

IN THE INTERNATIONAL COURT OF JUSTICE

THE REPUBLIC OF NAMIBIA,

V.

THE REPUBLIC OF BOTSWANA,

RESPONDENT MEMORIAL OF THE REPUBLIC OF NAMIBIA

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

STATEMENT OF LAW:

1. As territories respectively administered by the United Kingdom and the Empire of Germany in the past, the contemporary Republic of Botswana and Republic of Namibia's common border was defined through the Heligoland–Zanzibar Treaty, also known as the Anglo-German Agreement of 1890.
2. Section 2 of Article III of said treaty specifies Germany's southwestern sphere of influence, the territory that constitutes the modern Republic of Namibia. After a series of explicit demarcations along latitude and longitude coordinates, the eastward-running line intersects with the Chobe river, after which the border will follow "the thalweg off the main channel" of the Chobe River, ending with the Chobe River's intersection with the Zambezi River.

STATEMENT OF FACT:

In 1890, the Empire of Germany and the United Kingdom formally established and agreed upon the borders distinguishing the respective states' spheres of influence in the African continent. This included declaring the borders of *Südwestafrika*, the German protectorate whose territory was later transferred, through the 1919 Treaty of Versailles, to be administered as a League of Nations Class C Mandate under the Dominion of South Africa. Namibian independence was finally fulfilled between 1988 and 1990, respecting United Nations Security Council Resolution 435.

Shortly after Namibian sovereignty and determination was obtained, and the Republic of South Africa's military presence withdrew, the Botswana Defense Force deployed soldiers and raised the Botswana flag over the island of Kasikili, an ephemeral island in the Chobe River. Despite no prior declarations of claims to this island, the Republic of Botswana unilaterally militarized and challenged the territorial sovereignty of Namibia. After the mediation of

President Robert Mugabe of the Republic of Zimbabwe, several diplomatic summits, and an inconclusive jointly-led survey of the floodplain around Kasikili, the Republic of Namibia and the Republic of Botswana have signed a special agreement (February 1996) to bring this territorial dispute to the attention of the International Court of Justice.

STATEMENT OF JURISDICTION:

1. With respect to articles 92 and 93, the Charter of the United Nations, this memorial recognizes the integrity of the International Court of Justice and that “All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.”
2. This application is, therefore, brought under Article 36, Paragraph 1 of the Statute of the Court: “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.”
3. As stated in Article 6, Paragraph 2b, parties may declare recognition of the jurisdiction of the court, including “any question of international law.” For these reasons, the Republic of Namibia acknowledges the International Court of Justice as the just, proper, and authoritative body to resolve this dispute.

ARGUMENTS:

1. The Republic of Botswana has violated territorial precedence laid out in the document that established that state’s common border with the Republic of Namibia: The Anglo-German Treaty of 1890. In it, the border follows the “thalweg of the main channel” of the Chobe River. The main channel of the river is the channel to the south of Kasikili Island, placing the island north of the border and in Namibian territory.
 - a. The Chobe River, especially in the vicinity of Kasikili Island, does not universally flow perennially, so defining the main channel cannot be done as simply as other rivers, given the arid climate of the area.
 - b. The scientific and topographic reasons for the southern channel being the main channel shall be further discussed in the oral statement.
2. Hitherto, the Republic of Namibia has prescriptively held possession of Kasikili as the island has been exclusively used and occupied by the Namibian state and nationals, or that of Namibia’s predecessor’s, which inhabited the exact same land.

SUMMARY AND REQUESTS:

Asserting the International Court of Justice's responsibility and authority in settling disputes of international law, as agreed upon by UN member states *ipso facto* recognizing the Statute of the Court, the Republic of Namibia prays for relief that this judicial body can peacefully resolve the escalating tensions between Namibia and the Republic of Botswana. Namibia hopes that the court's decision will faithfully review this application and conclude the border between Namibia and Botswana does not need to alter from the territorial demarcation respected for more than a century: in the vicinity of the Kasikili Island, the southern channel of the Chobe River serves as the river's main channel and, therefore, the border between the Republic of Namibia and the Republic of Botswana in that area.