



INTERNATIONAL COURT OF JUSTICE

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Communiqué
unofficial
for immediate release

No. 99/53
13 December 1999

Kasikili/Sedudu Island (Botswana/Namibia)

The Court finds that Kasikili/Sedudu Island forms part of the territory of Botswana

THE HAGUE, 13 December 1999. Today, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, gave its decision in the case concerning Kasikili/Sedudu Island (Botswana/Namibia).

In its Judgment, the Court finds, by eleven votes to four, that "the boundary between the Republic of Botswana and the Republic of Namibia follows the line of the deepest soundings in the northern channel of the Chobe River around Kasikili/Sedudu Island" and, by eleven votes to four again, that "Kasikili/Sedudu Island forms part of the territory of the Republic of Botswana".

The Court adds unanimously that, "in the two channels around Kasikili/Sedudu Island, the nationals of, and vessels flying the flags of, the Republic of Botswana and the Republic of Namibia shall enjoy equal national treatment".

Background information

On 29 May 1996, Botswana and Namibia jointly notified to the Registrar the text of a Special Agreement signed at Gaborone (Botswana) on 15 February 1996 and having entered into force on 15 May 1996 for the submission to the Court of a dispute between them concerning the boundary around Kasikili/Sedudu Island. The Special Agreement referred *inter alia* to a Treaty signed on 1 July 1890 between Great Britain and Germany delimiting their respective spheres of influence in Africa.

Under the terms of the Special Agreement, the Parties asked the Court to "determine, on the basis of the Anglo-German Treaty of 1 July 1890 and the rules and principles of international law, the boundary between Namibia and Botswana around Kasikili/Sedudu Island and the legal status of the island".

Reasoning of the Court

The Court begins by stating that the island in question, which in Namibia is known as "Kasikili", and in Botswana as "Sedudu", is approximately 3.5 square kilometres in area, that it is located in the Chobe River, which divides around it to the north and south, and that it is subject to flooding of several months' duration, beginning around March.

It briefly outlines the historical context of the dispute, then examines the text of the 1890 Treaty which, in respect of the region concerned, locates the dividing line between the spheres of influence of Great Britain and Germany in the "main channel" of the River Chobe. In the Court's opinion, the real dispute between the Parties concerns the location of that main channel, Botswana contending that it is the channel running north of Kasikili/Sedudu Island and Namibia the channel running south of the island. Since the Treaty does not define the notion of "main channel", the Court itself proceeds to determine which is the main channel of the Chobe River around the Island.

In order to do so, it takes into consideration, *inter alia*, the depth and the width of the channel, the flow (i.e., the volume of water carried), the bed profile configuration and the navigability of the channel. After having considered the figures submitted by the Parties, as well as surveys carried out on the ground at different periods, the Court concludes that "the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel".

After evoking the object and purpose of the 1890 Treaty, and its *travaux préparatoires*, the Court examines at length the subsequent practice of the parties to the Treaty. The Court finds that this practice did not result in any agreement between them regarding the interpretation of the Treaty or the application of its provisions.

The Court further states that it cannot draw conclusions from the cartographic material "in view of the absence of any map officially reflecting the intentions of the parties to the 1890 Treaty" and "in the light of the uncertainty and inconsistency" of the maps submitted by the Parties to the dispute.

The Court finally considers Namibia's alternative argument that it and its predecessors have prescriptive title to Kasikili/Sedudu Island by virtue of the exercise of sovereign jurisdiction over it since the beginning of the century, with full knowledge and acceptance by the authorities of Botswana and its predecessors. The Court finds that while the Masubia of the Caprivi Strip (territory belonging to Namibia) did indeed use the Island for many years, they did so intermittently, according to the seasons, and for exclusively agricultural purposes, without it being established that they occupied the Island *à titre de souverain*, i.e., that they were exercising functions of State authority there on behalf of the Caprivi authorities. The Court therefore rejects this argument.

After concluding that the boundary between Botswana and Namibia around Kasikili/Sedudu Island follows the line of deepest soundings in the northern channel of the Chobe and that the Island forms part of the territory of Botswana, the Court recalls that, under the terms of an agreement concluded in May 1992 (the "Kasane Communiqué"), the Parties have undertaken to one another that there shall be unimpeded navigation for craft of their nationals and flags in the channels around the Island.

Composition of the Court

The Court was composed as follows: President Schwebel; Vice-President Weeramantry; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek; Registrar Valencia-Ospina.

Judges Ranjeva, Koroma and Higgins have appended declarations to the Judgment. Judges Oda and Kooijmans have appended separate opinions. Vice-President Weeramantry, Judges Fleischhauer, Parra-Aranguren and Rezek have appended dissenting opinions.

A summary of the Judgment is given in Press Communiqué No. 99/53bis, to which a brief summary of the declarations and of the opinions is annexed. The full text of the Judgment, of the declarations and of the opinions are available on the Court's website (<http://www.icj-cij.org>).

The printed text of the Judgment, of the declarations and of the opinions will become available in due course (information requests and orders should be addressed to the publications sections of the United Nations in New York and Geneva).

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