 (1962).

88. Presidential Proclamation No. 2668, 10 Fed. Reg. 12304 (1945), reprinted in 59 Stat. 885 (1945).

89. See Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1811 (Supp. 1979).

90. See Agreement Concerning Fishing and Sealing, June 13, 1969, USSR-Finland, 739 U.N.T.S. 77 (entered into force May 24, 1970); U.N. Press Release, Montevideo Declaration on the Law of the Sea, NV/185 (June 9, 1970), reprinted in 64 AM. J. INT'L L. 1021 (1970).

91. Convention on Fishing and Conservation of the Living Resources of the High Seas, done Apr. 29, 1958, 1 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.

best scientific evidence . . . ."<sup>92</sup> New Ghana has already demonstrated the technological expertise required to carry out the necessary research and fisheries conservation mandated by these Articles<sup>93</sup> and its superior capability is further evidenced by the fact that it is a wealthier country, has its own Department of Natural Resources and began exploration in the Atlantic a full seven years prior to New Togo.

By contrast, the Respondent's only activities up until February 1980 centered around traditional and uncontrolled exploitation of the living resources by its coastal ethnic groups. It would appear, therefore, to be much less capable of conserving the resources in the area than would New Ghana. Accordingly, the area should be delimited as part of the EFZ and continental shelf of New Ghana.

V. *EVEN IF THIS COURT REJECTS THE EQUIDISTANCE PRINCIPLE FOR DELIMITING THE CONTINENTAL SHELF, EQUITABLE PRINCIPLES REQUIRE THE MAINTENANCE OF THE EQUIDISTANT LINE DRAWN BY NEW GHANA.*

A. *THE EQUIDISTANT LINE IS MANDATED BY THE THEORY OF NATURAL PROLONGATION.*

In the *North Sea* cases this Court mandated that equitable delimitation be based on "natural prolongation," the most fundamental rule of law relating to the continental shelf.<sup>94</sup> As stated by the Court: "The rights of a coastal state in respect of continental shelf that constitutes a natural prolongation of its land territory . . . exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land . . . ."<sup>95</sup>

Since the New Oti River is known to have followed a course running in a south-easterly direction into what is now ocean area but which had been land at an earlier time, the Ancient New Oti Riverbed provides the best indication of the natural prolongation of New Ghana's land territory. The delimitation is clearly distinguishable from the Hurd Deep, which not only lay in the middle of the English Channel, unconnected to any offshore feature, but also extended for only a small portion of the area to be delimited.<sup>96</sup>

The geographical configuration of the coastlines also provides evi-

---

92. ICNT, *supra* note 33, art. 61.

93. See, e.g., 4 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 967 (1965).

94. *North Sea* cases, *supra* note 12, at para. 19.

95. *Id.*

96. See Anglo-French Arbitration, *supra* note 23, at para. 9.

dence weighing in New Ghana's favor.<sup>97</sup> The slight concavity in its coast, the presence of an offshore island extending eastward and the descending curve of the 300 mile coast firmly support the contention that the natural prolongation runs in a south-easterly direction.<sup>98</sup> Without contradicting the Arbitral Decision, New Togo cannot assert that the *general* east-west alignment of the two countries' coasts results in a natural prolongation running due south.<sup>99</sup> The precatory language in New Togo's 1979 domestic legislation indicates their recognition of this fact. Accordingly, since the ancient riverbed emerges as a natural feature of the seabed, causing a break in the geological continuity,<sup>100</sup> it may logically serve as the lateral seaward boundary between the two States.

However, as in this case, the natural prolongation of one country's landmass cannot always be strictly followed for delimitation purposes; when the ancient riverbed line is extended across the continental shelf, it significantly encroaches upon the natural prolongation of New Benin's territory. Since an objective of delimitation is to avoid as much as possible any encroachment on the natural prolongation of another's territory, the equidistant line drawn by New Ghana effects a more equitable result. The line drawn by New Togo, on the other hand, severely encroaches upon the natural prolongation of New Ghana and, therefore, violates the most fundamental rule of the continental shelf.

**B. THE LINE DRAWN BY NEW TOGO FAILS TO CONSIDER ALL THE RELEVANT FACTORS REQUIRED BY EQUITABLE PRINCIPLES.**

The rule of continental shelf delimitation issued by this Court in the *North Sea* cases is that delimitation is to be effected by application of equitable principles, including equidistance.<sup>101</sup> The process of delimitation in that case may be characterized as an assessment and balancing of all relevant factors.<sup>102</sup>

**1. *No Account Was Taken of the Roadstead or Charts Issued by New Ghana.***

If indeed there is no legal limit to the "considerations which States

---

97. See *North Sea* cases, *supra* note 12, at para. 96.

98. See *Anglo-French Arbitration*, *supra* note 23, at para. 27, 28, 86.

99. *Id.* at para. 230.

100. *Anglo-Norwegian Arbitration*, *supra* note 23, at para. 107.

101. See *North Sea* cases, *supra* note 12, at para. 93.

102. *Id.*; Brown, *supra* note 18, at 485.

may take into account"<sup>103</sup> then due notice must be taken of the roadstead located one mile south of Keta Island. This roadstead, established thirty years ago by the United Kingdom, has been continuously used by New Ghana for the shipment and transfer of its hard minerals. According to the facts, New Togo has never questioned the nautical charts, which were produced in full compliance with Article 9 of the Territorial Sea Convention requiring a coastal State to give due publicity to charts of any roadstead it may claim. The charts were issued by the United Kingdom and at a later date by the Applicant to cover the area in which the channel and roadstead are located. While, in and of itself, this shows New Togo's acquiescence to the ownership of the roadstead by New Ghana, the proposition is further compelled by the fact that, once in 1976 and twice in 1977, New Togo requested permission from the Applicant to use it for the transfer of ocean cargo bound for New Lomé, the capital of New Togo.

The nautical charts showing the roadstead also showed all the facts relevant to safe navigation in the waters 25 miles east of Keta Island. Not only do they constitute evidence of New Ghana's sovereignty over the area, but New Togo's failure to protest within a reasonable period after gaining independence also attests to their acquiescence to New Ghana's claim. Support is thereby provided for the conclusion that use of the equidistant line, giving full effect to Keta, is equitable. As this Court has observed, in adjudication of boundary disputes, maps have gained much more importance than they have possessed in the past.<sup>104</sup>

In this regard, any vagueness in the language of New Ghana's 1978 Act suggesting that its eastern boundary, described as "an equidistant line between the habitable land territories . . .," indicates opposite state delimitation<sup>105</sup> is eliminated by reference to the maps issued by New Ghana which reflect their intention to establish a *lateral* seaward boundary extending into the Atlantic.<sup>106</sup> On the other hand, New Togo cannot claim New Ghana has acquiesced in the New Togo/New Benin Treaty as it was never followed by the issuance of an official map nor any publicity.

Since New Togo's delimitation totally ignores New Ghana's ownership of the roadstead and fails to account for a 20 year period of total acquiescence in New Ghana's sovereignty over the area to the south

---

103. *North Sea cases*, *supra* note 12, at para. 93.

104. *Case of Temple of Preah Vihear*, [1962] I.C.J. 16.

105. *Whiteman, Conference on the Law of the Sea: Convention on the Continental Shelf*, 52 *AM. J. INT'L L.* 629, 651 (1958).

106. *Weissberg, Maps as Evidence in International Boundary Disputes: A Reappraisal*, 57 *AM. J. INT'L L.* 781 (1963).

and east of Keta, it is grossly inequitable.

2. *Since Keta Island Is Entitled to Its Own Continental Shelf, the Three-Mile Bank Which New Togo Has Drawn Violates Customary International Law.*

This Court has made it clear that customary international law confers a continental shelf upon islands.<sup>107</sup> This view has also been incorporated into Article 121 of the ICNT, exception being made for uninhabitable rocks such as New Lomé Rock.

Since under the circumstances of Keta's close proximity to the mainland the island cannot be accorded a continental shelf extending 200 miles north and west of the mainland, the boundary would minimally have to deviate to the extent necessary to respect Keta's 12 mile territorial sea. Since the area 12 miles east coincides with a point on the equidistant line, it is certainly within reason to delimit this area as appertaining to New Ghana. Clearly a three-mile zone around Keta which ignores the roadstead, interferes with the development of Keta's tourist trade, and makes the defense and security of the island impossible, are further considerations reflecting the inequality of New Togo's delimitation.

**C. THE EQUIDISTANCE PRINCIPLE, FUNDAMENTAL TO THE ACHIEVEMENT OF EQUITABLE RESULTS, SHOULD BE APPLIED TO THE FACTS OF THIS CASE.**

In the *North Sea* cases the Court indicated that equidistance is itself preeminent among the equitable principles.<sup>108</sup> It has already been demonstrated that there are no special circumstances which provide persuasive reasons for reconsidering the equidistant boundary. Since equitable delimitation does not require an equitable allocation, and in view of New Ghana's burgeoning population, rising industry, and concerted exploration of known shelf resources, the equidistant boundary reflects the equitable principles under the particular circumstances of this case.

**VI. THE GRANTING OF INTERIM RELIEF BY THIS COURT WOULD BE INAPPROPRIATE.**

Although Article 41 of the Statute of this Court permits interim

---

107. See *North Sea* cases, *supra* note 12, at para. 63; Continental Shelf Convention, *supra* note 14, art. 1.

108. *North Sea* cases, *supra* note 12, at para. 24.



relief, such relief may only be granted in instances where "irreparable prejudice would be caused to rights which are the subject of dispute in the judicial proceedings."<sup>109</sup> "[I]f the act is capable of reparation by appropriate means, there is no need and justification for applying Article 41."<sup>110</sup>

No irreparable prejudice is caused by any of New Ghana's acts in the disputed area: its drilling at Axim Block has not deprived New Togo of any rights to which it may be entitled; its condemnation of New Togo's exploration has not constituted a direct threat of force, nor is it applicable to the instant claim.

A similar claim for interim relief was requested by Greece under Article 2(4) of the U.N. Charter to prevent Turkey from all measures likely to aggravate or extend the dispute.<sup>111</sup> This Court rejected the claim, reasoning that this right "is not the subject of any of the several claims submitted in the application; whereas it follows that the request does not fall within the provisions of Article 41 of this statute."<sup>112</sup> Applying this rationale to the instant dispute, a claim for interim relief by New Togo should be dismissed.

## VII. PRAYERS FOR APPROVAL OF THE APPLICATION AND FOR NECESSARY ORDERS.

In view of the facts and arguments presented in the Memorial, New Ghana respectfully requests that this Court:

1. Grant a declaration that the principle of equidistance is the rule of Continental Shelf delimitation to be applied in the context of the instant dispute.
2. Grant a declaration that Keta Island is to be given full effect in the delimitation.
3. Grant a declaration that there are no special circumstances in the present controversy requiring deviation from the equidistant line.
4. Grant a declaration that Equitable Principles mandate the Equidistant Line as drawn by New Ghana.
5. Grant a declaration denying any interim relief which may have been requested by New Togo.

---

109. See Interim Protective Order of Sept. 11, 1976, Aegean Sea Continental Shelf Case, [1976] I.C.J. 3, para. 13.

110. *Id.* at para. 34.

111. *Id.* at para. 15.

112. Gross, *The Dispute Between Greece and Turkey Concerning the Continental Shelf in the Aegean*, 71 AM. J. INT'L L. 31, 43 (1977).

**Respectfully submitted,**

**Elizabeth S. Benson**

**Laurie K. Chisolm**

**Mark A. Conrad**

**Margaret A. Enloe**

**Svetlana V. Petroff**