

INTERNATIONAL COURT OF JUSTICE

SPECIAL AGREEMENT

**BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE
GOVERNMENT OF THE REPUBLIC OF NAMIBIA TO SUBMIT TO THE
INTERNATIONAL COURT OF JUSTICE THE DISPUTE EXISTING BETWEEN
THE TWO STATES CONCERNING THE BOUNDARY AROUND
KASIKILI/SEDUDU ISLAND AND THE LEGAL STATUS OF THE ISLAND**

jointly notified to the Court on 29 May 1996

**I. THE MINISTERS FOR FOREIGN AFFAIRS OF THE REPUBLIC OF
BOTSWANA AND OF THE REPUBLIC OF NAMIBIA TO THE
REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE**

17 May 1996

Re: Joint notification of the Special Agreement between the Government of the Republic of Namibia and the Government of the Republic of Botswana to submit to the International Court of Justice the dispute existing between them concerning the boundary around Kasikili/Sedudu Island and the legal status of the island.

We, the undersigned, acting for and on behalf of our respective Governments, have the honour to inform you that the Government of the Republic of Namibia and the Government of the Republic of Botswana have jointly decided to submit their dispute concerning the boundary in the area of Kasikili/Sedudu Island to the International Court of Justice for a final and binding decision. In this regard, on 15 February 1996 in Gaborone, in the Republic of Botswana, the two Governments signed a Special Agreement enabling them to bring the said dispute before the Court for a peaceful settlement

Instruments of ratification were exchanged between the Parties on 15 May 1996 and in accordance with the provisions of Article VII (1) of the Agreement, it entered into force on that date.

Pursuant to Article 40, paragraph 3, of the Statute of the Court, the Special Agreement is hereby transmitted to you in order to enable the Court to set the proceedings in train.

(Signed) Hon. Theo-Ben Gurirab,

Minister of Foreign
Affairs,
for the Government
of the Republic of
Namibia.

(Signed) Hon. Lt.-Gen. Mompoti S. Merafhe,

Minister of Foreign Affairs,
for the Government
of the Republic of Botswana.

II. SPECIAL AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE THE DISPUTE EXISTING BETWEEN THE TWO STATES CONCERNING THE BOUNDARY AROUND KASIKILI/SEDUDU ISLAND AND THE LEGAL STATUS OF THE ISLAND

Whereas a Treaty between Great Britain and Germany respecting the spheres of influence of the two countries in Africa was signed on 1 July 1890 (the Anglo-German Agreement of 1890):

Whereas a dispute exists between the Republic of Botswana and the Republic of Namibia relative to the boundary around Kasikili/Sedudu Island;

Whereas the two countries are desirous of settling such dispute by peaceful means in accordance with the principles of both the Charter of the United Nations and the Charter of the Organization of African Unity;

Whereas the two countries appointed on 24 May 1992 a Joint Team of Technical Experts on the Boundary between Botswana and Namibia around Kasikili/Sedudu Island "to determine the boundary between Namibia and Botswana around Kasikili/Sedudu Island" on the basis of the Treaty of 1 July 1890 between Great Britain and Germany respecting the spheres of influence of the two countries in Africa and the applicable principles of international law;

Whereas the Joint Team of Technical Experts was unable to reach a conclusion on the question referred to it and recommended "recourse to the peaceful settlement of the dispute on the basis of the applicable rules and principles of international law":

Whereas at the Summit Meeting held in Harare, Zimbabwe, on 15 February 1995, and attended by Their Excellencies President Sir Ketumile Masire of Botswana, President Sam Nujoma of Namibia and President Robert Mugabe of Zimbabwe, the Heads of State of the Republic of Botswana and the Republic of Namibia, acting on behalf of their respective Governments, agreed to submit the dispute to the International Court of Justice for a final and binding determination:

Now therefore the Republic of Botswana and the Republic of Namibia have concluded the following Special Agreement:

Article I

The Court is asked 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.

Article II

1. The proceedings shall consist of written pleadings and oral hearings.

2. The written pleadings shall include:

(a) Memorials submitted to the Court by each Party not later than nine months after the notification of the Special Agreement is transmitted to the Registrar of the Court in accordance with Article VII (2) of this Special Agreement;

(b) Counter-Memorials submitted by each Party to the Court not later than nine months after the date of submission of the Memorials;

(c) such other written pleadings as may be approved by the Court at the request of either of the Parties, or as may be directed by the Court.

3. The written pleadings submitted to the Registrar shall not be communicated to the other Party until the corresponding pleadings of that Party have been received by the Registrar.

Article III

The rules and principles of international law applicable to the dispute shall be those set forth in the provisions of Article 38, paragraph 1, of the Statute of the International Court of Justice.

Article IV

The order of appearance in the oral proceedings shall be as agreed by the Parties with the approval of the Court, or in the absence of agreement, as directed by the Court.

Article V

The order of the written pleadings and oral submissions shall be without prejudice to the burden of proof.

Article VI

The language of the proceedings shall be English.

Article VII

1. This agreement shall enter into force on the date of the exchange of instruments of ratification by the two Governments.
2. It shall be notified to the Court as required by Article 40, paragraph 3, of the Statute of the Court by joint letter of the Parties to the Registrar.
3. If such notification is not effected within two months from the entry into force of this Special Agreement, it may be notified to the Registrar by either of the Parties.

Article VIII

1. Each of the Parties may exercise its right under Article 31, paragraph 3, of the Statute of the Court to choose a person to sit as judge.
2. A Party which chooses to exercise the right referred to in sub-Article I, above, shall notify the other Party in writing prior to exercising such right.

Article IX

1. The judgment of the Court on the dispute described in Article I shall be final and binding on the Parties.

2. As soon as possible after the delivery of the Court's judgment, the Parties shall take steps necessary to carry out the judgment.

In witness whereof; the undersigned, being duly authorized thereto, have signed this Special Agreement and have affixed thereto their seals.

Done at Gaborone, this 15th day of February 1996.

(Signed) Molosywa Louis Selepeng,

for the Government
of Botswana.

(Signed) Albert Kawana,

for the Government
of Namibia

**III. CERTIFICATION BY THE MINISTER FOR
FOREIGN AFFAIRS OF BOTSWANA**

CREDENTIALS

THE INTERNATIONAL COURT OF JUSTICE
THE HAGUE, HOLLAND

Whereas the Government of the Republic of Botswana is desirous to make suitable provision for representation of the interests of the Republic of Botswana at the International Court of Justice in The Hague, Holland, and has decided to delegate the person whose name appears below to the said Court.

Now therefore these presents are to certify that the person whose name appear hereunder have been duly named, constituted and appointed by the Government of the Republic of Botswana to represent the Republic of Botswana as Government Agent in the dispute existing between

the Republic of Botswana and the Republic of Namibia concerning the boundary around Kasikili/Sedudu Island and the legal status of the island:

Mr. Abednego Batshane Tafa, Deputy Attorney General.

In witness whereof, I Mompoti Sebogodi Merafhe, Minister for Foreign Affairs of the Republic of Botswana, have hereunto set my hand and affixed my seal.

Done at Gaborone on the 22nd of May in the year one thousand nine hundred and ninety-six.

(Signed) M. S. Merafhe,
Minister for Foreign Affairs.

IV. LETTER FROM THE MINISTER FOR FOREIGN AFFAIRS OF NAMIBIA TO THE REGISTRAR

24 May 1996.

I have the honour to refer to the letter of 17 May 1996 from the Foreign Minister of the Republic of Botswana and myself notifying you of the Special Agreement between the Government of the Republic of Botswana and the Government of the Republic of Namibia to submit to the International Court of Justice the dispute between them concerning the boundary around Kasikili/ Sedudu Island and the legal status of the island.

This is also to inform you that the Government of the Republic of Namibia has designated its Agent and Deputy-Agents in the above-mentioned case as follows:

Agent: Dr. Albert Kawana, Permanent Secretary, Ministry of Justice, Private Bag 13302, Windhoek, Namibia.

Deputy-Agent: H.E. Dr. Zedekia Ngavirue, Ambassador, Embassy of the Republic of Namibia, Avenue de Tervuren 454, B1150 Brussels, Belgium.

Deputy-Agent: H.E. Mr. Ben Uulenga, High Commissioner, High Commission of the Republic of Namibia, 6 Chandos Street, London W1M 0LQ, United Kingdom.

I further have the honour to inform you, pursuant to the Rules of Court, that the address for service of the Agent is: Embassy of the Republic of Namibia to Belgium, Avenue de Tervuren 454, B1150 Brussels, Belgium. Tel. (32 2) 771 14 10. Fax (32 2) 771 96 89.

I hereby certify the authenticity of the signature of Dr. Albert Kawana as it appears on the aforementioned Special Agreement.

(Signed) Theo-Ben Gurirab, MP,
Minister of Foreign Affairs
