

IN THE INTERNATIONAL COURT OF JUSTICE

**THE REPUBLIC OF BOTSWANA,
APPLICANT**

V.

**THE REPUBLIC OF NAMIBIA,
RESPONDENT**

MEMORIAL OF THE REPUBLIC OF BOTSWANA

COMES NOW the Republic of Botswana and for their Memorial to the Court states the following:

STATEMENT OF JURISDICTION

The Republic of Botswana has come before the International Court of Justice with an issue in need of settlement. The Republic of Botswana recognises the jurisdiction of this court to settle an ongoing issue involving The Republic of Namibia. There lies a river on the Northern border of Botswana and the Southern border of Namibia that constitutes the borders between the sovereign nations.

1. A Special Agreement signed by the Republic of Namibia and the Republic of Botswana in 1996 states:

ARTICLE I: The Court is asked to determine, on the basis of the Anglo-German Agreement of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Sedudu Island and the legal status of the island.

ARTICLE IX: The judgment of the Court on the dispute described in Article 1 shall be final and binding on the Parties. As soon as possible after the delivery of the Court's judgment, the Parties shall take steps necessary to carry out the judgment.

2. Under Article 36 of the United Nations Charter, both nations have come to the courts in need of help settling a dispute. Below listed are the exact statutes mentioned before.

“1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.”

“2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a.) the interpretation of a treaty
- b.) any question of international law;
- c.) the existence of any fact which, if established, would constitute a breach of an international obligation;
- d.) the nature or extent of the reparation to be made for the breach of an international obligation”

“6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.”

STATEMENT OF LAW:

1. Under the Anglo-German Agreement of 1890, the borders of the former colonies of German South West Africa (current Namibia) and the Protectorate of Bechuanaland (current Botswana) were established. Said established borders were kept equal when the two states obtained their independence.
2. Paragraph 2 of Article 3 of the Anglo-German Agreement of 1890 states that: "The line then...runs along this degree of latitude eastward to its intersection with the Chobe River. Here it descends the thalweg of the main channel until it meets the Zambezi, where it ends."
3. It must be recognized that the provisions of the Anglo-German Agreement must be regarded as the governing law in the context of resolving the ongoing dispute. The inclusion of 'the rules and principles of international law' can be considered superfluous, given that international agreements are typically interpreted while considering 'any relevant rules of international law applicable in the relations between the parties,' as stipulated in the Vienna Convention on the Law of Treaties, Article 31(3)(c).

STATEMENT OF FACT:

1. As previously stated, in the year 1890 the borders of the two states were established by the Anglo-German Agreement. It happens that the Chobe river splits into two different channels, a northern one and a southern one, around the island of Sedudu. Therefore, Sedudu island has been disputed by the Republic of Botswana and the Republic of

Namibia due to an absence of clear interpretation of the Agreement regarding which channel constitutes the main path of the river, hence the border.

2. In adherence to the 1890 Anglo-German Agreement, “the centre of the main channel” of the Chobe river forms the border between nations. During drought and times of low flow regime of the Zambezi river, which confluences with the Chobe , the southern channel dries out almost entirely, thus proving that the northern channel is the main channel. Even without taking this fact into consideration there are still many ways to define the main channel such as, depth, width, the thalweg, and navigability. In the case of the aforementioned criteria, the northern channel surpasses the southern channel with greater depth, width and the thalweg of both channels. Navigability is a consequence of the previously mentioned characteristics of the river, giving the northern channel a more easily navigable route compared to the southern's meandering route.

ARGUMENTS:

1. In accordance with the specific language outlined in the Anglo-German agreement, it is explicitly stated that the border between these neighboring nations is represented by the main channel.
2. Referring back to the fact that the southern channel frequently dries out, and the other defining characteristics of a “main channel”, the northern channel has to be recognized as the singular main channel in the context of our dispute. Therefore, the border between the Republic of Botswana and the Republic of Namibia should be set to the northwest of Sedudu Island.

SUMMARY AND REQUESTS:

Thanks to the explicit wording found within Article 3 of the 1890 Anglo-German Agreement, the established border adheres closely to the main channel of the Chobe River. However, a contentious situation has arisen due to the presence of a smaller, fragmented channel to the south of the primary one, which has led Namibia to assert an illegitimate claim over this southern channel as the true main channel, primarily to assert control over the disputed island of Sedudu. In light of these conflicting claims, the nation of Botswana is earnestly appealing to the distinguished International Court of Justice (ICJ) for a resolution. Botswana earnestly requests the ICJ to examine the facts and come to a conclusion that aligns with Botswana's interpretation of the Anglo-German Agreement, thereby settling this long-standing border dispute.