CASE No. 23

DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN GHANA AND CÔTE D’IVOIRE IN THE ATLANTIC OCEAN

(GHANA/CÔTE D’IVOIRE)

REPLY OF GHANA

VOLUME I

25 JULY 2016
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
SPECIAL CHAMBER

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CHAPTER 1
INTRODUCTION

1.1 By its Order of 16 March 2016, the Special Chamber authorised the submission of the second round of written pleadings by the Parties: a Reply by Ghana and a Rejoinder by Côte d'Ivoire, along with setting out time limits for these submissions. Pursuant to a request by Ghana, to allow it time to obtain a translation into English of Côte d'Ivoire’s Counter-Memorial, and without objection from Côte d'Ivoire, the Special Chamber granted the Parties a short extension in the time limits to file the Reply and Rejoinder respectively. By its Order dated 25 April 2016, the Special Chamber extended the time limit to file Ghana’s Reply to 25 July 2016. Ghana submits this Reply in accordance with the revised schedule set out in the Order.

1.2 This Reply supplements the arguments of law and fact presented in the Memorial, all of which are maintained in full, and responds to Côte d’Ivoire’s arguments as set out in the Counter-Memorial. None of the arguments advanced by Côte d’Ivoire have caused Ghana to change its approach to this case.

1.3 The first round of pleadings served to underscore the extent of the differences between the Parties that became evident during the Provisional Measures phase of these proceedings. In accordance with ITLOS Rules, Ghana focuses on the issues that continue to divide the Parties.

I. Points of Agreement

1.4 Before proceeding it is useful to note the general points of agreement between the Parties. More specific points of agreement are identified in the Chapters that follow.
• **First,** Ghana and Côte d’Ivoire agree that the applicable law for the delimitation in this case is the 1982 Convention and other rules of international law not incompatible with it;¹

• **Second,** they agree that the 720 km land boundary that separates them was established by a series of Agreements between Great Britain and France in the period between the late 1880s and 1905, and that this boundary culminates on the coast at Boundary Pillar (BP) 55;²

• **Third,** they agree on the precise geographical coordinates of BP 55, and acknowledge the fact that they previously agreed that BP 55 constitutes their agreed land boundary terminus (LBT);³

• **Fourth,** they are in broad agreement about the offshore geology and geomorphology;⁴

• **Fifth,** they agree that the Special Chamber has jurisdiction to effect the delimitation both within 200 M and beyond 200 M;⁵ and

• **Sixth,** they agree that they have entitlements to a continental shelf beyond 200 M, subject to the CLCS’s findings regarding Côte d’Ivoire’s entitlement.⁶

### II. Summary of Facts and Disputed Issues

1.5 These proceedings arise against a background of fifty years of mutually agreed, peaceful economic activity by both Parties along either side of an agreed customary equidistance boundary. The practice of each Party has been consistent and respectful of the other’s, in full knowledge of and reliance upon mutual respect of a recognised and agreed

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¹ *See Memorial of Ghana (4 Sept. 2015) (hereinafter “MG”), para. 1.27; Counter-Memorial of Cote d’Ivoire (4 Apr. 2016) (hereinafter “CMCI”), paras. 3.1-3.3.*

² *See MG, paras. 2.2, 4.13; CMCI, paras. 2.29, 7.28.*

³ *See MG, paras. 4.13-4.17; CMCI, para. 7.28.*

⁴ *See MG, paras. 2.9-2.11; CMCI, paras. 1.35-1.36.*

⁵ *See MG, paras. 6.14-6.28; CMCI, para. 8.2.*

⁶ *See MG, paras. 6.6-6.13; CMCI, paras. 8.7-8.20.*
boundary. Step by step, Ghana and Côte d’Ivoire developed their oil industries in mutual and constant reliance on this agreed maritime boundary. Côte d’Ivoire did not object throughout decades of activity by Ghana and its operators, carried out openly and in close liaison with Côte d’Ivoire and PETROCI, its national oil and gas company. Ghana even received Côte d’Ivoire’s permission to use Ivorian waters so that it could conduct seismic surveys on its own side of the agreed boundary.

1.6 Only after five decades of this consistent unbroken practice did Côte d’Ivoire abruptly and unilaterally change its position. The Parties engaged in ten rounds of negotiations from 2008, aimed initially at precisely fixing their agreed boundary. However, as those talks progressed, Côte d’Ivoire effectively repudiated the agreed boundary, decided to depart from the agreed equidistance method, and began to advance a series of alternative and constantly changing approaches, culminating in the angle bisector approach, which it now invokes before the Special Chamber. The motivation behind this abrupt series of changes may perhaps be discerned from the fact that they came to be coupled with demands that Ghana immediately cease all oil-related activities in an area that Côte d’Ivoire had never claimed. Only now, after the discovery of new oil, did Côte d’Ivoire create a dispute. When Ghana reasonably declined to proceed as Côte d’Ivoire wished, Côte d’Ivoire attempted to persuade the Special Chamber to grant provisional measures to that effect. It failed, but now argues—without supporting evidence or any specificity of argument—that Ghana has violated the requirements which the Special Chamber did impose.

1.7 Throughout this period, Ghana has behaved responsibly and with utmost restraint. The minutes of the ten rounds of talks demonstrate that Ghana consistently sought to identify areas of agreement and make progress where possible; it has followed up on matters arising at the various meetings; and it has sought to understand and engage with Côte d’Ivoire’s various positions. This cooperation has continued following the Special Chamber’s Order of 25 April 2015: as explained in Chapter 5 below, the steps taken by Ghana to comply with the obligations set out in the Order have been discussed at length in a number of bilateral meetings between the two Agents and technical experts from both States. In short, Ghana has consistently acted in a spirit of neighbourly cooperation, befitting the long and cordial relations between the two States, and in a manner called for by the 1982 Convention.
1.8 Yet, the Counter-Memorial seeks to paint a very different picture. It portrays Ghana as having acted to impose a *fait accompli*, recklessly forging ahead with oil-related activities in Côte d’Ivoire’s territory, against Côte d’Ivoire’s protests. As well as this recasting of history, Côte d’Ivoire seeks to refashion geography, portraying the Parties’ coastal configurations as concave and convex, and deeply unstable, when in fact they are neither. Côte d’Ivoire’s assertions are undermined by the very documents it has chosen to annex to its Counter-Memorial.

1.9 Côte d’Ivoire then seeks to create an alternative picture of history and geography in an attempt to deny the Parties’ tacit agreement and long, mutual respect of the equidistance boundary. On that basis, it argues for an angle bisector approach, then undermines its own bisector argument by claiming in the alternative for an adjusted equidistance line based on a series of fictitious “relevant circumstances”, and finally it argues that Ghana has violated international law.

1.10 It will be seen from this summary that the Parties are sharply divided on many issues of fact and law. For the reasons developed in the following Chapters, Ghana considers that Côte d’Ivoire bases its case on a selective presentation of the evidence, providing facts out of context, omitting large periods of the relevant chronology, failing to deal with critical evidence, and constantly changing its positions and arguments. This selective presentation is directed at portraying Ghana’s activities as “unilateral” when, in fact, they have been consistent and undertaken with Côte d’Ivoire’s full knowledge and cooperation. Indeed, Ghana has acted throughout on the basis of representations made by Côte d’Ivoire and on which Ghana has placed reliance.

1.11 Côte d’Ivoire presents its legal arguments equally selectively, repeatedly ignoring cases which do not support it, and citing authorities which, when carefully analysed, are either irrelevant to—or undermine—the case it now presents. One of the tasks of this Reply is to set the record straight, by correcting the factual and legal inaccuracies and by responding to the many areas of selective presentation of facts and law.
1.12 While the Chapters that follow set out a detailed response to Côte d’Ivoire’s truncated presentation, there are certain matters in the Counter-Memorial that merit particular attention. These include various omissions and misrepresentations. The most serious are an incomplete account of Côte d’Ivoire’s own petroleum activities over many years and decades, including the grant of concessions, and related drilling; its silence as to the extensive cooperation between the Parties through their national oil companies, particularly from 1992 to 2007; its assertions regarding the legal status of its national oil company, PETROCI; and a misrepresentation of Ivorian decrees, most particularly the inaccurate and misleading depiction of concession areas in its sketch maps.

1.13 The Special Chamber will have noted that Côte d’Ivoire has also created new material for the purposes of these proceedings. One example is its new technical study to establish the location of the low water line in the vicinity of the land boundary terminus. Based on this newly-developed data, Côte d’Ivoire has identified new base points to construct its newly-minted equidistance line. Prior to this study both Parties measured their coastlines based on official British and French maps that relied on the same survey data. While Ghana has continued to rely on these official charts, as agreed by the Parties in 2014, Côte d’Ivoire appears to have abandoned the earlier agreement and prepared new nautical charts solely for the purpose of this arbitration. The new study and the charts are problematic for the several reasons set out in Chapter 3 of this Reply.

1.14 Côte d’Ivoire’s creation of new material for the purposes of this arbitration is not confined to charts alone. Remarkably, on 24 March 2016, just days before filing its Counter-Memorial, Côte d’Ivoire made a new submission to the CLCS, replacing its May 2009 Submission, in which Côte d’Ivoire claimed only areas to the west of the customary equidistance boundary. The new submission is another abandonment of an earlier position, and reflects a further repudiation of the tacit agreement between the Parties that respected the customary equidistance boundary as extending beyond 200 M. This agreement was evident from their respective 2009 Submissions to the CLCS. It appears that Côte d’Ivoire’s new CLCS submission was necessitated by its recognition that its 2009 CLCS Submission was manifestly incompatible with the new claims it now advances. This is the latest demonstration of Côte d’Ivoire’s constantly evolving positions with regard to the maritime boundary between the Parties.
1.15 Côte d’Ivoire’s use of new materials needs to be treated with caution for a number of reasons, not least because it appears to have been expressly developed for the purposes of this litigation and after its commencement. Its reliability and accuracy are questionable. For example, in the case of the new technical study the Counter-Memorial fails to provide to the Special Chamber or Ghana the data that underlies it, making its verification impossible. Ghana’s attempt to elicit this information in April 2016 was met with evasion.

1.16 In using this material, Côte d’Ivoire also repudiates technical parameters agreed between the Parties during bilateral negotiations prior to the commencement of these proceedings. At that time, the Parties had expressly agreed on a number of technical issues, including the use of the same international hydrographical charts. However, Côte d’Ivoire now rejects the use of official charts, including its own, relying instead on its new technical study.

1.17 Côte d’Ivoire also ignores aspects of the Parties’ agreement on the LBT at BP 55, and postulates an entirely different LBT, located at BP 54. It then connects BP 54 to the low water line, through BP 55, by means of a geodetic line following the same azimuth as the line from BP 54 to BP 55.

1.18 Despite the complex and novel factual and legal arguments which Côte d’Ivoire attempts to develop, Ghana submits that this case is actually straightforward. At its heart, it does not involve any delimitation at all. Rather, it involves the formal recognition of a longstanding customary equidistance boundary, supported by a practice that dates back five decades and demonstrates the existence of a tacit agreement on the location of the boundary.

1.19 Even if the Special Chamber were to decide that the maritime boundary must be delimited, in the view of Ghana, and pursuant to the applicable law, the boundary ends up in effectively the same place. This occurs as a consequence of the applicable law, which directs the straightforward application of the principle of equidistance to the equally

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8 See infra para. 3.97; CMCI, paras. 7.23, 7.27.
straightforward—and straight—relevant coasts. Unlike other cases with which ITLOS and Annex VII tribunals have had to grapple, the coasts in this case are remarkable only for the lack of any remarkable features. There is no geographical basis for any adjustment to the provisional equidistance line. The only truly relevant circumstance is the Parties’ longstanding and unbroken practice, for over five decades, of recognizing a customary equidistance boundary between them, and respecting it fully in their granting of oil concessions and development activities, and Ghana’s detrimental reliance on Côte d’Ivoire’s actions and representations in that respect. The only minor adjustment to the provisional equidistance line that is justified is to shift it slightly to the west so that it coincides with the customary line, as set out in Chapter 3. The equitableness of that boundary is indisputable, by application of the standard non-disproportionality test. As noted above, there is nothing in Côte d’Ivoire’s Counter-Memorial that has caused Ghana to revise the conclusion set out in its Memorial.

III. Structure of the Reply and Summary of Arguments

1.20 This Reply consists of four volumes. Volume I comprises the main text of the Reply and selected maps and figures. Volume II contains a full set of maps and figures. (The Figures are organised in the order they are referenced in the main text.) Volumes III and IV contain documentary annexes supporting the Reply, arranged in the following order: Volume III contains Annexes 109 to 114, and Volume IV contains Annexes 115 to 168.

1.21 Volume I consists of 5 chapters, followed by Ghana’s Submissions. Following this Introductory Chapter, Chapter 2 responds to Côte d’Ivoire’s arguments concerning the history of the Parties’ conduct. This builds on Chapter 3 of the Memorial, in which Ghana demonstrated that the repeated statements, representations, acts and omissions of the Parties over approximately half a century have unambiguously and consistently reflected three main points: (a) that both States have accepted the general and well-established principle of equidistance as the appropriate and equitable approach to the delimitation of their maritime boundary, in accordance with international law; (b) that both States have acted on the basis that the principle of equidistance should and does specifically apply to the delimitation of their common maritime boundary; and (c) that both States agreed for over five decades that the equidistance boundary should follow a specific course, and deliberately and consistently
granted their respective oil concessions so that they extended to, but did not cross, the customary equidistance boundary, and each conducted all of its oil related activities exclusively on its own respective side of the agreed boundary, openly and without objection by the other.

1.22 Côte d’Ivoire does not accept these fundamental contentions, despite the weight of the evidence adduced by Ghana, and its own longstanding and consistent practice. It seeks to attack the legal foundations of Ghana’s argument, before challenging the very existence of a tacit agreement between the Parties. In response, Chapter 2 explains how the Parties’ tacit agreement cannot simply be wished away now that Côte d’Ivoire would prefer the boundary to lie further to the east. The Chapter examines how Côte d’Ivoire has distorted the history of the Parties’ conduct by omitting key information from the period after it achieved independence in 1960, and from the fifteen years between 1992 and 2007, a period when extensive mutual practice in the relevant area, as well as cooperation between both States through their respective oil companies, was occurring. This mutual practice, extending over five decades, demonstrates the Parties’ shared understanding and tacit agreement that their maritime boundary follows a customary equidistance line. The Chapter closes by showing that the undisputable representations made by Côte d’Ivoire, and relied upon by Ghana in good faith for more than five decades to develop its oil industry, estop Côte d’Ivoire from objecting at this late stage to the well-established customary equidistance boundary.

1.23 Chapter 3 responds to Côte d’Ivoire’s arguments on the delimitation of the maritime boundary within 200 M, as set out in Chapters 6 and 7 of the Counter-Memorial. It begins by noting that the maritime boundary between Ghana and Côte d’Ivoire has been agreed. There is thus no need for the Special Chamber to delimit a new boundary in this case. But even if delimitation were called for, Côte d’Ivoire’s approach would not be the right one.

1.24 Chapter 3 sets out the fundamental contradiction between Chapters 6 and 7 of the Counter-Memorial. In its Chapter 6, Côte d’Ivoire argues that the proper method of delimitation in this case is the “angle bisector method”, which, it correctly points out, has been used when international courts and tribunals have found it impossible to construct an equidistance line. But then in its Chapter 7, Côte d’Ivoire goes on to construct such a line,
and argues that its proposed equidistance line produces an equitable result. In doing so it fatally undermines its own bisector argument. Even ignoring this contradiction and viewing Côte d’Ivoire’s case on the bisector in isolation from its incompatible arguments in its Chapter 7, there is absolutely no justification for the adoption of a bisector approach in the geographical circumstances present in this case. Côte d’Ivoire’s half-hearted attempt to do so, in the face of case law which it simply ignores, fails, leaving it clear that, if the boundary falls to be delimited, the real issue in this case is the correct application of equidistance methodology.

1.25 Accordingly, the application of equidistance forms the heart of Chapter 3. In it, Ghana explains why Côte d’Ivoire has wrongly applied equidistance methodology to the geographic circumstances of this case. It has, for example, completely ignored the concept of “relevant coasts”, the determination of which is an essential precursor to the drawing of a provisional equidistance line. This failure is compounded when Côte d’Ivoire ignores its own official charts and proceeds to identify erroneous base points, in reliance on its very recent satellite photography and recalculations of the low-water line, without supplying the underlying technical data on which those new, post-litigation calculations were made. Ghana goes on to show how this leads to a contrived “equidistance” line, which Côte d’Ivoire attempts to “adjust” based on allegedly “relevant circumstances” which are both fictitious and irrelevant. The relevant coasts are, contrary to Côte d’Ivoire’s unsupported presentation of the geography, neither concave nor convex. There are no unusual or anomalous geographic features that affect the provisional equidistance line, much less that cause it inequitably to cut off the maritime entitlements of either Party. Côte d’Ivoire’s “adjusted” equidistance line is therefore as contrived and unsupported as its angle bisector. Both are unsupported by the case law; neither produces an equitable result.

1.26 Chapter 3 shows how equidistance methodology is properly to be applied. The relevant coasts are first identified, and base points are established along the low water line as depicted on the Parties’ official charts, which they agreed in 2014 to use for the purpose of fixing the precise coordinates of the boundary. The provisional equidistance line constructed from those base points is then adjusted in light of relevant circumstances. In this case, there are none of a geographical nature, since the relevant coasts are straight and devoid of any anomalous features. The only truly relevant circumstance is the prolonged and consistent
practice of the Parties recognizing a customary equidistance boundary. To achieve an equitable result the provisional equidistance line must be shifted slightly to match the customary boundary line. The result passes the non-disproportionality test, and is equitable to both Parties.

1.27 Building on the previous Chapters concerning the Parties’ tacit agreement on the existence and location of a customary equidistance boundary within 200 M, Chapter 4 addresses the delimitation of the continental shelf beyond 200 M. Here, Ghana describes the Parties’ respective entitlements to the areas beyond 200 M as reflected in their submissions to the CLCS in 2009. Those submissions are a powerful illustration of the Parties’ agreement on the existence and location of their maritime boundary within and beyond 200 M.

1.28 Belatedly, and remarkably, Côte d’Ivoire then went on to file a second CLCS submission on 24 March 2016, a mere eleven days before the filing of its Counter-Memorial. Chapter 4 addresses the belated submission, before going on to demonstrate that the equitable solution called for by Article 83(1) of UNCLOS consists of an extension of the customary equidistance boundary that separates the Parties’ maritime areas within 200 M to the outer limits of the continental shelf.

1.29 Chapter 5 addresses Côte d’Ivoire’s unfounded allegations that Ghana has violated international law in several respects: in particular, that it violated Côte d’Ivoire’s sovereign rights under general international law and UNCLOS, the “general obligation to negotiate in good faith”, the obligations under Article 83(3) of UNCLOS, and, for good measure, the Special Chamber’s Order of 25 April 2015.

1.30 Tackling each of these allegations in turn, Ghana demonstrates that they are unfounded. There has been no violation of Côte d’Ivoire’s sovereign rights, principally because, as the rest of the Reply demonstrates, the area in question is subject to Ghana’s sovereignty or sovereign rights. In any event, Côte d’Ivoire’s arguments on the question of sovereign rights are unsupported by authority, principle, or the evidence. Accordingly, the question of compensation does not arise. Nor is there a legal basis for Côte d’Ivoire’s claimed right to information, and its requests are over-broad and take no account of the commercial
nature of the information or the intellectual property rights which may attach to it. In respect of compensation for any oil extracted by Ghana from any area that may be found by the Special Chamber to belong to Côte d’Ivoire, the Parties are in agreement that this should, in the first instance, be a matter for negotiation between them following the Special Chamber’s Judgment. Ghana reserves the right to advance, at that stage, its own claim for damages in respect of losses caused by the conduct of Côte d’Ivoire, which has interfered with Ghana’s oil development activities in its own waters and continental shelf.

1.31 As to the allegation that it has failed to negotiate in good faith, Ghana regrets that such a claim has been advanced. The record shows this allegation to be wholly unfounded: Ghana has acted in good faith throughout, including through ten rounds of negotiations, at all stages of which it acted constructively and in a spirit of neighbourly cooperation, even when faced with Côte d’Ivoire’s repeated changes of position and unrealistic demands. The same applies to Article 83(3): Ghana has done nothing that could possibly be construed as jeopardising or hampering the determination of the Parties’ maritime boundary. Such a determination cannot be jeopardized or hampered by the continuation of peaceful economic activity which has reflected the status quo for many years.

1.32 Finally, Chapter 5 addresses the Order of 25 March 2015, demonstrating that Ghana has faithfully complied with every aspect of that Order.

1.33 Volume I concludes by setting out Ghana’s Submissions.
CHAPTER 2
THE CUSTOMARY EQUIDISTANCE BOUNDARY: CÔTE D’IVOIRE’S DISTORTION OF THE HISTORY OF THE PARTIES’ CONDUCT

I. Introduction

2.1 As set out in Ghana’s Memorial, over a period of more than five decades (from 1957 to 2009) the conduct of Ghana and Côte d’Ivoire has been consistent and unambiguous in relation to the existence of a settled maritime boundary following an equidistance line. Specifically, that practice shows that:

*First*, both States have explicitly accepted the general and well-established principle of equidistance as the appropriate and equitable approach to the delimitation of their maritime boundary, in accordance with international law.

*Second*, both States have acted on the basis that the principle of equidistance should and does specifically apply to the delimitation of their common maritime boundary....

2.2 In its Memorial, Ghana provided a detailed account of the conduct of both States over five decades. This conduct was supported by extensive evidence in the form of national legislation, presidential decrees, diplomatic correspondence, public statements, and representations before third States and international organisations. Moreover, as demonstrated in the Memorial, the conduct of both States as to the existence of an international boundary represented by the “customary equidistance line” is reflected in—and accompanied by—consistent and abundant cartographic material from both official and corporate sources. In its Memorial, Ghana put this material before the Special Chamber.10 Taken as a whole, the evidence unambiguously establishes that both Parties, for more than five decades, recognised and respected a maritime boundary that followed an equidistance line beginning at the land boundary terminus at BP 55. Both Parties also made repeated

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9 MG, paras. 3.2-3.3.
10 See ibid., paras. 3.8-3.69.
official and public representations to this effect, and each Party relied on the representations made by the other.\(^{11}\)

2.3 Notwithstanding the clarity of Ghana’s case, Côte d’Ivoire argues that five decades of consistent practice are without legal foundation or consequence, and that Ghana’s case is somehow confused, based variously on assertions of tacit agreement, custom, and estoppel.\(^{12}\) Côte d’Ivoire argues that there is no basis to consider a “customary equidistance line” as the Parties’ maritime boundary, and that the evidence on which Ghana relies is not relevant or probative. However, as will be shown below, it is Côte d’Ivoire’s case that is without foundation and unsupported by the evidence.

2.4 First, Côte d’Ivoire asserts that Ghana’s claim is based on the alleged existence between the Parties of a “special, bilateral custom”,\(^ {13}\) but that Ghana has failed to justify the two conditions necessary for such a rule to emerge (consent and \textit{opinio juris}).\(^ {14}\) This is a fundamental misrepresentation of Ghana’s case.

2.5 As set out in the Memorial, Ghana’s reference to a “customary” maritime boundary refers to the existence of a specific boundary line that both Parties have recognised and respected over the course of more than five decades by their mutual, sustained, and consistent conduct.\(^ {15}\) This pattern of conduct points unequivocally to an agreement by the Parties as to the existence and orientation of a common maritime boundary: one that starts at the land boundary at BP 55 and then follows an equidistance line. Ghana has never argued that this “customary equidistance line” reflects a bilateral custom. The term “customary equidistance line” simply refers to the fact that both Parties have, over a period of many decades, mutually followed an equidistance line in their practice. As Ghana has consistently maintained, the customary line is a reflection of the Parties’ tacit agreement as to the existence of a maritime boundary that follows an equidistance line, as distinguished from a formal boundary treaty.\(^ {16}\)

\(^{11}\) See ibid., paras. 3.70-3.96.

\(^{12}\) See CMCI, paras. 3.18-3.25.

\(^{13}\) Ibid., para. 3.23 (“coutume spéciale, bilatérale”).

\(^{14}\) Ibid., paras. 3.21-3.23.

\(^{15}\) MG, para. 3.3.

\(^{16}\) See ibid., para. 3.1 (“Ghana and Côte d’Ivoire have not formally delimited their common maritime boundary”).
2.6 Second, Côte d’Ivoire challenges the notion that there exists a tacit agreement as to a maritime boundary based upon an equidistance line. Côte d’Ivoire argues that the maritime boundary has never been formally delimited, that different views have been expressed by the Parties over time as to the method that should be followed for the delimitation and that, in view of persistent uncertainties, it has repeatedly asked Ghana to abstain from undertaking activities in the “disputed area”, i.e., the area it now considers to be subject to a dispute. In order to substantiate this claim, Côte d’Ivoire relies heavily on just two brief and isolated episodes: an alleged proposal for a method of delimitation other than equidistance in 1988 and, in 1992, a suggestion that both States abstain from activities in the area pending final delimitation. This argument is contradicted by the evidence before the Special Chamber, which demonstrates that, since the mid-1950s, the overwhelming practice of both States has been consistently to treat the customary equidistance line as the limit of their national jurisdiction at sea. Moreover, this well-established and consistent conduct is in no way undermined by the 1988 and 1992 episodes: Côte d’Ivoire itself treated the positions it expressed on those two occasions as being without consequence, and continued, without interruption until at least 2009, to respect the customary equidistance line as the international boundary.

2.7 Third, Côte d’Ivoire challenges Ghana’s invocation of the principle of estoppel, asserting that the argument is intended to circumvent the requirements of “custom”, which it claims that Ghana has not proven.\textsuperscript{17} Côte d’Ivoire’s assertion reflects its confusion as to the nature and function of the estoppel principle. Estoppel is not invoked by Ghana as a foundation for its claim that the maritime boundary follows an equidistance line. Ghana relies upon the principle of estoppel to prevent Côte d’Ivoire from ignoring and abandoning its own long-standing practices and representations, and from abruptly claiming a new and entirely different line.

2.8 The present chapter focuses on these inter-related arguments, by which Côte d’Ivoire seeks to deny the existence of a tacit agreement and of obligations under international law which prevent it from invoking a claim to a maritime boundary that is not based on equidistance. Section II explains how the Counter-Memorial offers a distorted account of the Parties’ conduct, by its silence on the practice that led to the emergence of the customary equidistance line.

\textsuperscript{17} See CMCl, para. 5.7.
equidistance line as from the mid-1950s, and by ignoring the context in which Côte d’Ivoire’s statements in 1988 and 1992 were made. Section III addresses the Counter-Memorial’s leap from 1992 to 2007, ignoring a period of fifteen years in which practice and cooperation between the Parties was extensive, consistent, and supportive of their conduct over the prior three decades. This mutual practice reflects the common understanding of both Parties as to the existence of a customary maritime boundary based on equidistance. The Chapter closes by showing that Côte d’Ivoire made repeated representations in relation to this shared maritime boundary along an equidistance line, and that Ghana relied upon these representations over a period of more than five decades, in order to develop its oil industry. Such consistent practice—representation and reliance repeated over half a century—operates to estop Côte d’Ivoire from objecting to the well-established customary equidistance boundary.

II. Côte d’Ivoire’s Disregard for the Emergence of a Tacit Agreement and De-Contextualised Presentation of Its Statements in 1988 and 1992

2.9 Côte d’Ivoire argues that the bilateral talks undertaken by the Parties “between 1988 and 2014” with a view to delimiting the common maritime boundary: “are themselves evidence of the fundamental disagreement between the Parties on the method of delimitation and, a fortiori, on the delimitation of their maritime boundary”. In taking this approach, Côte d’Ivoire places particular emphasis on the position it claims to have expressed on just two occasions before 2009. These occurred in July 1988, at the 15th Ordinary Session of the Joint Commission on Redemarcation of the Ghanaian-Ivorian Border (hereinafter the “Joint Commission on Redemarcation”), and four years later in 1992, in response to a request by Ghana to resume discussions on the maritime boundary and exchange seismic data. Côte d’Ivoire claims that the minutes of the proceedings of the 1988 meeting, and the

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18 Ibid., para. 4.11 (“entre 1988 et 2014”; “sont la preuve même du désaccord fondamental entre les Parties sur une méthode de délimitation, et a fortiori sur la délimitation de leur frontière maritâme”). See also ibid., paras. 4.10-4.24.
19 Ibid., paras. 2.33-2.47; 4.12-4.20.
two telegrams exchanged in 1992 between the Ivorian Ministry of Foreign Affairs and Côte d’Ivoire’s Ambassador in Accra, are sufficient to establish that Côte d’Ivoire objected to Ghana’s reliance on the customary equidistance line. An examination of the evidence shows that Côte d’Ivoire’s claims are without merit.

2.10 Côte d’Ivoire claims that, in 1988, it presented Ghana with an alternative method of delimitation that was not based on equidistance. It further claims that the exchange of telegrams in 1992 demonstrates that the Ivorian side requested a suspension of all activities in an “area which was to be delimited”.\(^\text{22}\) In connecting these two episodes to the beginning of formal negotiations between the Parties on the delimitation of their maritime boundary, sixteen years later in 2008, Côte d’Ivoire attempts to show that there was constant disagreement and opposition between the two States on the location of the maritime boundary. The claim is hopeless: the evidence before the Special Chamber proves that there was no disagreement—and no dispute—at any time before 2009.

2.11 Indeed, an examination of the minutes of the 1988 Joint Commission on Redemarcation and the 1992 telegrams, together with a comprehensive review of the context in which these documents were prepared, shows that Côte d’Ivoire’s conduct between 1988 and the formal beginning of the negotiations in 2008 was entirely consistent with its previous practice over three decades in support of the equidistance line. As developed below, Côte d’Ivoire continued to recognise, respect, and benefit from the customary equidistance line between 1988 and 2009, as it had since its independence. Most importantly, Côte d’Ivoire and Ghana actively cooperated in their oil and natural gas industries, including in the area subject to the present dispute, and did so in reliance upon the customary equidistance line.

2.12 In this context, it is important to note the use that each Party makes of different dates for different purposes. Ghana’s understanding is, and has always been, that the dispute between the Parties started on 23 February 2009. It was on this day, during the Second Meeting of the Joint Ivoro-Ghanaian Commission of the Demarcation of the Maritime Border between Côte d’Ivoire and Ghana, that Côte d’Ivoire abruptly changed course, unexpectedly repudiating the customary equidistance line (and indeed the principle of equidistance in its


\(\text{\textsuperscript{22} CMCI, para. 4.16 ("la zone à délimiter").}\)
entirety), and presenting a new line on which it had never previously relied—the so-called “geographic meridian approach” based on meridian 2°52’11’’. It did so only after the discovery of oil on Ghana’s side of the equidistance line.

2.13 Ghana regrets that Côte d’Ivoire has presented so partial and inaccurate an account of the facts, one that distorts the evidence that is available to the Special Chamber on the existence of a tacit agreement on the customary equidistance boundary. In particular, Côte d’Ivoire is totally silent about the development of its oil industry, including its extensive exploration, development and production activities—from the date of its independence until the years immediately preceding the 1988 meeting of the Joint Commission on Redemarcation—and the evidence of recognition of the customary equidistance boundary that these activities generated. It also ignores the significant activities that occurred in the relevant area between 1988 and 1992 and between 1992 and 2007. Instead, it takes refuge in two isolated events, which, as will be shown below, are minor outliers, at most, in the five decades of consistent mutual practice between the Parties.

A. The Parties’ Mutual Understanding of the Customary Equidistance Boundary before the 1988 Meeting of the Joint Commission on Redemarcation (1950s-1988)

2.14 According to the Counter-Memorial, Côte d’Ivoire’s oil activities between the mid-1950s and 1988 were limited, reaching a momentary golden age with the concession agreement signed in 1970 by the consortium led by Esso, and renewed in 1975. Out of the five pages that Côte d’Ivoire dedicates to the description of its oil activities in Chapter 2 of the Counter-Memorial, three are devoted to commenting on Presidential Decrees 70-618 and 75-769 concerning these Esso concessions. In this way, Côte d’Ivoire doubly misrepresents the facts: (1) it fails to mention numerous other activities that took place prior to the 1988 meeting of the Joint Commission on Redemarcation in what both Parties understood to be their respective maritime areas on either side of the customary equidistance boundary.

23 MG, para. 3.105.

24 Ghana discussed these activities at length in its Memorial. See ibid., paras. 3.8-3.52. Côte d’Ivoire’s Counter-Memorial does nothing to counter this evidence.

25 See CMCI, Chapter 2, Section III.B.

26 CMCI, paras. 2.96-2.106.
boundary, and (2) it attempts to downplay the role of the Esso concessions of 1970 and 1975 by presenting the facts related to them in an incomplete fashion.

1. **Mutual Practice in the Relevant Area Prior to 1988**

2.15 Ghana and Côte d’Ivoire’s offshore activities can be traced back to the years immediately preceding their respective dates of independence, obtained in 1957 and 1960 respectively. As described in the Memorial (but ignored by Côte d’Ivoire), in the period from 1957 to 1988, several major developments occurred in both countries’ offshore industries: important concession agreements were signed with international oil companies that led to extensive exploration, development and production activities; national legislation was adapted to the challenges these new activities presented; and national oil companies (GNPC and PETROCI) were established to implement and give effect to the oil policies and strategies of each of the two Governments. These were extensively addressed in Chapter 3 of Ghana’s Memorial. In this Reply, a brief recapitulation of the main stages of development of both States’ mutual practice—on which Côte d’Ivoire is silent—is appropriate.

2.16 Ghana’s first offshore concession was awarded to Gold Coast Gulf Oil Co. in February 1956. This concession covered 100 square miles of land, 100 square miles of lagoon, and coastal waters in the extreme southwest of the country. It was bounded on the west by an equidistance line. Similarly, as early as 1957, Côte d’Ivoire granted its first offshore oil concession up to the limit of its territorial sea—three miles at the time—to Société Africaine des Pétroles. It was bounded to the west by the 6°W meridian, and to the east by the equidistance boundary with Ghana, matching the western limit of Gold Coast Gulf Oil Co.’s concession from Ghana. A 1959 map from the *Bulletin of the American Association of Petroleum Geologists* shows how the licensed areas of Ghana and Côte d’Ivoire reflected both States’ early acceptance of the customary equidistance line. Considering that in those years both States were going through their respective independence processes, the only available sources of cartographic material illustrating these kinds of activities are from the corporate sector.

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27 See MG, paras. 3.8-3.10, Figures 3.1 and 3.2.
28 See *ibid.*, paras. 3.1-3.69.
29 See *ibid.*, para. 4.21.
30 *Ibid.*, para. 3.10, Figure 3.2.
2.17 The 1960s saw the first major developments in the offshore oil industry of the Tano Basin. This was marked by Ghana’s division of its offshore area into 22 new concession blocks, and the implementation in 1968 of the demarcation of Block-1, which was bounded on the west by the customary equidistance line. Figures 2.1 and 2.2, reproduced below, show not only that Ghana’s western concessions limits were bounded by the customary equidistance line, but also that this line constituted a boundary that extended seaward beyond the concessions themselves.

Figure 2.1: Ghana’s Offshore Oil Concessions, 1968

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2.18 In December 1968, Ghana awarded Blocks 1 and 2 to Mayflower Volta Petroleum, the local subsidiary of the Israeli National Oil Corporation. Volta Petroleum commenced exploration activities in the concession by acquiring over 900 km of 2D seismic data in 1969. The following year, in July 1970, it drilled the first exploration well—Tano 1-1—in the Tano/Cape Three Points Basin, approximately 12.5 km east of the customary equidistance boundary, in its block immediately adjacent to Côte d’Ivoire. Further drilling activities in the Tano/Cape Three Points Basin continued after 1970. For instance, the CTP-1 well was drilled by Mobil Zapata in November 1973, resulting in a small gas discovery; and the South Dixcove 4-2X well was drilled by Phillips Petroleum in May 1975.

2.19 Similar developments took place on the Ivorian side of the customary equidistance boundary during the 1970s. In 1970, Côte d’Ivoire concluded its first important oil concession agreement with a consortium led by Esso, which also involved Shell and the Erap Group. The contract area of this agreement was bounded to the east by the customary

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33 *Ibid.* See also MG, para. 3.16.
equidistance boundary.\textsuperscript{35} Esso, as the operator of this consortium, commenced exploration activities with the acquisition of 2D seismic data in 1970. Five years later, the Esso consortium agreement was renewed.\textsuperscript{36} The consortium acquired over 6,000 km of 2D seismic data and drilled twenty offshore wells. This drilling activity resulted in an oil discovery at the Belier field in 1974.\textsuperscript{37} A production-sharing model contract published by Côte d’Ivoire in 1975 reflected a clear and unambiguous recognition of the customary equidistance boundary.\textsuperscript{38} The same year, Côte d’Ivoire’s national oil company, PETROCI, was founded. The 1970s were thus a key period in the development of Ivorian offshore oil industry, which was based on an approach that recognised and respected the customary equidistance boundary.

2.20 In 1976, a year after the renewal of the Esso concession, Côte d’Ivoire extended its concessions deeper into its maritime area, granting a concession south of Esso’s block to a consortium operated by Phillips Petroleum. The Phillips concession was bounded in the east by the same equidistance line recognised in the 1970 Ivorian Presidential Decree as the border with Ghana, as shown in Figure 2.3 on the following page.\textsuperscript{39} An official map published by the Ivorian Ministry of Economy and Finance in 1976 showing this new concession depicts the customary equidistance boundary with labels showing the dashed boundary line in the map’s legend as “frontière”. The Phillips consortium acquired over 9,000 km\textsuperscript{2} of seismic data and drilled two wells before 1977. The consortium then acquired


over 13,000 km of 2D seismic data and drilled eight exploration wells between 1979 and 1985.\textsuperscript{40} This resulted in the Assienie-1X and B-3X gas and condensate fields discoveries in Block B which, by 1983, was bounded to the east by the customary equidistance line, shown in Figure 2.4 on the following page.\textsuperscript{41}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure2_3.png}
\caption{Côte d’Ivoire Petroleum Research Permits, 1976}
\end{figure}


\textsuperscript{41} MG, Figure 3.8, Société Nationale d’Opérations Pétrolières de la Côte d’Ivoire (PETROCI), \textit{Permis des hydrocarbures en Côte d’Ivoire et position des puits} [Hydrocarbons Permit in Côte d’Ivoire and Location of Wells] (20 Jan. 1983, Côte d’Ivoire). MG, Vol. II, Annex M3.
2.21 The existence of a mutual understanding of the existence of the customary equidistance boundary is reflected in the practice of both States during this period. Mirroring its Ivorian concession block, Phillips also acquired six offshore concession blocks in Ghanaian waters in 1975, following Mayflower Volta Petroleum’s exit from the Tano Basin. Two of these blocks, 1S and 1P, were bounded to the west by the customary equidistance line. Phillips began active exploration with the acquisition of over 3,000 km of its extensive PH-GH-1975 series of 2D seismic data. This seismic data extended over Block 1P into the easternmost part of Block B, Phillips’s concession on the Ivorian side of the customary equidistance line.42 A map by Phillips, reproduced on the following page as Figure 2.5,43 shows its concessions in both States, adjacent to each other on either side of the customary equidistance boundary. Based on the analysis of this seismic data, Phillips proceeded to conduct extensive exploration activity on both sides of the customary equidistance line pursuant to concession rights it had acquired from both Ghana and Cote d’Ivoire. For


instance, in its Ghanaian blocks, an active drilling campaign led to the discovery in 1978 of the South Tano field with the South Tano 1S-1X well. This was followed a year later by a discovery in the North Tano field with the North Tano 1N-1X well.\textsuperscript{44}

\begin{figure}[h]
\centering
\includegraphics[width=0.8\textwidth]{figure2.5}
\caption{Phillips Petroleum Côte d’Ivoire and Ghana Offshore Concessions, 1980}
\end{figure}

2.22 In the midst of these oil-related activities, Côte d’Ivoire also enacted legislation to clarify the legal framework applicable to its offshore activities. Article 8 of the 1977 Act on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of the Ivory Coast formally recognised the principle of equidistance as the most appropriate method of delimitation of Côte d’Ivoire’s maritime boundaries (in the absence of any \textit{a contrario} agreement by the Parties).\textsuperscript{45}

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2.23 Côte d’Ivoire argues that Article 8 of the 1977 Law only reflects “the state of the law with regard to maritime delimitation”,46 and that it does not constitute an acceptance by Côte d’Ivoire of equidistance as the method of delimitation for “the future establishment of maritime boundaries”.47 It is difficult to understand the logic of this argument. Whatever their nature, rules are, by definition, intended to display their effects in the future. When a rule is not considered likely to produce acceptable effects in the future, it is amended or repealed. Yet, as already noted in the Memorial, the 1977 Law was deposited with the United Nations Division for Ocean Affairs and the Law of the Sea, and it has never been repealed, rescinded or amended. On the contrary, its content has been reaffirmed in other national legislation of Côte d’Ivoire, including laws concerning fishing, navigation, and petroleum.48

2.24 Côte d’Ivoire relies on the Barbados v. Trinidad and Tobago award to support the view that the enactment of the 1977 Law did not result “in any form of recognition of, or acquiescence in, the equidistance line as a definitive boundary by any neighboring State”.49 Yet Ghana does not argue that the enactment of the 1977 Ivorian Law is, as Côte d’Ivoire apparently claims, to be understood as a form of consent to the demarcation of a particular boundary with another State. The effect of enacting the 1977 Law was to recognise that, as a matter of principle, equidistance was the appropriate method for delimiting Côte d’Ivoire’s maritime boundaries with neighbouring States. In this way, the enactment of the 1977 Law confirms that the practice of Côte d’Ivoire up to that date—and for three decades thereafter—in respect of its maritime boundary with Ghana was properly based on equidistance.

2.25 For the 34 years following 1977, all the oil concessions granted by Côte d’Ivoire in its easternmost offshore areas were limited in the east by the boundary it recognised with Ghana, and all of Côte d’Ivoire’s exploration and production activities were conducted to the west of

46 CMCI, para. 4.32 (“l’état du droit en matière de délimitation maritime”).
47 Ibid., para. 4.60 (“l’établissement futur des frontières maritimes”) (emphasis in original).
49 CMCI, paras. 4.33-4.34 (citing Barbados v. Trinidad and Tobago, UNCLOS Annex VII Tribunal, Award (11 Apr. 2006) (hereinafter “Barbados v. Trinidad and Tobago, Award”), para. 365) (emphasis added).
that boundary line. After the discovery in 1974 of Côte d’Ivoire’s first offshore field, Bélier, no less than 27 wells were drilled on the Ivorian side of the customary equidistance boundary, resulting in 14 discoveries, none of which were located on Ghana’s side of the customary equidistance line. Likewise, all of Ghana’s westernmost oil concessions extended to the customary equidistance boundary with Côte d’Ivoire, and all of Ghana’s oil exploration and exploitation activities were carried out to the east of that boundary. On this practice, too, Côte d’Ivoire’s Counter-Memorial maintains a complete silence.

2.26 In the early 1980s, Ghana readjusted its concession blocks. Despite significant changes in the configuration of the new blocks, the customary equidistance boundary with Côte d’Ivoire always remained the western limit of Ghana’s concessions. This was the case in respect of the blocks along the boundary, which were divided into Block 1 and Block 1-N, and once again granted to Phillips. The company went on to drill four additional wells to appraise its earlier discoveries, until it relinquished its acreage in Ghana in 1983. Soon after, Ghana founded its national oil company, GNPC, and began an active campaign to promote its offshore areas to international oil companies. Events were held in London, Houston and Calgary as part of Ghana’s petroleum promotion tour in 1984. Based on Ghana’s public representations, which in turn relied on the practice of Côte d’Ivoire, the Government of Canada funded the acquisition of new seismic data on the relinquished Phillips acreage. This seismic survey respected the customary equidistance boundary with Côte d’Ivoire, as did the drilling of appraisal wells in the South Tano field, under a programme undertaken by the Petro Canada International Assistance Corporation.

2.27 All of these activities, as well as the legal and institutional developments concerning both States’ offshore oil industries, took place for more than two decades before the 1988

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50 MG, para. 3.33.
meeting of the Joint Commission of Redemarcation. The practice consistently indicates that both States shared a mutual understanding of the existence of the customary equidistance boundary. It further confirms that it was on the basis of such an understanding that they demarcated their offshore concession blocks on their respective sides of that boundary. Neither Côte d’Ivoire nor Ghana ever deviated from this position; nor did either State ever raise any objections to the acts of the other.

2. **Misrepresentation of the Content of the 1970 and the 1975 Ivorian Presidential Decrees**

2.28 Of all the activities referred to above, the two concessions awarded to the Esso consortium are perhaps the most important in reflecting the mutual understanding of the customary equidistance boundary before 1988. It is therefore not surprising that, to these concessions, Côte d’Ivoire devotes three out of the five pages of the Counter-Memorial which describe the totality of its oil activities.\(^{55}\) However, the explanation and description it gives of the two Ivorian Presidential Decrees that authorised these two concessions are erroneous.

2.29 In Paragraph 2.100 of the Counter-Memorial, Côte d’Ivoire quotes from Presidential Decree 70-618, which granted a concession to the Esso consortium. The excerpt chosen by Côte d’Ivoire provides that the coordinates of points A, B, K, L, M and T limiting the concession “are approximate”.\(^{56}\) Côte d’Ivoire argues that this expression is a clear caveat, proving that there was no tacit agreement as to the equidistance line and that the eastern limit of the concession was only intended for practical use related to the development of oil activities.\(^{57}\)

2.30 Yet Côte d’Ivoire fails to mention the text immediately preceding this excerpt, which reads: “[the delimited region is defined by] the border line separating the Ivory Coast from

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\(^{55}\) See CMCI, paras. 2.99-2.106.


\(^{57}\) CMCI, para. 2.103.
Ghana between the reference points M and L”,”58 i.e., the two points that define the concession’s limits in the sea.

2.31 By failing to refer to the relevant parts of the passage, Côte d’Ivoire has distorted the meaning of the expression “[t]he coordinates of points A, B, K, L, M, and T are approximate”.59 Contrary to Côte d’Ivoire’s claim, the Decree recognises that there is a “border line separating [Côte d’Ivoire] from Ghana”, and that the eastern limit of the concession follows that border.60 It is only the coordinates of the points along this border that are indicative, because they were not as yet scientifically confirmed.

2.32 In addition, Croquis 2.4 of the Counter-Memorial, a sketch map produced by Côte d’Ivoire for the purpose of this case, and relating to the “Périmètre objet du contrat pétrolier du 14 janvier 1975”, offers an inaccurate depiction of the limits of the area under discussion. This Croquis is inconsistent with the wording of the texts on the basis of which this sketch map was created.

2.33 Indeed, while both Law No. 1970-573 and Presidential Decree No. 70-618 of 1975 indicate that the area shall be delimited by straight lines (“les droites”) between points B, C, D, E, F, G and H,61 they also provide that the limit shall run “by the border line separating the

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Ivory Coast from Ghana between the reference points M and L”. Figure 2.6, reproduced below, illustrates the true content of these two legal instruments.

Figure 2.6: Côte d’Ivoire Concession to Esso, 1970

2.34 In spite of this clear difference in wording, Figure 2.7, on the next page, which reproduces Croquis 2.4 of the Counter-Memorial, depicts the limit as being a straight line between points M and L, which are located on the land boundary. This leaves a portion of


Ivorian territory excluded from the concession area while also, most strikingly, including a portion of Ghana’s land territory close to point L within the concession area.

Figure 2.7: Perimeter of the Oil Contract of 14 January 1975

2.35 It does so notwithstanding that, according to the Anglo-French boundary agreements, the land boundary between the two States in this area follows the thalweg of the Tano River, and not a straight line.63 This inaccuracy appears not to be accidental, since it provides a basis for Côte d’Ivoire to argue in another Chapter of the Counter-Memorial that:

a simple observation of the diagram with the points L, M and K of the aforementioned 1975 Decree shows that these points do not correspond to a political border but to the limit of the oil concessions in question. The diagram shows that the line drawn between the points L and M does not form the land border between the two States, just as the line drawn between points L and K does not form the maritime border.64


64 CMCI, para. 4.59 (emphasis added) ("une simple observation du schéma comportant les points L, M et K du décret de 1975 susvisé démontre que ces points correspondent non à une frontière politique mais à la limite des concessions pétrolières en question. Le schéma fait apparaître que la ligne tirée entre les points L et M ne..."
2.36 Thus, in order to serve its argument, Côte d’Ivoire has prepared a map that misrepresents the limits of the concession areas defined by the 1970 and 1975 Ivorian legislation. Ghana regrets this approach to pleading, and invites the Special Chamber to treat Côte d’Ivoire’s use of cartography with caution.

2.37 Faced with a mass of documents showing that the acceptance and use by both States of the customary equidistance line as their common maritime boundary was already well established by 1988, Côte d’Ivoire attempts to challenge the notion that these activities, and the documents which supported them, offer evidence of a tacit agreement between the Parties. It does so by silence, by failing to respond to many of Ghana’s factual assertions, by offering an erroneous depiction of the content of relevant Ivorian legislation, and by cartographic misrepresentation.

B. The “Ivorian Proposal” before the 1988 Joint Commission on Redemarcation

2.38 In an attempt to portray the history of the Parties’ conduct as one of disagreement on their common maritime boundary, Côte d’Ivoire argues that its official opposition to the customary equidistance line can be traced back to the meeting of the 15th Ordinary Session of the Joint Commission on Redemarcation, which took place in Abidjan on 18-20 July 1988. Côte d’Ivoire claims that the question of the “delimitation of the maritime and lagoon boundary” was still outstanding, and recalls that, prior to the meeting, it sought to have this point added to the agenda of the Joint Commission. Côte d’Ivoire also claims that during the bilateral meeting it presented “a proposal of a maritime boundary line consisting of extending offshore the land border terminal connecting pillars 54 and 55”.

2.39 Ghana does not dispute that the issue of formalising the maritime boundary was included in the agenda of the 1988 meeting of the Joint Commission, or that Côte d’Ivoire constitue pas la frontière terrestre entre les deux États, de même que la ligne tracée entre les points L et K ne constitue pas la frontière maritime”.

65 Ibid., para. 12 (“Le différend entre la Côte d’Ivoire et le Ghana remonte à près de trois décennies”).

66 Ibid., para. 4.12 (“délimitation de la frontière maritime et lagunaire”).

67 Ibid., para. 4.13 (“une proposition de tracé de la frontière maritime consistant à prolonger en mer le segment terminal de la frontière terrestre reliant les bornes 54 et 55”).
proposed an alternative method of delimitation to the principle of equidistance. The minutes of the proceedings reflect that this point was part of the agenda of the meeting when it started, and that Côte d’Ivoire made a presentation on this matter.

2.40 Nonetheless, Ghana notes that the proceedings fall far short of offering the support that Côte d’Ivoire seeks to derive from them. The report on this matter is limited to a single paragraph, which offers no information with respect to the alternative line that was proposed:

Following the presentation made by the Ivorian Party on the issue of the delimitation of the maritime boundary, the Ghanaian delegation took note of the inclusion of this item on the agenda and stated that it did not have a mandate to discuss it. It will inform its Government and will seize the Ivorian authorities on the arrangements made by Ghana before the next Session is held.

2.41 Côte d’Ivoire offers no evidence as to the presentation it delivered in 1988. It is only through internal documents summarising discussions held four years later between representatives of various Ivorian ministerial departments that Côte d’Ivoire seeks to reconstruct what it now claims happened in 1988.

2.42 One might expect that a presentation on an alternative method of delimitation—if important—would have been reflected in the minutes of the proceedings, or at least added to them later. Yet Côte d’Ivoire tenders no such evidence in support of its claim. The fact that no further communications on the “Ivorian proposal”, whatever it may have been, took place

68 Ibid.

69 See Republic of Ghana and Republic of Côte d’Ivoire, Procès-verbal de la 15ème session ordinaire de la Commission mixte de réabornement de la frontière ivoiro-ghanéenne [Minutes of the 15th Ordinary Session of the Joint Commission to Redemarcate the Ivorian-Ghanaian Border] (18-20 July 1988), para. 2. CMCI, Vol. III, Annex 12 (“This Session was intended to provide an update on the redemarcating work of the Ivorian-Ghanaian land border, to examine the outstanding issues, and to explore the possibility of delimiting the maritime and lagoon boundary between the two countries.”) (“Cette Session avait pour objet de faire le point d’avancement des travaux sur le réabornement de la frontière terrestre ivoiro-ghanéenne, d’examiner les questions en suspens et d’étudier la possibilité de délimiter la frontière maritime et lagunaire existant entre les deux pays.”) (emphasis added).

70 Ibid., point III.1 (“À la suite de l’exposé fait par la Partie ivoirienne sur la question de la délimitation de la frontière maritime, la Délégation ghanéenne a pris acte de l’inscription de ce point à l’ordre du jour et a déclaré qu’elle n’avait pas mandat pour en discuter. Elle en informera son Gouvernement et saisira les Autorités ivoiriennes des dispositions prises par le Ghana avant la tenue de la prochaine Session”.).

following the 1988 meeting (e.g., an official communication or report by the relevant Ivorian Ministry to its Ghanaian counterpart) is revealing. It confirms that Côte d’Ivoire did not seek to insist on it at any point in the 21 years that followed. Rather, judging by Côte d’Ivoire’s subsequent course of action, the raising of the issue of delimitation before the Joint Committee in 1988 was a minor, isolated event that was followed by Côte d’Ivoire’s consistent conduct over the next 21 years confirming the previous practice. The point on which Côte d’Ivoire now places reliance was never raised again.

2.43 Indeed, an examination of Côte d’Ivoire’s actions, and its reactions to activities developed by both countries in the disputed area between 1988 and 1992, indicates that Côte d’Ivoire did not voice any objection to the customary equidistance line. The record shows that, on the contrary, it sought to develop its oil industry on the basis of the recognised customary equidistance line.

2.44 Salient evidence of Côte d’Ivoire’s continued recognition of the customary equidistance line after 1988 may be found in the report published in 1990 by the Ivorian Ministry of Mines, entitled “Côte d’Ivoire Petroleum Evaluation”. The main purpose of this official document was to announce that the Ministry “will offer open acreage for international bidding” and that “Oil Companies will be invited to bid for eleven blocks to be opened early June 1990”. As shown in Figure 2.8 on the following page, a map illustrating the location of the eleven new blocks was included in the report. As noted in Ghana’s Memorial, this map clearly shows Côte d’Ivoire’s offshore concessions to be bounded in the east by the customary equidistance line with Ghana. Moreover, it is not the concessions themselves that form the boundary: the boundary is separately identified along the same course as the concessions’ limits, and continues in a dashed line south of the concessions to 4°N with the word “Ghana” written to the east of the line, in what had always been considered Ghanaian waters by the two States. On this, too, Côte d’Ivoire’s Counter-Memorial is silent.

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73 Ibid., p. 106.
75 MG, para. 3.54.
This is not merely an internal document: this governmental report was prepared by the Ivorian Ministry of Mines to publicise the beginning of the most important stage in the development of the Ivorian offshore oil industry. To ensure its maximum circulation, the report was written in English and presented by a delegation of Côte d’Ivoire officials, along with PETROCI and an independent petroleum consultancy firm, at two promotional meetings for interested oil companies held in London and Houston in June 1990. In this way, the 1990 reconfiguration of Côte d’Ivoire’s blocks, as well as its new policy of expansion of its offshore oil industry, were officially and publicly represented to be based on an understanding that the Ivorian waters were bounded to the east by the customary equidistance line, which constituted the maritime boundary with Ghana.

Consistent with the 1990 report, a year later the same Ministry (renamed the Ministry of Industry, Mines and Energy), along with PETROCI, published an official map, reproduced in Figure 2.9 on the following page, illustrating a new block, CI-06. It is notable that the map clearly depicts the maritime border with Ghana with a dashed line running along the customary equidistance line all the way to the map’s southern edge, and identifies the area to the east of the boundary line as belonging to “GHANA”.

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2.47 Following this, after Esso’s relinquishment of block APE-4 (renamed CEP-2), Côte d’Ivoire subsumed block APE-4 in the newly-configured onshore/offshore block CI-01, which was leased to United Meridian International Corporation (UMIC) in 1994. The block was also bounded on the east by the customary equidistance line with Ghana, and has remained so until today.78

2.48 These elements of proof clearly point to the fact that Côte d’Ivoire not only accepted the status quo existing at the end of the 1980s, but actually reinforced the existing consensus on the customary equidistance line in the period following the 1988 meeting of the Joint Commission. This approach continued into the early 1990s in respect of the reconfiguration and development of its own offshore oil activities.79 Côte d’Ivoire’s 1988 proposal of an alternative method of delimitation—whatever it may have been—was an isolated and insignificant proposal, regarding which Côte d’Ivoire did not thereafter follow up. The consistent practice of both States, before and after the 1988 meeting of the Joint Commission,

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79 See infra Section III.A.1.
reveals an agreement on—rather than an opposition to—the delimitation of the maritime boundary along the customary equidistance line.

C. Côte d’Ivoire’s Reaction in 1992 Following Ghana’s Proposal To Begin Bilateral Negotiations Did Not Induce Any Change in the Parties’ Conduct

2.49 In addition to its 1988 “proposal”, Côte d’Ivoire refers to Ghana’s 1992 invitation to address the issue of formal maritime delimitation through bilateral negotiations. According to Côte d’Ivoire, the mere existence of such an invitation is a sign that “there was no delimitation agreement existing between the Parties at that time”. This reflects a misunderstanding of the purpose of the bilateral negotiations.

2.50 Indeed, the existence of a tacit agreement on the customary equidistance line is fully consistent with Ghana’s proposal to address the question of the formal delimitation of the maritime boundary through bilateral negotiations. Ghana has always acknowledged that while both Parties had respected the equidistance line through their respective and consistent State practice, the common maritime boundary had not been formally delimited. As both States began to plan the further development of their offshore maritime oil activities, it was in their common interest to formally and precisely establish what they had already accepted in practice and principle. This was the purpose of Ghana’s invitation to address the delimitation of the maritime boundary through bilateral talks.

2.51 Côte d’Ivoire also relies on its own “response” to Ghana’s invitation, by asserting that the invitation confirmed the absence of an agreement between the Parties on their common maritime boundary. To make this point, Côte d’Ivoire relies on an exchange of telegrams between the Ivorian Ministry of Foreign Affairs and the Ivorian Ambassador in Accra. The

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80 This, again, is not based on direct evidence, but on the fact that a telegram addressed by the Ivorian Ministry of Foreign Affairs to Côte d’Ivoire’s Ambassador in Accra refers to the fax “by which the Ghanaian government proposed to hold on February 1992 in Abidjan meeting of Ghanaian and Ivorian experts on the issue of boundary delimitation and the exchange of seismic data between Côte d’Ivoire and Ghana”. Telegram from H.E. Amara Essy, Minister of Foreign Affairs of Côte d’Ivoire, to H.E. Konan N’Da, Ambassador of Côte d’Ivoire to Ghana (1 Apr. 1992). CMCI, Vol. III, Annex 16 (“par lequel le gouvernement ghanéen proposait la tenue le 12 février 1992 à Abidjan d’une réunion d’experts ghanéens et ivoiriens chargés de la question de la délimitation des frontières et de l’échange de données sismiques entre la Côte d’Ivoire et le Ghana”).

81 CMCI, para. 4.17 (“à l’époque qu’aucun accord de délimitation n’existait entre les Parties”).

82 MG, para. 3.5 (“Nonetheless, during the course of recent diplomatic negotiation, initiated with a view to formalizing the Parties’ long-standing and mutual recognition of the customary equidistance boundary, Côte d’Ivoire unexpectedly acted to change its position”) (emphasis added).
initial instructions from the Ministry, sent on 1 April 1992, asked the Ivorian Ambassador to transmit a message to the Ghanaian Government. As explained by Côte d’Ivoire in its Counter-Memorial, the message noted that the Ghanaian Government had not reacted to the 1988 Ivorian delimitation proposal on the maritime boundary and “welcomed Ghana’s proposal, and accepted its invitation to negotiate”. Côte d’Ivoire emphasises that the telegram asked that both countries refrain from all operations or exploration works in the border zone. On 30 April, the Ivorian Ambassador informed the Ministry of Foreign Affairs that “the content of that message [from 1 April 1992] has been transmitted to the Ghanaian Government”.

2.52 In any event, Côte d’Ivoire’s subsequent practice clearly contradicts the narrative it gives in the Counter-Memorial.

2.53 First, the Ivorian Ambassador in Accra recommended in his telegram of 30 April 1992 that Côte d’Ivoire’s Government take the initiative to set a new date for a meeting of the Joint Commission (given that the initial date proposed by Ghana—February 1992—had been refused by the Ivorian authorities). It seems that—despite several meetings of Côte d’Ivoire’s National Commission on Demarcation, and the internal discussion on this matter that ensued—the Ivorian Government never followed up on the Ambassador’s recommendation.

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83 CMCI, para. 4.16 (“se félicitant de la proposition ghanéenne, et a accepté son invitation à négocier”).
84 Ibid., para. 2.41; Telegram from Amara Essy, Minister of Foreign Affairs of Côte d’Ivoire, to Konan N’Da, Ambassador of Côte d’Ivoire to Ghana (1 Apr. 1992). CMCI, Vol. III, Annex 16 (“The Ivorian government is pleased with the willigness of the Ghanaian government and therefore hopes that, pending the meeting of the Commission to Redemarcate the Border, both countries will refrain from any operations or drilling in the area whose status remains to be determined.”) (“Le gouvernement ivoirien se réjouit de cette bonne disposition du gouvernement ghanéen et espère donc qu’en attendant la réunion de la Commission mixte de réabornement des frontières, les deux pays s’abstiendront de toutes opérations ou travaux de forage dans la zone dont le statut reste à déterminer”).
85 Telegram from H.E. Konan N’Da, Ambassador of Côte d’Ivoire to Ghana, to H.E. Amara Essy, Minister of Foreign Affairs of Côte d’Ivoire (30 Apr. 1992). CMCI, Vol. III, Annex 17 (“le contenu de ce message [de 1 avril 1992] a été transmis au gouvernement ghanéen”). Côte d’Ivoire did not provide the original document whereby such response was transmitted to the Ghanaian Government. After further research in official archives, however, Ghana has been able to locate the original message transmitted in April 1992 to the Ghanaian Ministry of Foreign Affairs. As far as the point in issue is concerned, the content of this document is identical to that of the fax message of 30 April 1992 referred to above. See Note Verbale from Ministry of Foreign Affairs of the Republic of Côte d’Ivoire, to Ministry of Foreign Affairs of the Republic of Ghana, No. 2678/AE/AP/RM-13 (Apr. 1992). RG, Vol. III, Annex 112.
In fact, the Joint Commission never met again. It is difficult to see why—if there truly was a disagreement between the two States as to the course of their maritime boundary—Côte d’Ivoire never attempted to revive Ghana’s invitation and set a new date for the meeting of the Joint Commission. This would have been an important opportunity to present a different position on the maritime boundary and request the suspension of all activities from both Parties.

2.54 This lack of interest was confirmed at the meeting held between the Parties’ technical working teams, which took place in Abidjan some five years later, on 2-3 December 1997. The Minutes of this meeting indicate that “[t]he two delegations agreed to ask their respective governments to reactivate the Joint Ivorio-Ghanaian Commission on the demarcation of the common maritime border”.

Reference is made to “demarcation” which—as opposed to the term “delimitation”—indicates that the Parties had already agreed on their common maritime boundary. What remained was the determination of the precise coordinates of the boundary.

2.55 In any case, no further action ensued. This is a clear indication that the situation at that time did not pose any particular problem for Côte d’Ivoire, and that the customary equidistance line provided a sufficiently stable and secure basis for the two States to continue their oil development activities in the relevant area.

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Second, Côte d’Ivoire’s contradictory position is not only evidenced by its failure to act and suggest a new date for the meeting of the Joint Commission; it is also evidenced by the fact that Côte d’Ivoire’s actions did not comply with its own alleged wish to suspend all activities in the relevant area. As described below, for fifteen years from 1992 to 2007 Côte d’Ivoire actively participated in mutual State practice with Ghana, while being perfectly informed of Ghana’s activities, as shown by the extensive cooperation between GNPC and PETROCI. In parallel, Côte d’Ivoire developed its own activities exclusively in what had always been considered as Ivorian waters to the west of the customary equidistance boundary. It did so despite its alleged proposal that “both States” suspend all activities.88

The weight Côte d’Ivoire seeks to place on the 1992 communication indicates its difficulty in attempting to find some support in the record for its supposed opposition to the equidistance line. Yet this communication is the one and only instance over the course of five decades in which Côte d’Ivoire might have suggested that both States abstain from activities in the relevant area pending a formal delimitation of their maritime boundary. If this was proposed at all, it was done tentatively and in the mildest of terms, simply expressing the hope that both States might suspend such activities.89 There is no evidence before the Special Chamber of any protest before 2009 against activities undertaken or authorised by Ghana in the relevant area. This explains Côte d’Ivoire’s complete silence, in its narrative of the relations between the Parties in its Counter-Memorial, on the entire period stretching from 1992 to 2007.

III. Côte d’Ivoire’s Unjustified Leap from 1992 to 2007

After a brief presentation of its position in 1992, Côte d’Ivoire leaps in time to 2007—a year before, as Côte d’Ivoire acknowledges, negotiations on the maritime border were

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89 Ibid. See also Government of Côte d’Ivoire, Second Meeting of the Joint Ivorio-Ghanaian Commission on the Demarcation of the Maritime Border Between Côte d’Ivoire and Ghana: Presentation by the Ivorian Side (23 Feb. 2009), para. 15. MG, Vol. V, Annex 47 (Côte d’Ivoire’s assertion, in its communication to the mixed delimitation Commission of February 2009, according to which such demands were made in 1988 and 1992, is indeed misleading since it clearly emerges from the documents referred to by Côte d’Ivoire itself that no such request was made in 1988.).
formally launched. Côte d’Ivoire describes this period of fifteen years as devoid of any significant activities in the area relevant to the present dispute. The purpose of Côte d’Ivoire’s silence on the developments that took place during that period appears to be twofold: (i) to present its actions in 1988 and 1992 as being more significant than they actually were; and (ii) to portray Ghana as acting unilaterally and imposing a “fait accompli” aimed at the promotion of its own interests.

2.59 Neither proposition is consistent with the facts. The evidence before the Special Chamber shows that Ghana and Côte d’Ivoire developed activities on their own in their respective maritime areas on each side of the customary equidistance boundary, and jointly, through extensive cooperation between their respective national oil companies. It shows that Côte d’Ivoire’s account of inactivity is wrong.

A. Mutual Practice in the Relevant Area between 1992 and 2007

2.60 Significant activities relating to the exploration and exploitation of natural resources were carried out until at least 2007, in both Ghanaian and Ivorian waters on each side of the customary equidistance boundary. These activities show that both States continuously respected and benefited from the customary equidistance line even after Côte d’Ivoire’s alleged proposal in 1992 that both States suspend all activities. Both States participated in mutual and consistent State practice continuously from 1991 onwards.

1. Côte d’Ivoire’s Usage of the Customary Equidistance Boundary

2.61 A great number of activities were undertaken in Côte d’Ivoire’s waters to the west of the customary equidistance line between 1992 and 2007. As already noted in Ghana’s Memorial, and mentioned above, as early as 1990 Côte d’Ivoire’s delineation of offshore blocks included block CI-02, which was bounded to the east by the customary equidistance line with Ghana. This was illustrated in the aforementioned official map that was produced

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90 CMCI, para. 4.20 (“Bilateral negotiations on the delimitation of the maritime boundary have finally started in 2008.”) (“Les négociations bilatérales relatives à la délimitation de la frontière maritime n’ont finalement débuté qu’en 2008.”).
91 See ibid., para. 5.20.
92 See ibid., paras. 25, 2.49, 5.27-5.28, 5.39-5.40, 5.55, 9.1, 9.43, 9.56.
93 See supra para. 2.44.
by the Ivorian Ministry of Industry, Mines and Energy and PETROCI, and presented in Figure 2.8 above, in which the boundary line with Ghana is depicted by a dashed line, and the area to the east of that line is referred to as “GHANA”. This indicates once again that the customary equidistance line was treated by Côte d’Ivoire as the international boundary between the two States.

2.62 The delineation of Ivorian offshore blocks, demarcated to the east by the customary equidistance boundary with Ghana, was the prelude to Côte d’Ivoire’s sustained efforts to develop its oil industry, which were enhanced from 1992 onwards. As explained in an article published in the *Oil & Gas Journal* in 1994 by N’Dri Koffi, then Exploration Manager of PETROCI, and current senior official of the Ivorian Ministry of Mines and Energy:

*Côte d’Ivoire in December 1992 amended laws covering petroleum PSCs and service contracts to liberalize terms and take a more active role in developing its oil and gas resources. Combined with recent tax law revisions, the new legal framework is intended to spur investment in petroleum exploration and development.*

2.63 Block CI-01, which had an eastern limit that coincided with the equidistance line, was among the new concession blocks offered by PETROCI. This is shown on the following page in *Figure 2.10*, an official map published by PETROCI. The map includes Côte d’Ivoire’s Petroleum Evaluation Concessions in 1993. Côte d’Ivoire also published a model production sharing contract the same year.

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94 “Côte d’Ivoire offers large tracts”, *Oil and Gas Journal* (22 Nov. 1993) (emphasis added). RG, Vol. IV, Annex 154. *See also* Republic of Côte d’Ivoire, Law No. 96-669 on the Petroleum Code, adopted on 29 August 1996, reprinted in *South & Central Africa, Basic Oil Laws & Concession Contracts*, Supplement No. 133 (Barrows, 1998), Art. 76. MG, Vol. IV, Annex 27 (providing that Petroleum Contract holders are exempted from the payment of (i) any other taxes on profits or dividends paid to shareholders, (ii) any other taxes or contributions based on Petroleum Contract holders’ operations, activities, assets and profits deriving therefrom, and (iii) VAT, tax on services and provisions introduced by Law n°90-434 of 29 May 1990, in respect of the acquisition of goods and services directly and exclusively affected to their petroleum activities, the latter exemption also applying to subcontractors.).


2.64 In 1995, Côte d’Ivoire offered to lease block CI-100, located seaward of CI-01 and also bounded by the equidistance line with Ghana on the east. This block would eventually be granted to Dana Petroleum in 2000. Meanwhile, in 1996, UMIC carried out drilling in block CI-01, with wells Ibex South-1 and Ibex-1 in the Ibex gas field near well IVC0-26, as shown in Figure 2.11, following page 44.

2.65 A map of Côte d’Ivoire’s concession blocks produced by Petroconsultants, which includes the location of wells and the dates they were drilled, shows that between 1996 and 1998 no less than seven wells were drilled by UMIC in block CI-01, which was bounded to the east by the customary equidistance line: Ibex 1 was drilled in 1996; Kudu 1, Kudu 2, and Kudu West 1 in 1997; and Antelope 1, Ibex 1 South, and Oribi 1 in 1998.99

2.66 In Côte d’Ivoire, as in Ghana, soon after the turn of the century, the activities that had begun in the 1990s followed the same trend, with the customary equidistance line being used and officially recognised by Côte d’Ivoire. These activities continued unabated throughout the period in which Côte d’Ivoire was affected by internal strife and armed conflicts. As noted in the Memorial, an official map of Côte d’Ivoire’s Petroleum Exploration Concessions published by PETROCI in 2002 shows block CI-100, bounded to the east by the customary

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equidistance line, as a “concession offered” with “prospects”. Most significantly, important new concessions were granted by Côte d’Ivoire between 2003 and 2007 in the relevant area, all of which used and respected the customary equidistance line as the boundary in the east. On all this Côte d’Ivoire’s Counter-Memorial is silent.

2.67 Following the official division of block CI-01 into blocks CI-401 and CI-01, the 2005 production sharing contract between Côte d’Ivoire and Vanco/PETROCI for block CI-401 contained a map that depicted the eastern limit of the block as coinciding with the customary equidistance line. In 2005, PETROCI published a map of Côte d’Ivoire’s Petroleum Exploration Concessions. It depicted blocks CI-01 and CI-401 as bounded to the east by the customary line, which continues beyond the offshore concession limits with a dashed line, as shown in Figure 2.12 on page 45, indicating the international boundary with Ghana. In 2005, Vanco acquired 1,978 km of 2D seismic data in their block CI-401 and its adjacent block CI-101. Lukoil farmed into the Vanco blocks in 2007, and the same year the consortium Vanco/Lukoil acquired 1,029 km² of 3D seismic data in the same blocks CI-401 and CI-101.

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Similarly, the production sharing contract between Côte d’Ivoire and YAM’s Petroleum/PETROCI, signed in 2006 for block CI-100, includes a map that shows the limits of the concession area as coinciding with the customary equidistance boundary, as shown in Figure 2.13 on the next page.\textsuperscript{104} This was replicated a year later in the 2007 concession agreement between Côte d’Ivoire and Tullow for Deepwater Tano, located immediately to the west of the customary equidistance line.\textsuperscript{105}

\begin{figure}
\centering
\includegraphics[width=\textwidth]{cote-ivoire-petroleum-exploration-concessions-2005}
\caption{Côte d’Ivoire Petroleum Exploration Concessions, 2005}
\end{figure}

\textsuperscript{104} MG, Figure 3.22, \textit{Bassin Sedimentaire Onshore & Offshore Bloc CI-100 [Sedimentary Block Onshore and Offshore, Block CI-100] in Republic of Côte d’Ivoire, Contrat de Partage de Production d’Hydrocarbures avec PETROCI et YAM’s PETROLEUM, Bloc CI-100 [Hydrocarbons Production Sharing Contract with PETROCI and YAM’s PETROLEUM, Block CI-100]} (23 Jan. 2006, Côte d’Ivoire), p. 74. MG, Vol. II, Annex M11; Vol. V, Annex 41.

2.69 Another example of Côte d’Ivoire’s incomplete presentation of the facts may be found in Chapter 5 of the Counter-Memorial. Seeking to justify the absence of any proposal or demand to suspend activities in the relevant area over the fifteen years between 1992 and 2007, and to obscure Côte d’Ivoire’s express recognition of the customary equidistance boundary on numerous occasions during that period, Côte d’Ivoire argues that “[d]uring the period that followed [1992], petroleum activities in the disputed area were reduced”. 106 A footnote accompanying this statement indicates that according to information known today by Côte d’Ivoire, “two drillings were made there, with quite big gaps, in 1999 and 2002

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106 CMCI, para. 5.20 (“[d]urant la période qui a suivi [1992], les activités pétrolières dans la zone litigieuse ont été réduites”).
respectively”. However, no official document supporting this statement is produced by Côte d’Ivoire. Only a report of February 2015, from an unknown source, is referenced.

2.70 No mention is made of the various activities undertaken by Côte d’Ivoire during the same period, in the area concerning the present dispute, as described above. In particular, Côte d’Ivoire is silent as to the drilling by UMIC of up to seven wells in that area between 1997 and 1998. It also fails to make any mention of the concession granted to Vanco in 2003, or to YAM’s Petroleum in 2006 for blocks CI-401 and CI-100, both bordering Ghana along the customary equidistance line. Nor does Côte d’Ivoire make any reference to the legislative changes that were made in the early 1990s with a view to encouraging foreign companies to invest in Côte d’Ivoire’s offshore blocks. And it is silent, too, as to its significant and constant cooperation with GNPC with a view to the joint promotion of interest in the Basin.

2.71 Moreover, before 23 February 2009 Côte d’Ivoire made no public claim of any dispute with Ghana, and made no efforts to alert its investors to the fact that a dispute was about to be raised with the neighbouring State with which it had discussed joint activities, and with which it had developed close cooperation. Nor did Côte d’Ivoire seek to warn investors on the Ghanaian side of the customary equidistance boundary prior to September 2011.

2. Ghana’s Usage of the Customary Equidistance Boundary

2.72 Côte d’Ivoire is also silent about the activities carried out between 1992 and 2007 on the Ghanaian side of the boundary, which followed the well-established customary equidistance line. Between 1991 and 1994, GNPC was operator of the South Tano field, and drilled 3 wells (ST-8, ST-7H and ST-9H) for further appraisal. During the drilling of the ST-

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107 Ibid., para. 5.20 n. 351 (“deux forages y avaient été effectués, à d’assez grands intervalles, en 1992 et 2002 respectivement”).
109 See supra para. 2.58.
110 See supra paras. 2.64-2.68.
111 See infra paras. 2.96-2.118.
7H well, GNPC invited engineers from PETROCI to sit in as observers to witness horizontal well technology being used to drill a well in West Africa for the first time.

2.73 In 1996, GNPC publicly announced the details of the seismic studies undertaken successfully in the field, which stopped at the border with Côte d’Ivoire, following the customary equidistance line. That year Ghana leased the Western Tano concession to Dana, as illustrated in Figure 2.14 below.

![Figure 2.14: Offshore Ghana, Tano Basin, 1997 Proposed Seismic Programme](image)

This was followed by the award in August 1997 of two concessions—the Western Tano and the South Cape Three Points blocks—to Dana Petroleum and Ghana Hunt Oil Company respectively.\textsuperscript{115} Both concessions were bounded to the west by the customary equidistance line. Dana acquired 1,153 km of 2D seismic data, reprocessed 1,300 km of 2D seismic data, and undertook integrated geological and geophysical interpretation of these data. Dana also drilled the WT-1X well in 1999, which led to the WT-1X heavy oil discovery. A map published by Petroconsultants in 1997, reproduced as \textbf{Figure 2.15},\textsuperscript{116} following page 50, shows the status of Ghana’s concessions the year before. In 2000, Dana again acquired about 1,100 km\textsuperscript{2} of 3D seismic data in the deepwater section of the block. It also drilled a second exploration well, WT-2X, which resulted in an oil discovery in 2002.\textsuperscript{117}

In addition, an official GNPC map, reproduced as \textbf{Figure 2.16} on the next page,\textsuperscript{118} depicts offshore activities in Ghanaian waters as of 1998. The information shown in this map is consistent with the map that accompanied Hunt’s Letter to Ghana’s Minister of Mines and Energy, shown at \textbf{Figure 2.17},\textsuperscript{119} following page 50, in which Hunt announced the relinquishment of a part of its oil concession in the South Cape Three Points block, located along the equidistance boundary with Côte d’Ivoire.

\begin{itemize}
\item \textsuperscript{117} \textit{See} Société Africaine des Pétroles, \textit{Côte D’Ivoire Exploration Concession, Location Map and Structural Sketch} (Fig. 8) in H. D. Hedberg, “Petroleum Developments in Africa in 1957”, \textit{Bulletin of the American Association of Petroleum Geologists}, Vol. 42, No. 7 (July 1958). MG, Vol. II, M49; Vol. VIII, Annex 90.
\end{itemize}
The award of the Western Tano and South Cape Three Points blocks in the Tano Basin to Dana Petroleum and Hunt Oil Ghana respectively was followed in 1999 by the award of the North Tano Exploration block to West Oil Ghana, illustrated in Figure 2.18 following Figure 2.17.\(^\text{120}\)

\(^{120}\) MG, Figure 4.5, Ghana National Petroleum Corporation (GNPC), *Fig. 2 [West Oil (Ghana) Pty Ltd. Licensed Blocks]* in *West Oil Block Concession Agreement* (1998, Ghana), Annex 1. MG, Vol. II, Annex M30; Vol. III, Annex 17.
Ghana
Current Status & Synopsis,
1996 (June 1997)

Irish independent Dana Petroleum with partner Seafield signed for Tano West.

Hunt signed PSC on Cape Three Points on March 28, 1996.

Hunt signed MOU on South Cape Three Points in January 1997.

Map Excerpt
82-645835

Figure R 2.15
Hunt’s Relinquishment Area in Ghana, 1998

ANNEX 1

**Ghana**

**Retained Area**

<table>
<thead>
<tr>
<th>POINT</th>
<th>LATITUDE</th>
<th>LONGITUDE</th>
</tr>
</thead>
<tbody>
<tr>
<td>J</td>
<td>4° 20' N</td>
<td>Ghana / Côte-d’Ivoire Border (@ approx. 3° 16' W)</td>
</tr>
<tr>
<td>K</td>
<td>4° 20' N</td>
<td>2° 50' W.</td>
</tr>
<tr>
<td>L</td>
<td>4° 25' N</td>
<td>2° 25' W.</td>
</tr>
<tr>
<td>M</td>
<td>4° 25' N</td>
<td>2° 25' W.</td>
</tr>
<tr>
<td>N</td>
<td>4° 06' N</td>
<td>2° 25 W.</td>
</tr>
<tr>
<td>O</td>
<td>4° 05' N</td>
<td>2° 35' W.</td>
</tr>
<tr>
<td>P</td>
<td>4° 00' N</td>
<td>2° 35 W.</td>
</tr>
<tr>
<td>Q</td>
<td>4° 00' N</td>
<td>2° 40 W.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>POINT</th>
<th>LATITUDE</th>
<th>LONGITUDE</th>
</tr>
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<tbody>
<tr>
<td>R</td>
<td>3° 55' N</td>
<td>2° 40' W.</td>
</tr>
<tr>
<td>S</td>
<td>3° 55' N</td>
<td>2° 55' W.</td>
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<tr>
<td>T</td>
<td>3° 50' N</td>
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<tr>
<td>U</td>
<td>3° 50' N</td>
<td>3° 10' W.</td>
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<tr>
<td>V</td>
<td>3° 55' N</td>
<td>3° 15 W.</td>
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<tr>
<td>W</td>
<td>3° 55' N</td>
<td>3° 15 W.</td>
</tr>
<tr>
<td>X</td>
<td>4° 00' N</td>
<td>Ghana / Côte-d’Ivoire Border (@ approx. 3° 20' W.)</td>
</tr>
<tr>
<td>Y</td>
<td>4° 00' N</td>
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</tr>
</tbody>
</table>

**South Cape Three Points Block**

**Retained Area**

4,720 Square Kilometers

**Area of First Relinquishment**

4,737 Square Kilometers

HUNT OVERSEAS EXPLORATION COMPANY (GHANA) L.P.

**SOUTH CAPE THREE POINTS BLOCK**

Ghana - Offshore

Figure R 2.17
2.77 In 2002, the Cape Three Points Deepwater block was awarded to Vanco Ghana Ltd. All these blocks were bounded to the west by the customary equidistance line, and all the companies engaged in exploration activities within their blocks. Côte d’Ivoire did not object in any way while these intensive exploration activities were being undertaken in Ghana. Additional official maps published by GNPC in 2000 and 2002 continued to depict the customary equidistance line as the border with Côte d’Ivoire.\textsuperscript{121}

2.78 The customary equidistance line was again used by Ghana in 2006 for the western border of the Deepwater Tano contract area granted to the Tullow/Sabre Oil/Kosmos consortium, as illustrated in Figures 2.19 and 2.20\textsuperscript{122} on the next page.


Figure 2.19: Deepwater Tano Contract Area, 2006

Figure 2.20: Ghana Offshore Activity Map, 2006

The numerous activities undertaken by both Parties, in the context of their close and active cooperation, confirms the understanding that their common boundary was defined by the customary equidistance line. There is no support for the contention by Côte d’Ivoire that there were two unilaterally developed practices running in parallel without any connection to one another. As defined by the *Oxford English Dictionary*, the expression “mutual” refers to “a feeling, action, undertaking, condition, etc. ... possessed, experienced, or performed by each of two or more persons ... or things towards or with regard to the other” or, something “[h]eld in common or shared between two or more parties”. As illustrated in the sketch maps below, the concessions of both Parties throughout the years, including until 2009 (shown in Figure 2.21, following page 54), and all wells drilled by both Parties between the mid-1950s and 2009 (as demonstrated in Figure 2.22, following Figure 2.21) respected the customary equidistance line. In doing so, they manifested the understanding, held in common by both Parties, that the location of their common boundary lay along the customary equidistance line.

There is an extensive collection of maps published during this period that evidences the consistency with which both States referred to the customary equidistance line as their common boundary. Côte d’Ivoire’s effort to challenge their relevance and weight in these proceedings is unpersuasive. As will now be shown, its criticism of this material is misplaced.

3. The Relevance of Maps: Côte d’Ivoire’s Erroneous Treatment of Cartographic Evidence

Côte d’Ivoire’s assessment of the evidentiary value of the cartographic evidence put before the Special Chamber in Ghana’s Memorial is erroneous and misleading. These maps show that both Parties mutually and consistently recognised, respected and relied upon the customary equidistance line as their maritime boundary.

In order to undermine the impact of the cartographic material presented by Ghana, Côte d’Ivoire seeks to rely on international case law (*Burkina Faso v. Mali, Nicaragua v.*

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123 CMCI, Chapter 2, Section III (entitled “Unilateral oil activities of the Parties”) (“Les activités pétrolières unilatérales des Parties”). See also ibid., para. 5.6.
Colombia, and Indonesia v. Malaysia) to assert that maps have limited evidentiary value for the determination of borders.\(^{125}\) Then, Côte d’Ivoire argues that the existence of adjacent limits of oil concessions between States, as reproduced in maps, “is not, in itself, sufficient to demonstrate the existence of a maritime boundary”.\(^{126}\)

2.83 Ghana recognises that international courts and tribunals have been reluctant to accord dispositive authority to maps as sole evidence of the actual location of international boundaries. The production of a map may indeed be a unilateral act of State that has the potential to be misused for expansionist purposes. However, that is plainly not the case here.

2.84 First, as shown in the Memorial and in Section II.A. above, the oil activities carried out in the border area over five decades were not the result of Ghana’s—or Côte d’Ivoire’s—unilateral practice. Rather, the extensive oil practice was developed mutually, on each side of the customary equidistance line, and within a context of constant inter-State communication and cooperation.\(^{127}\) The maps reflect such practice. Indeed, beyond the maps already submitted in Volume II of the Memorial, additional maps referred to in this Reply, which accompany concession agreements, official reports, or letters, also reflect the fact that the customary equidistance line was considered by both Parties to be the common maritime boundary.\(^{128}\) And it is clear that these maps not only show the concession limits in the border area, but also in many cases actually depict the boundary. Most significantly, Côte d’Ivoire has not been able to put before the Special Chamber a single map published between the date of Côte d’Ivoire’s independence and 2009 that purports to show a maritime boundary with Ghana that is not based on the customary equidistance line.

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\(^{126}\) CMCI, para. 4.35 (“n’est pas en elle-même suffisante pour démontrer l’existence d’une frontière maritime”).

\(^{127}\) See infra Section III.B.

Côte d’Ivoire and Ghana Concession Blocks, 2009

Mercator Projection, Datum: WGS-84
(Scale accurate at 1:70)

Nautical Miles
0 20 40 60
Kilometers
0 40 80 120

Prepared by International Mapping

Sources: Ghana National Petroleum Corporation GIS data (2009); Petroleum Concessions in B. V. Glohi (E&P Technical Advisor to the Managing Director of PETROCO), Deepwater Côte d’Ivoire Potential (November 2009), Annex M15 from Ghana Memorial.

For purposes of illustration only

Figure R 2.21
Côte d'Ivoire and Ghana Drilled Wells, up to 2009

Mercator Projection, Datum: WGS-84
(Scale accurate at 4%)

Sources: IHS Energy Group, Côte d'Ivoire (December 2014), Annex M48 from Ghana Memorials; IHS Energy Group, Ghana Coastal Zone (December 2014), Annex M49 from Ghana Memorials.

Figure R 2.22
2.85 The existence of this mutual practice is particularly evident in cases where the activities were carried out with the active cooperation of both States’ national oil companies. This includes the development of petroleum resources in block CI-01, which GNPC sought to carry out with UMIC between 1995 and 1998, with the approval of PETROCI and the Ivorian Ministry of Mines, Oil and Energy.\(^{129}\)

2.86 Other salient evidence of such mutual practice may be found where the same foreign oil company acquired from both States blocks on both sides of the customary equidistance line that mirrored each other. As previously noted, such was the case of Phillips, which, in 1975, acquired the concession on the Ghanaian side, bounded to the west by the customary equidistance line, and then in 1976, also acquired the Ivorian concession that had previously been granted to Esso, bounded to the east by the same line.\(^{130}\)

2.87 Second, Côte d’Ivoire treats all the maps submitted by Ghana in the same way. Yet the cartographic material submitted by Ghana is rich in its evidential variety, and the differences—which relate both to the source of the maps, as well as their content—have to be taken into account in assessing their evidentiary value.

2.88 The first main difference is between maps that stand alone, and those that accompany another document, e.g., a concession agreement, national legislation, a report, or correspondence. In these latter cases, the accompanying map illustrates and completes the content of the main document, and is a complementary source of evidence on the Parties’ conduct, and a reflection of their recognition, respect, and use of the customary equidistance line as the international border. In other words, these maps exist as a result of the Parties’ conduct, and have not been prepared with a view to shaping such conduct in the future.

2.89 Côte d’Ivoire appears to acknowledge the special value of maps accompanying documents, in recognizing that the only relevant maps are those “annexed to a [written] Agreement concluded between the Parties”, and that in such cases, they constitute “the clearest reflection of the agreement between the Parties”.\(^{131}\) Yet its view is too narrow, as it only considers relevant the maps accompanying one specific type of document—namely, a

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\(^{129}\) See supra paras. 2.64-2.66.

\(^{130}\) See supra paras. 2.20-2.22.

\(^{131}\) CMCI, paras. 4.88-4.90.
written agreement between the Parties. In Côte d’Ivoire’s view, maps accompanying other documents—such as national legislation, concession agreements, requests for seismic studies in bilateral correspondence, and official reports—have only the same limited value as stand-alone maps. That is not correct, and in the present case, out of the 62 maps submitted by Ghana, 24 maps accompany another document.132

2.90 Third, Côte d’Ivoire contends that “[n]one of the maps produced mentions an international maritime boundary, or an agreement on it”.133 This is a surprising statement, given that 22 out of the 62 maps submitted by Ghana depict the customary boundary represented by a dashed line (or a dash and two dots line) drawn beyond the seaward limits of the oil concessions.134 These maps also indicate the names of one or both Parties on each side of the boundary line depicted.135


133 CMCI, para. 4.109 (“[f]aucune des cartes produites ne mentionne une frontière maritime internationale, ni un accord sur celle-ci.”).


2.91 Côte d’Ivoire attempts to downplay such depictions of the line beyond the limits of oil concessions by arguing that the signs used on these maps “are not those commonly used to represent an international boundary”. This is excessively formalistic and wrong. Signs used on maps to represent international boundaries vary significantly and the “common use” of specific signs for that purpose, referred to by Côte d’Ivoire, simply does not exist. In addition, Côte d’Ivoire’s argument cannot detract attention from the obvious: the fact that the line shown on most of those maps is identified clearly as an international boundary separating Ghana from Côte d’Ivoire and is a continuation of the land boundary separating both countries, which often extends south of the concession limits. Figures 2.23\(^{137}\) and 2.24\(^{138}\) below, also submitted in the Memorial,\(^{139}\) are reproduced here as examples of the 22 maps that obviously show the existence of a recognised boundary between both Parties.

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\(^{136}\) CMCI, para. 4.99.


2.92 Equally formalistic is Côte d’Ivoire’s narrow interpretation of what constitutes an “official nautical chart…”\textsuperscript{140} For Côte d’Ivoire, the only maps that may be so characterised are exclusively those charts produced by the Ivorian Centre de cartographie et de télédétection (CCT) or by the Hydrography and Navigation Services Division of the Ghana Maritime Authority.\textsuperscript{141} No further explanation is provided by Côte d’Ivoire as to why a map produced by another government department of either State, or by its state-owned and controlled national oil company, cannot be characterized as “official”.

2.93 Despite all these differences between categories of maps, Côte d’Ivoire addresses all maps produced by Ghana under a single all-embracing umbrella, and argues that all have a limited evidentiary value. This simplification is misconceived.

2.94 What these maps clearly evidence is an obvious—and constant—common perception of the location of the maritime boundary between both States by all the actors concerned: oil companies, national oil corporations and governmental bodies. Each and every map depicts a

\textsuperscript{140} CMCI, para. 4.106 ("carte[] marine[] official[]").

\textsuperscript{141} See ibid.
concession limit following the customary equidistance line, and a great number of them show an explicit boundary following the same equidistance line between Ghana and Côte d’Ivoire, extending seaward beyond the concession limits. They reflect the existence of a longstanding agreement between both States.

B. Cooperation between the Two States through their National Oil Companies (1992-2007)

2.95 The exploration and exploitation of offshore natural resources by Ghana and Côte d’Ivoire since the 1960s presented a significant challenge for both countries in legal, technical and operational terms. It soon became evident that cooperation was needed to realise the full potential of these resources. The degree of cooperation between the Parties, through their respective national oil companies (GNPC on the side of Ghana, and PETROCI on the side of Côte d’Ivoire), reached its highest level in the period from 1992 to 2007. This is shown in detail below, after some brief remarks on PETROCI’s legal status.

1. PETROCI’s Legal Status

2.96 Among the most striking inaccuracies in the Counter-Memorial is the assertion that “PETROCI is a private entity, governed by the laws applicable to private companies in Côte d’Ivoire”.

142 Côte d’Ivoire asserts that the conduct of PETROCI cannot engage the Ivorian government, in particular with regard to the delimitation of its land and maritime boundaries.

2.97 It is clear that, contrary to Côte d’Ivoire’s assertion, for all practical and legal purposes, the actions undertaken and positions expressed by the Ivorian national oil company amount to actions and positions of the State of Côte d’Ivoire itself. As Ghana explained in its Memorial, this is a consequence of the form and status of PETROCI as a State company, up to 2001, and since then as a company with public financial participation.

144 Surprisingly, Côte d’Ivoire’s Counter-Memorial fails to engage in any discussion of the legal nature of PETROCI, and simply replicates Côte d’Ivoire’s position in the Provisional Measures

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142 Ibid., para. 4.104 (“PETROCI est une entité de droit privé, régie par les lois applicables aux sociétés privées de Côte d’Ivoire”).

143 Ibid.

144 See MG, paras. 3.37-3.39.
labelling PETROCI as merely a “private law entity” with no capacity to act on behalf of Côte d’Ivoire. Nor does Côte d’Ivoire explain the basis of PETROCI’s entitlement to participate in the lease of oil concession contracts, if this is not based on its public status.

2.98 This assertion is at odds with the evidence confirming that PETROCI is endowed with a public status and acts as a representative of the Ivorian State in matters relating to oil exploration and exploitation. This is confirmed by numerous documents, in addition to the relevant legislation referred to in Ghana’s Memorial.

2.99 These include documents produced by PETROCI itself, such as the 1983 report entitled *Elements for the Definition of a Petroleum Industry in Ivory Coast*, authored by PETROCI’s Managing Director. This report, intended to give an account of the main axes of the Ivorian strategy of development of its oil industry, defines PETROCI as a “modest State company”. It further indicates that “the commitments undertaken by the State, through PETROCI, give the operators of these groups the responsibility to represent all the partners and to protect their interest”. It explains the origins of the State oil company, its institutional anchorage, and even its instrumental political role.

2.100 The transformation in 2001 of PETROCI into a “société à participation financière publique” did not alter PETROCI’s public nature. This is confirmed by the 2003

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146 CMCI, para. 4.104 (“entité de droit privé”).
147 MG, paras. 3.37-3.38.
151 *Ibid.*, p. 15 (“PETROCI, the national company for oil operations, was created out of the Directorate of Hydrocarbons. The latter maintains its administrative role, while… PETROCI became the instrument of the Government oil policy”).
production-sharing contract between Côte d’Ivoire and Vanco/PETROCI, which reproduces the terms of Côte d’Ivoire’s 1993 model contract. Indeed, the contract with Vanco provides that PETROCI is the owner of all mining rights for the exploration and exploitation of hydrocarbons in all areas available in Côte d’Ivoire:

[T]hat pursuant to Decree No. 77-848 of 21 October, 1977 PETROCI is the rights-holder of all rights for exploration and exploitation of hydrocarbons on all available areas of Côte d’Ivoire, including the area bounded defined below;

that the government directly and through PETROCI, wishes to promote the development of the Delimited Region...

2.101 It is therefore misleading for Côte d’Ivoire to claim that PETROCI is no more than a private law entity with no ties to the Government. PETROCI was created as a State oil company derived from the Ministry of Energy and Mines, its activities between 1988 and 2001 were carried out as such, and its fundamental nature was not modified by its transformation in 2001 into a “company with public participation”. Ghana’s Memorial offers a detailed account of the control exercised over PETROCI by the Government, both before and after the corporation’s change of status in 2001. Its actions and the positions it has expressed, including with regard to the location of the maritime boundary separating both States, are highly probative when it comes to identifying the position of Côte d’Ivoire.


156 MG, paras. 3.36-3.39.
2. Seismic Surveys Requests and Common Projects of PETROCI and GNPC

2.102 The activities that PETROCI and GNPC carried out jointly, particularly between 1992 and 2007, show a high level of cooperation. All of these activities pursued a common, government-determined political strategy, promoting the whole Basin to international oil companies. As explained by GNPC’s Chief Executive, during a meeting in Abidjan hosted by the Managing Director of PETROCI: “The exchange of information, data, and technical personnel will make us better and stronger in our relations with the foreign oil companies”.

2.103 Côte d’Ivoire was not merely “informed” of Ghana’s offshore activities: it sought to develop projects jointly with Ghana, as well as on its own, including in the area relevant to the present dispute, and in doing so it repeatedly recognized the customary equidistance line as the maritime boundary between the two States.

2.104 Ghana’s Memorial highlights that one of the clear representations made by Côte d’Ivoire to Ghana, showing its recognition and respect of the customary equidistance boundary, can be found in Côte d’Ivoire’s responses to Ghana’s requests to conduct seismic surveys in the border area, for example in 1997 and 2008. According to Côte d’Ivoire, such representations are limited in number and, if anything, prove the absence of practice rather than its existence.

2.105 Most importantly, Côte d’Ivoire fails to address its own request for an authorisation from the Ghanaian Government to cross the customary equidistance boundary in carrying out seismic surveys. This request, submitted in 2007 through PETROCI, was related to the

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159 See MG, paras. 3.71-3.76, 5.13-5.17.

160 CMCI, para. 4.72.

rights granted by Côte d'Ivoire a year earlier to YAM’s Petroleum. Ghana granted the authorisation.162 Here too, the language of PETROCI’s request confirms the existence of a recognised and agreed boundary that followed the equidistance line. In a fax message of 9 March 2007 sent to GNPC, the PETROCI’s Managing Director “seek[s] permission and authorization on behalf of YAM’s” to “allow the seismic vessel to turn in Ghanaian waters” 163 Coordinates and a map were appended to the request, showing the customary equidistance line extending along and beyond the limits of Ivorian concessions in the area, with the word “GHANA” on the eastern side of the line.164

2.106 Also striking is the degree of similarity in the way in which both State agencies identified the equidistance line as their boundary. In his letter of 19 March 2007 requesting the Ghanaian Minister of Energy to grant PETROCI the authorisation it applied for, the GNPC Managing Director underlined that “GNPC has checked the coordinates and the maps provided [by PETROCI] against our own maps and confirm that data will not be acquired in Ghana’s blocks”.165 Once again, the exchange shows that the equidistance line was not considered by the authorities of both States as a mere limit between their respective oil concessions, but as their agreed maritime boundary in the area. PETROCI’s reference to turning “in Ghanaian waters” and the mention of “Ghana” on the Ivorian map leave no room for doubt.

2.107 Such perception of the equidistance line as an agreed boundary between both States is also reflected in other documents relating to the cooperation between the two national oil corporations. This is, for instance, the case in the minutes of a meeting held between PETROCI and GNPC on 28 and 29 August 1997, showing the existence of a stable framework of cooperation between the two companies regarding geological and geophysical

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studies. The minutes indicate that “[a]t the interpretation stage Petroci was prepared to involve GNPC especially in the cross border correlation since the geology is the same”. A 1999 draft GNPC-PETROCI Memorandum of Understanding also mentions in its preamble that “[the Parties agree] to exchange technical information on La Cote d’Ivoire-Tano Basin which straddles both countries to the extent feasible to enhance the exploration and exploitation of this common basin”. This framework of cooperation was particularly intended for block CI-01, the easternmost limit of which was drawn by Côte d’Ivoire to coincide with the customary equidistance line.

The cooperation between GNPC and PETROCI extended to discussions on the possibility of conducting joint exploration and exploitation projects. There is abundant evidence to demonstrate the extensive and regular cooperation between the two State agencies during the 1992-2007 period:

- **Joint Venture Proposal by GNPC for the Redevelopment of Côte d’Ivoire’s ESPOIR field (1991-1995):** The first main project discussed was the proposal by GNPC on the redevelopment of Côte d’Ivoire’s Espoir field. As early as 1991, a report from GNPC indicates that “as a result of earlier high level contacts between GNPC and Ivorian Government officials and the Petroci Management, GNPC had shown interest in the re-development of the Espoir field offshore Côte d’Ivoire”. This cooperation project was discussed at the highest governmental levels of both States. The preparation of the project continued during the following years and, in 1993, GNPC requested from PETROCI the seismic data and other detailed information on the offshore blocks.

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167 Ibid., p. 3 (emphasis added).


169 Ibid., para. 3.

Espoir field. 171 In late 1994, GNPC made its formal application to the Ivorian Ministry of Energy and Mines for the redevelopment of the Espoir field, attaching a two year work programme. 172

- Development of Oil and Gas Resources in block CI-01 (1995-1998): Another proposed project was the development of oil and gas resources in block CI-01, located in Ivorian waters and bounded in the east by the customary equidistance line. This project was formalized through a Memorandum of Understanding on cooperation between PETROCI and GNPC for the development of gas and petroleum resources specifically located in block CI-01. 173 A second Memorandum of Understanding was signed in 1997 for the purchase by GNPC of Ivorian natural gas. 174 Upon invitation by PETROCI, the terms of this agreement were then discussed by GNPC and


173 Memorandum of Understanding between Société Nationale d’Opérations Pétrolières de la Côte d’Ivoire (PETROCI) and Ghana National Petroleum Corporation (GNPC) (22 Nov. 1995). RG, Vol. IV, Annex 123. See also Letter from Tsatsu Tsikata, Ghana National Petroleum Corporation (GNPC), to the Minister of Mines & Energy, Republic of Côte d’Ivoire (19 Dec. 1994). RG, Vol. IV, Annex 122 (referring to the redevelopment of the Espoir field between both companies in the bordering block CI-01.). As provided in the Memorandum of Understanding: “Petroci and GNPC will co-operate in establishing a market in Ghana for natural gas from Cote d’Ivoire oil and gas fields. For the duration of this MOU, Petroci will deal exclusively with GNPC as the purchaser of natural gas from Cote d’Ivoire oil and gas fields into the Ghanaian market. GNPC will commit to purchase natural gas through take-or-pay contract including the one currently being negotiated with the Operator of Block CI-01… Petroci will encourage UMIC as Operator of Block CI-01 to conclude arrangements for the projected joint development of Block CI-01 using GNPC’s Tano Fields development infrastructure”.


PETROCI during February 1998, with a view to preparing the “joint proposal for submittal to the authorities of Ghana and Côte d’Ivoire on time”.

- **Training of Personnel and Joint Technical Cooperation (1995-2004):** Another area of cooperation between PETROCI and GNPC was the training of personnel from PETROCI by GNPC, as well as joint technical cooperation between the two State oil companies. After PETROCI staff visited GNPC premises in Accra in 1995, “the two companies agreed to cooperate in various areas to enhance cooperation between them and their respective countries”, and a Staff Exchange Programme was initiated for that purpose. In 1999 a delegation from PETROCI visited Accra with a view to develop even greater cooperation. Following this visit, a Joint Technical Committee was established. Several other visits from PETROCI personnel to GNPC premises in Accra ensued in the following years for different purposes and with different degrees of formality.

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180 For instance, in 2003, a letter from the Ivorian Embassy in Accra informed the director of GNPC that “a 25 member delegation from the Société Nationale D’Opérations Pétrolières de la Côte d’Ivoire holding (PETROCI) will arrive in Accra on Thursday, 4th December 2003 on a short vacation. The Delegation would like to pay a courtesy call on the staff and Management of GNPC”. Letter from H.E. Amon Tanoe Emmanuel, Ambassador of Côte d’Ivoire to Ghana, to Director of Operations, Ghana National Petroleum Corporation (GNPC) (2 Dec. 2003). RG, Vol. IV, Annex 133. A year later, an English Proficiency Training Programme for PETROCI staff was organised by GNPC with the collaboration of the University of Ghana. See Letter from A. K. L. Badoo, Ghana National Petroleum Corporation (GNPC), to Head of Department of Linguistics, University of Ghana (26
Use by PETROCI of the Ghanaian Base in Takoradi (2004): Another salient example of the close ties that both State oil companies nurtured between 1992 and 2007 can be found in a letter from PETROCI to GNPC in which PETROCI explained that “[d]ue to the socio-political environment that the country is experiencing by now, some service companies may not accept to operate from our onshore base. Therefore as a backup solution, we are planning to select your Takoradi Base”. The degree of confidence with which PETROCI envisaged the use of the Takoradi base, in Ghana, by service companies operating in Ivorian oil fields is, once again, highly telling as to the very significant level of cooperation between both State agencies—and between both States. In the end, the Takoradi base was used by one of Côte d’Ivoire’s service companies, in response to PETROCI’s request to GNPC.

It is readily apparent that Côte d’Ivoire and Ghana were fully aware of the activities undertaken by each other in the border area. Not once, in over fifteen years, did either of them call for a suspension of these activities by reason of uncertainties concerning their common maritime boundary. Nor is there any evidence before the Special Chamber of any protest by either Party against such activities. The Parties’ common understanding of the location of the maritime boundary in the relevant area—one that followed the customary equidistance line—was an important factor in facilitating the development of exploration and exploitation activities on both sides of the line, as well as the active cooperation between the two competent State agencies. Each State relied on the other’s acceptance of the customary equidistance boundary to carry out its own development activities on its side of the line.

All in all, what these various documents evidence is an atmosphere of open and active cooperation and exchange of information between the Parties in all matters relating to oil exploration and exploitation, including in or near the border area. They show that many
projects were considered or carried out in that area during the fifteen years ignored by Côte d'Ivoire in its Counter-Memorial. They also show that Ghana’s policies regarding the exploitation of offshore natural resources to the east of the customary equidistance line were not unilateral, as Côte d'Ivoire now contends, but based on a mutual understanding of the location of the maritime boundary along that line.

3. The Evidentiary Threshold on Tacit Agreement Is Met

2.111 The fact that State consent is not to be presumed in international law does not mean that the form in which consent can be expressed by a State, and recognised by other Parties (States or judicial institutions), must be in writing. One of the manifestations of State sovereignty is precisely the freedom to choose the forms through which consent to an agreement (*animus contrahendi*) is manifested. 182

2.112 The history of international law shows that, prior to the codification movement developed in the 20th century, the great majority of international rules and agreements existed in non-written form. They were not, for reason of their lack of written basis, considered as a “secondary” source of legal obligations with limited normative value. An international rule or an agreement perfected through non-written means is as binding as a written one for the States that consent to it. 183 Article 3 of the Vienna Convention on the Law of Treaties recognises tacit agreement as a widely accepted mode of creation of legal rights and obligations in providing that “the fact that the present Convention does not apply to ...
international agreements not in written form, shall not affect ... [t]he legal force of such agreements".184

2.113 What matters is not the form that an agreement takes, but whether the consent of the States bound by it is sufficiently established. Côte d’Ivoire contends that the conditions for recognition of a tacit agreement on maritime delimitation are “particularly strict”.185 Ghana agrees with the view that the evidence establishing the existence of a tacit agreement between two States must be compelling, whether with regard to maritime delimitation or other inter-State issues.186 However, this is not, and should not be, an unattainable standard. In fact, the history of both States’ conduct in the present case is compelling, and leaves no room for doubt as to the existence of a mutual agreement between them on the location of their common border along the equidistance line they had both used for over five decades.

2.114 The ICJ observed in Nicaragua v. Honduras that “evidence of a tacit agreement must be compelling”.187 The standard of proof indicated by the Court does not imply that only tacit agreements that have been subsequently confirmed by a written document—as was the case in Peru v. Chile188—can be recognised. Côte d’Ivoire itself acknowledges that such a formal confirmation is not required, even though the existence of a tacit agreement may then be more difficult to establish.189 Such difficulty does not arise in the present case, since the evidence, resulting from concession agreements, presidential decrees, legislation, correspondence, maps, public statements, representations to international organisations and oil companies, and the cooperative practice of both States, all detailed in the previous Sections of this Chapter, is indeed “compelling”.

2.115 Côte d’Ivoire relies on Bangladesh v. Myanmar to illustrate what the “compelling” standard may actually require in practice. It asserts that “Bangladesh maintained that the

185 CMCI, para. 4.5.
186 MG, para. 5.38.
188 See Maritime Dispute (Peru v. Chile), Judgment, ICJ Reports 2014, p. 3, para. 91.
189 CMCI, para. 4.6.
fishing, oil exploration and navigation of the Parties, spanning over a period of thirty years, on either side of the median line, is worth recognition of a tacit agreement”. 190 This account of the award, and of what Bangladesh actually claimed, is erroneous. Bangladesh never relied on oil concession practice, unilateral nor mutual, to argue that a tacit agreement on the maritime boundary with Myanmar existed. Bangladesh relied only on fishing and navigation practices, which it sought to prove mainly through the affidavits of fishermen and naval officers.191 ITLOS declined to give weight to such self-serving declarations.192 The facts of that case cannot be compared to the weight of Ghana’s and Côte d’Ivoire’s consistent usage of the customary equidistance line as a limit of the oil concessions they both granted for over five decades, and their repeated and mutual references to and recognition of that line as their international border.

2.116 The special value of mutual oil practice as evidence of the existence of a tacit agreement on a common border was recognised by the ICJ in Cameroon v. Nigeria. The Court observed that “the existence of an express or tacit agreement between the Parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled”.193 Likewise, in Tunisia v. Libya, the Court emphasised that the line “of adjoining concessions, which was tacitly respected for a number of years [10 years] ... does appear to the Court to constitute a circumstance of great relevance for the delimitation”.194 This must also be the case here, in view of the much longer period over which Côte d’Ivoire’s and Ghana’s mutual practice regarding oil exploration and exploitation in the border area was consistently carried out.

2.117 Côte d’Ivoire’s main response is to distort the history of the relations between the Parties. Ignoring the overwhelming evidence establishing the existence of a tacit agreement

190 Ibid., para. 4.8 (“[l]e Bangladesh soutenait que les activités de pêche, d’exploration pétrolière et de navigation des Parties, s’étalant sur une période de plus de trente ans, de part et d’autre de la ligne médiane, valaient reconnaissance d’un accord tacite “).  
191 See Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012, ITLOS Reports 2012 (hereinafter “Bangladesh/Myanmar, Judgment”), paras. 101-105.
192 Ibid., para. 113.
on the customary equidistance line, Côte d’Ivoire erroneously asserts that “[t]he dispute dates back nearly three decades”.\textsuperscript{195} According to the generally accepted definition, a “dispute” is a “disagreement on a point of law or fact, a conflict of legal views or of interests between two persons”.\textsuperscript{196} The history of the Parties’ conduct, which includes the close cooperation between their governments and State oil companies, as well as mutual and consistent oil practices, indicates that no disagreement on a point of law or fact, or a conflict of legal views of interests, existed between them prior to 2009. It was only then that each Party began to argue in favour of a delimitation method incompatible with that proposed by the other. Ghana rejects the claim that there was any “disputed area” at issue between the States prior to 2009. There was none.

2.118 No alternative to the customary equidistance boundary was envisaged by either prior to 2009. That line provided a safe and stable reference that enabled both Parties to develop their respective activities in the border area without any conflict for over five decades.

C. Detrimental Reliance Derived from the Parties’ Usage of the Customary Equidistance Boundary: the Applicability of Estoppel

2.119 Côte d’Ivoire argues that the existence of a “customary equidistance line” conflicts with Ghana’s additional argument based on the applicability to the present case of the doctrine of estoppel. According to Côte d’Ivoire, Ghana’s invocation of the principle of estoppel reflects a weakness in its argument as to the existence of a customary maritime boundary, and a strategy to circumvent the conditions necessary to establish a “custom” which, Côte d’Ivoire argues, Ghana cannot prove.\textsuperscript{197}

\textsuperscript{195} CMCI, para. 12 (“Le différend ... remonte à près de trois décennies”).

\textsuperscript{196} Mavrommatis Palestine Concessions (Greece v. Great Britain), Judgment, 1924, PCIJ Series A, No. 2, p. 11. See also Interpretation of the Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion, First Phase, ICJ Reports 1950, p. 65, at p. 74 (“A situation in which the two sides held clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations”); South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, ICJ Reports 1962, p. 319, at p. 328 (“In other words it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its nonexistence. Nor is it adequate to show that the interests of the two parties to such a case are in conflict. It must be shown that the claim of one party is positively opposed by the other. Tested by this criterion there can be no doubt about the existence of a dispute between the Parties before the Court, since it is clearly constituted by their opposing attitudes relating to the performance of the obligations of the Mandate by the Respondent as Mandatory”).

\textsuperscript{197} See CMCI, para. 5.7.
2.120 Far from constituting a weakness, Ghana’s reference to estoppel is an indication of the coherence and consistency of its argument as to the existence of a tacitly agreed customary maritime boundary. Estoppel is invoked by Ghana precisely as a consequence of Côte d’Ivoire’s recognition of and respect for the “customary equidistance line”, which constitutes acquiescence, coupled with Ghana’s reasonable reliance on Côte d’Ivoire’s actions.

2.121 Ghana’s reliance on Côte d’Ivoire’s actions over decades means that the present and sudden change in Côte d’Ivoire’s position would have a severe impact on Ghana’s economy. The Special Chamber acknowledged this in its Provisional Measures Order when it noted that “the suspension of ongoing activities conducted by Ghana in respect of which drilling has already taken place would entail the risk of considerable financial loss to Ghana and its concessionaires”.[198]

2.122 The most salient example of detrimental reliance suffered by Ghana in light of Côte d’Ivoire’s recent change of position includes the potential loss of a part of the Deepwater Tano Block, located in the disputed area, which contains the TEN (Tweneboa-Enyera-Ntomme) fields. Between January 2006 and November 2012, the investment in this field alone amounted to approximately USD 1 billion, and another USD 4 billion had been earmarked for the period 2012 to mid-2016.[199] The majority of the USD 4 billion has already been committed through a series of lump sum contracts with major international contractors. By the end of 2015, over USD 2 billion had already been expended.[200]

2.123 In addition, following a major discovery in the Jubilee field—located to the east of the Deepwater Tano Block (and which is cut in two by Côte d’Ivoire’s “bisector line”)—significant investments have been made by international oil companies in the vicinity. In particular, Tullow has conducted appraisal activities in the Ebony field (part of the Shallow Tano Block) and is conducting the same activities in the Wawa field (part of the Deepwater Tano Block). Both blocks are located to the north of the TEN fields and are very close to the customary equidistance line.

[199] See MG, Figure 3.24, para. 3.89.
2.124 The TEN project has been recognised as one of the most significant ongoing offshore oil field developments in Africa.\textsuperscript{201} Ghana expects that this field, along with the potential prospective discoveries of the other fields close to it, will produce revenues that will be key for fiscal and development purposes—in particular, for agricultural modernization and infrastructure projects.\textsuperscript{202}

2.125 The absence of a challenge to the customary equidistance boundary on the part of Côte d’Ivoire before 2009, as well as its continued acceptance and use of that boundary, as reflected in both Ivorian legislation and the overwhelming mutual practice detailed above, form the basis of Ghana’s argument on estoppel. Ghana asserted in its Memorial—and here re-asserts—that, in application of the estoppel principle, Côte d’Ivoire, like Ghana, is precluded from abruptly changing its position as to the method to be used for the delimitation of the common maritime boundary, and as to its location, after having accepted a particular boundary based on equidistance for over 50 years. Having acted as it did over so many years, and in circumstances in which Ghana reasonably relied upon that behaviour when it authorized and carried out activities up to the customary equidistance line, Côte d’Ivoire cannot now change its position.\textsuperscript{203} The principle of estoppel protects Ghana against the detrimental effects of Côte d’Ivoire’s abrupt change of position, and provides grounds to Ghana to claim compensation for any damage that would result from this change.\textsuperscript{204}

\textbf{IV. Conclusions}

2.126 In light of the foregoing, Ghana requests the Special Chamber to:

\begin{itemize}
\item [a)] recognise the existence of a tacit agreement on the maritime boundary between the Parties, consisting of a customary equidistance boundary;
\item [b)] adopt the customary equidistance boundary agreed by the Parties; and
\end{itemize}


\textsuperscript{202} MG, paras. 3.91-3.93.

\textsuperscript{203} \textit{Ibid.}, paras. 5.54, 5.73.

\textsuperscript{204} \textit{See infra} paras. 3.89-3.90, 5.30.
c) proceed to the determination of the coordinates of the customary equidistance boundary, as provided in Chapter 3 at paragraph 3.105.
CHAPTER 3

DELIMITATION OF THE MARITIME BOUNDARY WITHIN 200 M

I. Introduction

3.1 This Chapter responds to Chapters 6 and 7 of Côte d’Ivoire’s Counter-Memorial, in which Côte d’Ivoire adopts two positions as to the methodology to be used in delimiting the maritime boundary, each contradicting the other.

3.2 In Chapter 6, Côte d’Ivoire argues that the proper “method of delimitation”205 in this case is “the bisector method …”,206 which, it correctly notes, has only been used when international courts and tribunals have found that the “equidistance method” is “not possible or appropriate”.207 Then in Chapter 7, in direct contradiction with its argument in Chapter 6, Côte d’Ivoire argues that the “equidistance method” is both possible and that it leads to a “equitable result”.208 Côte d’Ivoire then devotes the remainder of Chapter 7 to the three-step “equidistance method”: it (i) constructs a provisional equidistance line, (ii) adjusts that line in light of alleged “relevant circumstances”, and (iii) seeks to show that the adjusted line does not distribute the disputed maritime space in this case disproportionately.

3.3 In other words, in Chapter 7 Côte d’Ivoire demonstrates conclusively that there can be no justification for application of “the bisector method” that it advocates in the previous Chapter. Chapter 6 is thus redundant, and the effect of that redundancy is to make clear that the maritime area that is truly in dispute is very narrow. Figure 3.1, following page 78, depicts four lines. From west to east, they are: (i) the customary equidistance line that both Parties recognized as the maritime boundary for over half a century until at least 2009; (ii) a provisional equidistance line drawn by Ghana based on official charts; (iii) the provisional equidistance line drawn by Côte d’Ivoire in Chapter 7 of the Counter-Memorial, which is based, according to Côte d’Ivoire, on recent satellite imagery; and (iv) the angle bisector drawn by Côte d’Ivoire in Chapter 6. The shaded area in Figure 3.1 is the area legitimately in

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205 CMCI, para. 25 (“méthode de delimitation”).
206 Ibid., para. 6.1 (“la méthode de la bissectrice …”).
207 Ibid. (“pas possible ou approprié …”) (citing Nicaragua v. Honduras, Judgment, para. 287).
208 See ibid., para. 7.1 (“méthode de l’équidistance”; “résultat équitable”).
dispute following Côte d’Ivoire’s admission (and demonstration), in Chapter 7, that application of the “equidistance method” is feasible in this case, such that there is no basis for resort to an angle bisector. It is thus clear that the angle bisector line is merely a strategic ploy to extend the area in dispute, presumably in the hope that the Special Chamber might award Côte d’Ivoire a more generous line.

3.4 In this Chapter, Ghana takes issue with Côte d’Ivoire’s approach and conclusions on four grounds. As will be seen, the focus is largely on Côte d’Ivoire’s conception of the equidistance line, since the angle bisector approach is entirely without merit.

3.5 First, as demonstrated in Chapter 2 of this Reply, the maritime boundary between Ghana and Côte d’Ivoire has been agreed. It has resulted from half a century of mutual, consistent and deliberate practice, recognition and respect by both States. Although the Parties’ boundary agreement is tacit, it is no less lawful or binding than if it were embodied in a formal treaty. There is thus no need—indeed, no occasion—for the Special Chamber to delimit a new boundary in the territorial sea, exclusive economic zone or continental shelf in this case. The tacit agreement of the Parties is fully consistent with and satisfies Articles 15, 74 and 83 of the Convention, which require that the boundary in the territorial sea be settled, in the first instance, by “agreement …”, 209 and that the boundary in the Exclusive Economic Zone and the continental shelf be “effected by agreement …”. 210 These provisions make no distinction between an agreement that is arrived at tacitly and one that is achieved by more formal means.

3.6 Second, even if delimitation were called for in this case, and even if Côte d’Ivoire had not thoroughly discredited its own argument, there would be no justification for resort to “the bisector method”. The law could not be clearer. In Bangladesh v. Myanmar, ITLOS quoted approvingly from the ICJ’s Judgment in the Black Sea case: “‘So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in the particular case’”. 211 Finding that it was feasible to draw an equidistance line between Bangladesh and Myanmar, ITLOS went on to reject

209 UNCLOS, Art. 15.

210 Ibid., Arts. 74(1), 83(1).

Bangladesh’s argument in support of an angle bisector in favour of Myanmar’s equidistance-based methodology.\textsuperscript{212}

3.7 Chapter 6 of the Counter-Memorial entirely ignores both the Black Sea case and ITLOS’s reliance on it. It also fails to identify any “compelling reasons that make [equidistance] unfeasible in this particular case”.\textsuperscript{213} Côte d’Ivoire’s failure to do so was not inadvertent. In Chapter 7, in the very first paragraph, it expressly acknowledges that the Special Chamber “could achieve an equitable result in delimiting the maritime spaces of the Parties according to the equidistance/relevant circumstances method”,\textsuperscript{214} and then proceeds, in the remainder of that Chapter, to draw and defend its version of an equidistance line. Its only disagreement with Ghana on that score concerns the precise locations of the base points from which the Parties’ respective equidistance lines are constructed. But there is no disagreement about the feasibility of drawing an equidistance line. Côte d’Ivoire has demonstrated this by drawing one.

3.8 What remains of Côte d’Ivoire’s angle bisector argument after this is mere lip service. Because Côte d’Ivoire has advocated since 2011, in its bilateral discussions with Ghana, that the boundary should be determined by an angle bisector rather than an equidistance line, it had little choice but to take that view, no doubt as an opening gambit, in its Counter-Memorial. But Chapter 7’s wholesale abandonment of angle bisector and embrace of equidistance demonstrates a recognition that the defence of the former, in these proceedings, is hopeless.

3.9 \textit{Third}, assuming Chapter 7 and equidistance reflect Côte d’Ivoire’s real argument, Côte d’Ivoire has wrongly applied equidistance methodology to the geographic circumstances of this case. It has, for example, completely ignored the concept of “relevant coast”, the determination of which is an indispensable precursor to the proper drawing of a provisional equidistance line. The relevant coasts are, by settled jurisprudence, those that generate overlapping entitlements in the area in dispute, along which base points for the construction of the equidistance line are placed. The Counter-Memorial fails even to mention “relevant

\textsuperscript{212} See \textit{ibid.}, para. 239.
\textsuperscript{213} \textit{Romania v. Ukraine}, Judgment, para. 116.
\textsuperscript{214} CMCI, para. 7.1 (“pourrait parvenir à un résultat équitable en délimitant les espaces maritimes des Parties selon la méthode de l’équidistance / circonstances pertinentes”).
coast”, let alone identify one, in its application of the equidistance method leading to the placement of base points and the construction of the provisional line. The flaws in Côte d’Ivoire’s approach are compounded by its decision to ignore its own official charts and identify erroneous base points derived from its own very recent satellite photography and recalculation of the low water line. Côte d’Ivoire has not supplied the underlying technical data on which its new, post-litigation calculations were made. Finally, Côte d’Ivoire calls for adjustments to its contrived equidistance line based on alleged relevant circumstances that either do not exist or are plainly not relevant to the delimitation.

3.10  Fourth, both the angle bisector and equidistance methodologies, as applied by Côte d’Ivoire, lead to inequitable results. In regard to the former, Côte d’Ivoire’s self-servingly drawn coastal façades bear scant relation to the actual directions of the Parties’ relevant coasts. This is readily apparent from Côte d’Ivoire’s Croquis 6.7 at paragraph 6.46 of the Counter-Memorial. As depicted therein, the relevant coasts are ignored in favour of lines that purportedly represent the entire coasts of both Parties, most of the lengths of which do not even face the maritime area in dispute. Just as bad, if not worse, Ghana’s purported “coastal façade …”215 is not drawn along the coast; as shown in Figure 3.2 on the next page, Ghana appears as a unique State whose coast is represented as being entirely inland, a considerable distance from the sea. Nor does Côte d’Ivoire’s “coastal façade” follow its coast; it is entirely at sea, a significant distance from any land territory. This is nothing more than an artifice calculated to distribute the vast majority of maritime space to Côte d’Ivoire.

215 See ibid., para. 6.46 (“façade côtière”).
3.11 Côte d’Ivoire’s application of the equidistance methodology is just as artificial. Its provisional equidistance line is constructed based on an alleged low water line that contradicts its own (as well as Ghana’s) official charts. Instead, it is based on “new data” developed by Côte d’Ivoire especially for the purposes of this litigation. Despite this contrivance, it does not depart very much from a properly drawn equidistance line. This leads Côte d’Ivoire, in Chapter 7, to invent a list of so-called “relevant circumstances” in order to justify an “adjustment” of the provisional line so that it pivots so far eastward that it matches—of all things—the angle bisector presented in Chapter 6.

3.12 Côte d’Ivoire’s “relevant circumstances” are fictitious as well as irrelevant. The relevant coasts of Côte d’Ivoire and Ghana are neither concave nor convex. There are no unusual or anomalous geographic features that affect the provisional equidistance line, much less cause it to inequitably cut off the maritime entitlements of either Party. Côte d’Ivoire’s “adjusted” equidistance line is therefore as contrived and unsupportable as its angle bisector. Neither approach finds any support in the case law. Nor does either produce an equitable result.

3.13 The remainder of this Chapter is divided into three sections. Section II directly addresses Chapter 6 of the Counter-Memorial, and explains why none of the arguments Côte
d’Ivoire advances in support of an angle bisector are valid. Section III responds to Chapter 7 of the Counter-Memorial, and demonstrates that Côte d’Ivoire’s approach to equidistance is misguided, while Ghana’s application of equidistance methodology, as reflected in Chapter 5 of the Memorial, is correct. Section III also demonstrates that proper application of equidistance methodology leads to an equitable result in this case, while angle bisector methodology does not. Section IV summarizes the conclusions to be drawn from this Chapter.

II. The Method of Delimitation

3.14 Paragraph 7.1 of Côte d’Ivoire’s Counter-Memorial offers a clear rebuttal of the use of angle bisector methodology. It states:

If this Chamber were to consider the method of bisector line inapplicable to the present case, it could achieve an equitable result in delimiting the maritime spaces of the Parties according to the equidistance/relevant circumstances method.216

3.15 This is a critical admission, in respect of which two comments are warranted. First, Côte d’Ivoire has applied the law backwards. The applicability or inapplicability of the angle bisector method is not the first step to be considered. Resort to equidistance does not depend on a prior finding of inapplicability of the angle bisector. The law is the reverse of that. The first consideration, in a case of two States with adjacent coasts, is whether equidistance is feasible.217 If it is, then there is no need to consider an angle bisector or any other alternative delimitation methodology. Indeed, it would be inappropriate to do so. If equidistance is feasible, then that is the methodology to be employed. The second comment is that Côte d’Ivoire admits, in this passage (as in the remainder of Chapter 7), that equidistance is indeed

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216 Ibid., para. 7.1 (“Si la Chambre de céans devait considérer la méthode de la bissectrice inapplicable au cas d’espèce, elle pourrait parvenir à un résultat équitable en délimitant les espaces maritimes des Parties selon la méthode de l’équidistance / circonstances pertinentes”).

feasible in the present case. More than that, Côte d’Ivoire asserts that equidistance yields an equitable result. There is nothing more that need be said to render angle bisector methodology inappropriate and inapplicable.

3.16 Nevertheless, for the sake of completeness, Ghana will briefly address below each of the various points made by Côte d’Ivoire in its attempt in Chapter 6 to justify the use of an angle bisector despite the admitted feasibility (and equitableness) of equidistance. Côte d’Ivoire invokes some of the same points in Chapter 7 as “relevant circumstances” purportedly justifying adjustment of the equidistance line in its favour. By addressing them here, in Section II, in relation to angle bisector, Ghana can deal with them more summarily in Section III, in relation to the proper application of equidistance methodology. There are five such points:

- The alleged concavity and convexity, respectively, of Côte d’Ivoire’s and Ghana’s coasts;
- The alleged instability of the coast in the vicinity of the land boundary terminus;
- The alleged small number of base points from which the equidistance line is constructed;
- The alleged “historical accident” by means of which the Ghanaian coast belongs to Ghana; and
- The alleged impact on delimitation between other States in the region.

A. Concavity and Convexity

3.17 ITLOS was faced with a truly concave coast in *Bangladesh v. Myanmar*: “The Tribunal observes that the coast of Bangladesh, seen as a whole, is manifestly concave. In fact, Bangladesh’s coast has been portrayed as a classic example of a concave coast”. Nevertheless, the Tribunal rejected Bangladesh’s argument that, due to the concavity of its coast, the delimitation should be based on an angle bisector rather than an equidistance line: “The Tribunal finds that in the present case the appropriate method to be applied for

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delimiting the exclusive economic zone and the continental shelf between Bangladesh and Myanmar is the equidistance/relevant circumstances method”.219

3.18 As the Tribunal explained, the concavity of a coast, in itself, is not necessarily significant. What makes it so is when it exerts a strong pull on the equidistance line, causing it to veer across a State’s coastal front and cut off its seaward projection:

The Tribunal notes that in the delimitation of the exclusive economic zone and the continental shelf, concavity per se is not necessarily a relevant circumstance. However, when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be necessary in order to reach an equitable result.220

3.19 After drawing a provisional equidistance line, the Tribunal found that Bangladesh’s coastal concavity “does produce a cut-off effect on the maritime projection of Bangladesh and that the line if not adjusted would not result in achieving an equitable solution, as required by articles 74 and 83 of the Convention”.221 On that basis it went on to adjust the equidistance line to mitigate the prejudicial effects of the concavity. It did not abandon equidistance in favour of an angle bisector.

3.20 ITLOS’s Judgment in the Bay of Bengal case is problematic for Côte d’Ivoire (which is presumably why Côte d’Ivoire all but ignores it). First, even when faced with a “classic example” of coastal concavity, which did cause the equidistance line to produce a prejudicial cut-off effect, the Tribunal determined that prevailing jurisprudence required it to apply equidistance methodology rather than angle bisector methodology. Second, it rejected the idea that any concavity would justify an adjustment to the equidistance line, holding that adjustment is required only where the equidistance line produces a cut-off effect. These findings defeat both Côte d’Ivoire’s case for an angle bisector in Chapter 6, as well as its argument for an adjustment to equidistance in Chapter 7. Simply put, there is no coastal “concavity” (or “convexity”) that causes the equidistance line to cut-off any part of Côte d’Ivoire’s coast.

219 Ibid., para. 239.
220 Ibid., para 292.
221 Ibid., para 293.
3.21 The geographic circumstances present here show just how far-fetched it is for Côte d’Ivoire to attempt to portray itself as Bangladesh. The equidistance line plainly does not cut off its seaward projection as a result of any concavity along the Ivorian coast. As shown in Figure 3.3, following page 86, the coastline located immediately on both sides of the land boundary terminus is remarkably straight. On the Ghana side, it extends straight in a southeasterly direction until the curve in the vicinity of Axim, 95 km from the LBT, and then continues on at a slightly altered bearing for 26 km until Cape Three Points. On the Côte d’Ivoire side, it extends mainly straight in a northwesterly direction for 207 km, to Sassandra, curving only slightly in the vicinity of Abidjan, 101 km from the LBT. This relatively straight northwest-to-southeast coastline generates a similarly straight equidistance line running in a southwesterly direction from the Parties’ LBT. There are no coastal indentations on the Côte d’Ivoire side, or protuberances on the Ghana side, that cause the line to substantially change direction, or, more to the point, to cut off the seaward projection of either Party. This is depicted in Figures 3.4A and 3.4B, following Figure 3.3, which show the effects of equidistance boundaries for Côte d’Ivoire as compared with putative equidistance boundaries for Bangladesh.

3.22 Nonetheless, Côte d’Ivoire advances an argument based on “concavity”. It points in particular to a small curvature along its coastline. But this cannot constitute a concavity sufficient to render equidistance inequitable because it has no effect on the direction of the equidistance line. It does not pull the line toward Côte d’Ivoire’s coast. It does not produce a cutoff of Côte d’Ivoire’s maritime projections within or beyond 200 M. As shown in Figure 3.5, immediately following Figures 3.4A and B, Côte d’Ivoire’s equidistance lines extend seaward—without any cut-off—far beyond 1,000 M. Côte d’Ivoire expressly recognizes the fallacy of its own argument; it admits that “the portions of coastline in question (8.7 km for Côte d’Ivoire and Ghana by 13.4 km) are perfectly straight and do not reflect the concavity of the Ivorian coast or convexity of the Ghanaian coast and notably the influence of Cape Three Points”.222 This is also apparent in Figure 3.6, following Figure 3.5. Côte d’Ivoire’s version of this Figure—its Croquis 7.9—is a contrivance intended to show a cut-off that is not there. Pictured immediately after Figure 3.6, are, on the top, Figure 3.7A, a reproduction of

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222 CMCI, para. 6.22 (“les portions de côtes en cause (8,7 km pour la Côte d’Ivoire et 13,4 km selon le Ghana) sont parfaitement rectilignes et ne reflètent donc pas la concavité des côtes ivoiriennes, ni la convexité des côtes ghanéennes et notamment l’influence du cap des Trois-Points”).
Croquis 7.9 from the Counter-Memorial, where, instead of arrows drawn perpendicular to its actual coast, they are drawn from an inaccurate “coastal façade”, demonstrating that Côte d’Ivoire has manipulated its coastline to create the appearance of a cut-off in the absence of a genuine one. By contrast, Figure 3.7B shows arrows drawn perpendicular to the actual coast: there is no appreciable cut-off.

3.23 Because Côte d’Ivoire’s “concavity” neither affects the equidistance line nor causes a cut-off of its maritime space, it is like Cameroon’s concavity in Cameroon v. Nigeria, which the ICJ found to be irrelevant to the delimitation because it produced no effect on the equidistance line in the area that was delimited. Accordingly, Côte d’Ivoire’s “concavity” justifies neither the resort to a delimitation methodology other than equidistance, nor an adjustment to the equidistance line.

3.24 The same is true of Ghana’s coastal “convexity”. As shown in Figure 3.8, following Figures 3.7A and 3.7B, the shape of Ghana’s coast at Cape Three Points is, indeed, convex. However, there are no Ghanaian base points along the coast at Cape Three Points that affect the equidistance line. As Côte d’Ivoire itself recognizes in paragraph 6.22 of the Counter-Memorial, this part of Ghana’s coast has no effect on the line; it does not push it in the direction of Côte d’Ivoire or cause a cut-off of any of Côte d’Ivoire’s maritime space. It is thus irrelevant.

B. Coastal Stability

3.25 After Bangladesh v. Myanmar and especially Bangladesh v. India, it is difficult to see how Côte d’Ivoire could justify abandoning equidistance in favour of an angle bisector based

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223 Cameroon v. Nigeria, Judgment, para. 297 (“[T]he Court stresses that this [concavity as a relevant circumstance] can only be the case when such concavity lies within the area to be delimited. Thus, in the Guinea v. Guinea-Bissau case, the Arbitral Tribunal did not address the disadvantage resulting from the concavity of the Coast from a general viewpoint, but solely in connection with the precise course of the delimitation line between Guinea and Guinea-Bissau …. In the present case the Court has already determined that the coastlines relevant to delimitation between Cameroon and Nigeria do not include all of the coastlines of the two States within the Gulf of Guinea. The Court notes that the sectors of coastline relevant to the present delimitation exhibit no particular concavity … Consequently the Court does not consider that the configuration of the coastlines relevant to the delimitation represents a circumstance that would justify shifting the equidistance line as Cameroon requests”.)(emphasis added).

224 Cape Three Points only affects the provisional equidistance line in the area beyond 200 M. When constructing the provisional equidistance line using the BA chart coastline, it affects the provisional equidistance line beginning at 270 M.
For purposes of illustration only

Figure R 3.4a

Equidistance Lines Do Not Cut Off Côte d'Ivoire

Mercator Projection, Datum WGS 84
Scale accurate to 1:1,000,000

Kilometers

Prepared by International Mapping

For purposes of illustration only

Figure R 3.4b

Equidistance Lines Do Not Cut Off Bangladesh

Mercator Projection, Datum WGS 84
Scale accurate to 1:5,000,000

Kilometers

Prepared by International Mapping

For purposes of illustration only
Côte d'Ivoire's CM Croquis 7.9, Original

Figure R 3.7a

Côte d'Ivoire's CM Croquis 7.9, Added Actual Projection of Adjacent Coast

Figure R 3.7b
on “the instability of coasts …”.\textsuperscript{225} In both of those cases, Bangladesh argued that the instability of the coast in the area of the Bengal Delta—one of the most geomorphologically active and highly unstable coastlines in the world—rendered base points ephemeral and equidistance erratic. Both ITLOS and the Annex VII tribunal rejected Bangladesh’s arguments, and applied equidistance methodology in delimiting these maritime boundaries.\textsuperscript{226} The Annex VII tribunal concluded that because “Bangladesh was able to identify base points on its coast, as well as on the coast of India”, this was sufficient to “consider … it appropriate to apply the equidistance/relevant circumstances method”.\textsuperscript{227} It also rejected Bangladesh’s attempts to justify adjustments to the equidistance line on the basis of the alleged instability of its coast.\textsuperscript{228}

3.26 Côte d’Ivoire’s invocation of Nicaragua v. Honduras\textsuperscript{229} is without foundation. In that case, the ICJ found that it was not feasible to construct an equidistance line because of the unique configuration and highly unstable nature of the coast in the area of the land boundary terminus, which was located at the mouth of the Coco River.\textsuperscript{230} Neither party had proposed using an equidistance line to delimit the boundary, and neither sought even to depict one in its written pleadings. The Court considered, then rejected, two options for selecting base points for an equidistance line. One was to situate base points on “unstable islands … in the mouth of the River Coco”.\textsuperscript{231} The other was to use a pair of base points located “on either bank of the River Coco at the tip of the Cape”,\textsuperscript{232} where the parties “agree[d] … [that the] delta, as well as the coastline to the north and south of the Cape … exhibit[ed] a very active

\begin{enumerate}
\item CMCI, para. 6.28 (“l’instabilité des côtes …”).
\item See Bangladesh v. India, Award, paras. 327, 346; Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar), Reply of Bangladesh (15 Mar. 2011), para. 3.104. See Bangladesh v. Myanmar, Judgment, para. 266 (utilizing the basepoint about which Bangladesh objected in the construction of its “provisional equidistance line”).
\item Bangladesh v. India, Award, para. 346.
\item Ibid., para. 399
\item See CMCI, paras. 6.32-6.34.
\item Nicaragua v. Honduras, Judgment, paras. 277-283.
\item Ibid., para. 280.
\item Ibid., para. 277.
\end{enumerate}
morpho-dynamism”. The Court found that either option “would make the[] base points … uncertain within a short period of time”.

3.27 By contrast, there has been no suggestion that base points in the vicinity of the land boundary terminus at BP 55 would have to be placed on unstable features, or that an active geomorphology would make them “uncertain within a short [or, indeed, any] period of time”. There is no river at the land boundary terminus. To the contrary, the relevant coasts in this case consist entirely of dry land and are remarkably stable. This is demonstrated conclusively by the evidence, including Côte d’Ivoire’s own evidence.

3.28 In its Counter-Memorial, Côte d’Ivoire reports that it has conducted a new technical study to establish the location of the low water line in the vicinity of the land boundary terminus. It argues that its depiction of the low water line is more accurate than that relied on by Ghana, which was drawn from British Admiralty Chart 1383 (hereinafter “BA 1383”), which in turn relied on survey information initially obtained in 1838-1840. Until the submission of the Counter-Memorial, both Ghana and Côte d’Ivoire determined their coastlines based, respectively, on official British and French maps that relied on the same 19th Century survey data. However, based on its newly-developed data, Côte d’Ivoire has identified new base points, different from those identified by Ghana based on BA 1383, and constructed a new equidistance line. What is most striking is the similarity of the two equidistance lines, despite their reliance on different base points. They diverge only modestly, by no more than 0.42 M within the first 12 M, and by no more than 4.65 M as far seaward as 200 M. Assuming, quod non, the accuracy of Côte d’Ivoire’s new data (about which Ghana urges caution, since it was developed for the purposes of this litigation), what

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233 Ibid. (emphasis added).
234 Ibid., para. 280.
this shows is that the coastline has changed only minutely over the 175 years since the British survey was conducted in 1838-1840.

3.29 This should hardly be surprising. Unlike the land boundary terminus in *Honduras v. Nicaragua*, or in *Bangladesh v. India*, BP 55 is (and always has been) on dry land, far removed from any river deltas or other geomorphologically active features. The nature and stability of the coasts of both Parties are more fully demonstrated in Chapter 2 of Ghana’s Memorial. In particular, Ghana’s relevant coast—west of Cape Three Points—is marked by a flat and wide beach, backed by coastal lagoons. Wave height is generally low.\textsuperscript{237} It is a “low energy” coast.\textsuperscript{238} Neither Ghana’s central coast, between Cape Three Points and Tema, nor its eastern coast, between Tema and the boundary with Togo, face the area in dispute. Côte d’Ivoire skips over the relevant, western portion of Ghana’s coast, acknowledging that it is not unstable: “Some regions, mainly located east of the Ghanaian coastline, are more affected …”.\textsuperscript{239} All of the specific coastal areas identified by Côte d’Ivoire as subject to erosion\textsuperscript{240} are well to the east of Ghana’s relevant coast. In particular, the coast at Accra is 325 km east of BP 55, at Ada it is 415 km to the east, and at the Keta Lagoon, east of the Volta River, it is 460 km from the land boundary terminus.

3.30 Côte d’Ivoire likewise points to erosion along irrelevant portions of its own coast, ignoring the stable coastline west of and immediately adjacent to BP 55. The case studies of littoral drift, wave height and impact angle of swells at Fresco and Grand Lahou are irrelevant, because these locations are between 200 and 300 km west of the land boundary terminus.


\textsuperscript{239} CMCI, para. 1.34 (“Certaines régions, situées principalement à l’est du littoral ghanéen, sont d’avantage touchées …”).

terminus, and have no effect on the provisional equidistance line. \(^{241}\) To be sure, Côte d'Ivoire asserts that there are “studies” showing coastal instability on its side of BP 55, but it neither produces nor cites to any specific studies to that effect. Instead, it presents only a single published article, which is unhelpful to Côte d'Ivoire’s argument. \(^{242}\) In regard to the area adjacent to BP 55, the article states that this “coastline is generally in sedimentary equilibrium”, which means that any erosion that occurs is offset by an equivalent level of accretion. \(^{243}\) Côte d'Ivoire admits this, acknowledging that whatever coastline is eroded between March and July is subsequently “reconstituted”. \(^{244}\) The same article produced by Côte d'Ivoire also undermines the claim that coastal erosion is significant farther to the west. At Assinie beach, for example, it concludes that seasonal changes result in “negative feedback”, which means the coastal system adapts to maintain its overall morphology. \(^{245}\) Thus: “Considering the results of the analysis of the coastline, we can say that coastal erosion is not a major prevailing phenomenon in Assinie”. \(^{246}\)

3.31 Accordingly, there is no basis for arguing that the relevant coasts of Ghana and Côte d'Ivoire are unstable, or that the alleged but disproven coastal instability justifies resort to a delimitation methodology other than equidistance.

C. The Number and Location of Base Points

3.32 Côte d'Ivoire argues that the “low” number of base points, as well as their location—”close” to the land boundary terminus—militate against equidistance methodology. This is not an argument that has found favour with any international court or arbitral tribunal.


\(^{244}\) CMCI, para. 1.25 (“reconstitu[é]”). 


\(^{246}\) Ibid., p. 317 (“Au regard des résultats de l’analyse cinématique du trait de côte, on peut dire que l’érosion côtière n’est pas une tendance lourde à Assinie”).
3.33 In its Memorial, Ghana identified nine base points, five on its side of the LBT and
four on Côte d’Ivoire’s side. Côte d’Ivoire, based on its new survey, claims there are ten,
three on its own side and seven on Ghana’s. In both cases, the number of base points is higher
than in other cases in which equidistance methodology has been employed. In Bangladesh v. Myanmar, for example, ITLOS found it sufficient that there were two base points on the
Bangladesh side (one of which had no effect on the equidistance line within 200 M), and four
on the Myanmar side. In the Black Sea case, it was deemed sufficient to have only two
base points on the Romanian side and three on the Ukrainian side. In Cameroon v. Nigeria,
the ICJ constructed the equidistance boundary based on a total of two base points. Only three
base points were used for the 170 M western section of the boundary in the Channel Islands
arbitration (United Kingdom v. France).

3.34 The jurisprudence also answers Côte d’Ivoire’s complaint that all nine (or ten) base
points in this case are located within 8.5 km of the LBT, and extend (from the farthest Ivorian
base point in the northwest to the farthest Ghanaian base point in the southeast) over 13.4 km
of coast. In Bangladesh v. Myanmar, the first 190 M of the equidistance boundary was
determined on the basis of a single Bangladeshi base point, located only 4.6 km from the
LBT. The two base points relied on by the ICJ in Cameroon v. Nigeria were located within
approximately 25 km of each other. In Barbados v. Trinidad & Tobago, the Annex VII
tribunal rejected Trinidad’s objection to Barbados’ use of base points that allowed “five miles
of opposite coasts between the Parties … [to] determine the fate of hundreds of miles of
maritime boundary”.

247 Bangladesh v. Myanmar, Judgment, para. 266.
249 Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland,
128-129 (Annex (The Boundary-Line Chart and the Tracing of the Boundary Line: Technical Report to the
Court by H. R. Ermel)).
250 See CMCI, paras. 6.19-6.20.
251 Bangladesh v. Myanmar, Judgment, para. 266.
253 Barbados v. Trinidad and Tobago, Award, para. 326.
3.35 Thus, neither the number of, nor distance between, base points—whether those identified by Ghana or by Côte d’Ivoire—constitute a basis for rejecting equidistance methodology.

D. Ghana’s Coast

3.36 Côte d’Ivoire would deny any base points to Ghana, and hence preclude the possibility of drawing an equidistance line, on the theory that Ghana’s putative base points (including those that Côte d’Ivoire attributes to it) are located on a “strip of land” that is a “historical accident” resulting from a treaty between the United Kingdom and France fixing the boundary separating their respective colonial possessions. This is an extremely odd argument. It asks the Special Chamber, in effect, to set aside the principle of *uti possidetis juris*, which both Parties and the African Union accept as inviolable, and ignore the land boundary that Ghana and Côte d’Ivoire inherited from their colonial predecessors, at least for the purpose of delimiting the maritime boundary. There can be no legal basis for doing such violence to a fundamental principle of international law, or to the actual geography of the area in question.

3.37 The maps used by both Parties accurately depict the land boundary between the Parties. As shown on Figure 3.9 on the next page it follows the Tano River as it flows southward toward its debouchement in the Tendo Lagoon. The boundary tracks the river’s thalweg, dividing the waters between the Parties. Ghana enjoys the east or left bank and its adjacent waters; Côte d’Ivoire the west or right bank. The river turns west or right at its southern extremity, as it debouches into the lagoon. But the same principle of equal enjoyment continues to be observed. Ghana enjoys the southern or left bank of the lagoon, and the waters out to the middle; Côte d’Ivoire has the northern or right bank and the waters adjacent to that side. The boundary proceeds westward to the middle of the lagoon to approximately its east-west midpoint, where it turns left, or south until it reaches the southern

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254 CMCI, para. 6.18 (“*langue*”; “*accident historique*”).

bank, and then proceeds southward across the land in a relatively straight line (slightly favouring Côte d’Ivoire) directly to the coast, where it terminates at BP 55.

![Figure 3.9: Ghana and Côte d’Ivoire Land Boundary](image)

3.38 This boundary, thus observed, is not an “accident of history”. To the contrary, it is the result of a deliberate decision by the colonial powers to establish the boundary between their respective possessions in such a way as to allow them to share in the benefits of the riverine system (including transportation and fishing) composed of the Tano River and Tendo Lagoon. As a consequence of the geography, the equal division of the waters left Ghana with a parcel of territory south of Tendo Lagoon, but not all of the territory south of the lagoon. This territorial division, and the resulting Ghanaian coastline at the southern extremity of the lagoon, is neither a “historical accident” nor capable of being ignored without doing violence to well-established legal principles like *uti possidetis* or engaging in the refashioning of geography, which international courts and tribunals have repeatedly warned against doing. Ghana cannot so cavalierly—and arbitrarily—be stripped of its coast (indeed, the most relevant portion of its coast).
E. Future Delimitations Involving Third States

3.39 Grasping at straws, Côte d’Ivoire argues that the use of equidistance methodology to delimit the boundary between Ghana and Côte d’Ivoire would be prejudicial to Togo, Benin and/or Nigeria.256

3.40 But it is indisputable that the Judgment of the Special Chamber in this case will be binding only on the two Parties: Ghana and Côte d’Ivoire. By operation of the ITLOS Rules, as well as fundamental principles of international law, it will bind no other State. In regard to third States, the Judgment will be res inter alios acta.257

3.41 Whether the Special Chamber determines that there is an agreed boundary, or delimits the boundary by means of equidistance, there can be no prejudice to any other State in the region. Each of the boundaries in the region must be delimited based on the geographic circumstances that are particular to that boundary. The fact that equidistance might be feasible, and lead to an equitable solution, between Ghana and Côte d’Ivoire, does not predispose a future tribunal toward applying equidistance between, for example, Côte d’Ivoire and Liberia, or between Ghana and Togo. As ITLOS observed in Bangladesh v. Myanmar:

[The issue of which method should be followed in drawing the maritime delimitation line should be considered in light of the circumstances of each]

256 See CMCI, para. 6.55. Immediately before making this point, however, Côte d’Ivoire acknowledges: “In this case, the delimitation of the maritime border between Côte d’Ivoire and Ghana will not encroach on the rights of third States since the Gulf of Guinea is open to the ocean. Therefore, the Ivorian-Ghanaian maritime boundary is not likely to prejudice directly Liberia, Togo and Benin, and other States of the Gulf of Guinea”. (“Au cas d’espèce, la délimitation de la frontière maritime entre la Côte d’Ivoire et le Ghana n’empiétera pas sur les droits d’États tiers puisque le Golfe de Guinée est ouvert sur l’océan. Dès lors, la frontière maritime ivoiro-ghanéenne n’est pas susceptible de préjudicier directement au Libéria, au Togo ou au Bénin, et aux autres États du Golfe de Guinée”) (emphasis added). Ibid., para. 6.54.

257 Statute of the International Tribunal for the Law of the Sea, Art. 33(2). See Territorial and Maritime Dispute (Nicaragua v. Colombia), Application of Honduras for Permission to Intervene, Judgment, ICJ Reports 2011, p. 420, para. 72 (recognizing that maritime delimitation treaties between two States “under the principle res inter alios acta, neither confer any rights upon a third State, nor impose any duties on it. Whatever concessions one State party has made to the other shall remain bilateral and bilateral only, and will not affect the entitlements of the third State”); ibid., paras. 50, 72-75 (rejecting Honduras’s argument that “without its participation as an intervening State, the decision of the Court may irreversibly affect its legal interests if the Court is eventually to uphold certain claims put forward by Nicaragua” because in light of, inter alia, the principle of res inter alios acta, “Honduras has failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision of the Court in the” maritime boundary delimitation between Nicaragua and Colombia, even though a tripoint between the three States’ maritime boundary was within “the perceived rectangle … under consideration”).
case. The goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection. Therefore the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result.\textsuperscript{258}

3.42 Therefore, Côte d’Ivoire’s suggestion that neighbouring States might be prejudiced if the Special Chamber were to employ a delimitation methodology other than angle bisector makes no sense. Future delimitations involving third parties can only be based on the “prevailing geographic realities and the particular circumstances” pertinent to those cases, not to those pertaining as between Ghana and Côte d’Ivoire. To be sure, whatever the outcome of the present case, as ITLOS has noted, “[The] jurisprudence has developed in favour of the equidistance/relevant circumstances method. This is the method adopted by international courts and tribunals in the majority of the delimitation cases that have come before them”.\textsuperscript{259} But this is a reason to embrace equidistance methodology here, not to eschew it.

3.43 In sum, the present case calls loudly—and only—for the application of equidistance methodology to determine the boundary between Ghana and Côte d’Ivoire, if there is any part of it that the Special Chamber may deem not covered by the Parties’ tacit agreement. There is no justification whatsoever for resort to an angle bisector in lieu of equidistance, especially when the Party asking for the angle bisector admits that equidistance is feasible in this case and produces an equitable solution.

\section*{III. Application of the Equidistance Method}

3.44 Ghana and Côte d’Ivoire agree that equidistance is a three-step process, by which (1) a provisional equidistance boundary line is constructed, (2) the line is adjusted, if merited, to account for relevant circumstances, and (3) the line is reviewed to confirm that it does not result in a gross disproportionality between the Parties’ relevant coasts and maritime areas.\textsuperscript{260} They disagree, however, on how each of these steps should be implemented in this case.

3.45 As shown below, Côte d’Ivoire applies each step of this process incorrectly.

\begin{flushright}
\textsuperscript{258} \textit{Bangladesh v. Myanmar}, Judgment, para. 235.
\textsuperscript{259} Ibid., para 238.
\textsuperscript{260} CMCI, para. 7.1; MG, para. 5.84.
\end{flushright}
A. Step One: Constructing the Provisional Equidistance Line

3.46 The first step entails establishing “a provisional delimitation line, using methods that are geometrically objective and also appropriate for the geography of the area in which the delimitation is to take place. So far as delimitation between adjacent coasts is concerned, an equidistance line will be drawn unless there are compelling reasons that make this unfeasible in the particular case.”

1. Côte d’Ivoire’s Avoidance of the Relevant Coasts

3.47 Côte d’Ivoire states that the first step begins by “establising the baseline by which the base points will be identified”. But there is an important prerequisite to establishing the proper base points, which Côte d’Ivoire chooses to ignore: before determining the base points it is necessary to identify the relevant coasts along which those base points will be found. As the ICJ observed in the Black Sea case, “The Court must, when delimiting the continental shelf and exclusive economic zones, select base points by reference to the physical geography of the relevant coasts”. As the Court explained, identification of the relevant coasts is necessary to both the first and third steps in the equidistance process:

The role of relevant coasts can have two different though closely related legal aspects in relation to the delimitation of the continental shelf and the exclusive economic zone. First, it is necessary to identify the relevant coasts in order to determine what constitutes in the specific context of a case the overlapping claims to these zones. Second, the relevant coasts need to be ascertained in order to check, in the third and final stage of the delimitation process, whether any disproportionality exists in the ratios of the coastal length of each State and the maritime areas falling either side of the delimitation line.

Côte d’Ivoire disregards entirely the role of relevant coasts in the first step of the process. It makes no reference whatsoever to “relevant coasts” anywhere in its Counter-Memorial, except in its discussion of the third and final step, when it considers whether the boundary line it has constructed produces a disproportionate distribution of maritime spaces. And even

262 CMCI, para. 7.5 (“d’établir la ligne de base en vertu de laquelle les points de base seront identifiés”).
263 Romania v. Ukraine, Judgment, para. 137 (emphasis added).
264 Ibid., para. 78 (emphasis added).
in that discussion, Côte d’Ivoire declines to identify the relevant coasts in this case, on the remarkable basis that their identification is “difficult or arbitrary”.265

3.48 Instead of identifying the “relevant coasts”—that is, the coasts that “abut as a whole upon the disputed area by a radial or directional presence relevant to the delimitation[]”266—Côte d’Ivoire treats its entire coast, as well as Ghana’s entire coast, as though they were relevant to this delimitation. This is despite the fact that large portions of each coast do not project onto the area to be delimited or otherwise affect the course of any properly drawn provisional equidistance line. Thus, *Croquis* 8.6 and 8.7 in the Counter-Memorial depict both countries’ entire coasts as relevant. But this is clearly not consistent with case law. In order to be considered “relevant” for delimitation purposes, a coast “must generate projections which overlap with projections from the coast of the other Party.”267 Ghana’s relevant coast, therefore, cannot extend eastward past Cape Three Points, because beyond that feature its coastline faces away from, not towards, the area of overlapping projections.268 Likewise, Côte d’Ivoire’s relevant coast extends westward from the land boundary terminus only to a point near Sassandra, because west of that coastal bend the effect of the Ivorian coastline on the area to be delimited is, at best, minute. Indeed, west of that point, the Ivorian coastline is almost entirely beyond 200 M from the maritime entitlements claimed by Ghana. Portions of a party’s coast that do not generate entitlements that overlap with those of the other party are simply not relevant to the delimitation. As the Court explained in *Tunisia v. Libya*:

> it is not the whole of the coast of each Party which can be taken into account; the submarine extension of any part of the coast of one Party which, because of its geographic situation, cannot overlap with the extension of the coast of the other, is to be excluded from further consideration . . . .269

3.49 Consistent with these principles, Ghana has identified the relevant coasts of the Parties as follows: for Ghana, “the portion that extends from the land boundary terminus in a southeasterly direction to Cape Three Points, where the coast turns abruptly to the northeast


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265 CMCI, para. 8.48 (“*difficile ou arbitraire*”).
266 *Barbados v. Trinidad and Tobago*, Award, para. 331.
268 *See also ibid.*, para. 145 (treating as relevant Nicaragua’s east-facing mainland coast, except only for the small segment around Punta Perlas that faced southwards, away from the delimitation area).
269 *Tunisia v. Libyan Arab Jamahiriya*, Judgment, para. 75; *Nicaragua v. Colombia*, Judgment, para. 150.
and begins to face away from the area to be delimited”; and for Côte d’Ivoire, “from the land boundary terminus to the northwest until it reaches a bend in the coast near Abidjan, and then to the west until the vicinity of Sassandra”. The relevant coasts, and the disputed maritime area into which they project and overlap, are shown in Figure 3.10, following this page. Ghana’s relevant coast is thus 121 km in length; Côte d’Ivoire’s is 308 km. It is along these relevant coasts that appropriate base points must be identified for the construction of the provisional equidistance line.

3.50 Ironically, the Counter-Memorial confirms that Ghana’s identification of the relevant coasts is correct. All of the base points identified by Côte d’Ivoire in the construction of its provisional equidistance line, on both sides of the LBT, fall along the relevant coasts as identified by Ghana; none are located beyond the limits of these relevant coasts. This is depicted in Figure 3.11, following Figure 3.10, which is taken from Croquis 7.6bis of the Counter-Memorial. As explained below, the precise locations of Côte d’Ivoire’s purported base points shown in these Figures are problematic, but their placement entirely within the limits of the relevant coasts identified by Ghana confirms the correctness of this part of Ghana’s analysis.

3.51 It may be that Côte d’Ivoire’s reluctance to expressly admit that Ghana is right about the relevant coasts is because doing so would undermine its argument in step two of the equidistance process, namely that the provisional equidistance line should be adjusted in its favour due to the alleged “concavity” of its coast. As shown in Figure 3.11, as well as in Croquis 6.2 of the Counter-Memorial, the coastline that is relevant to this delimitation—where both Parties have placed all of the base points—is almost perfectly straight. The Parties agree on this: the coast between Sassandra (Côte d’Ivoire) in the west and Cape Three Points (Ghana) in the east, which covers a distance of some 429 km, is relatively straight. There are no concavities, convexities, protuberances, offshore features or other geographic circumstances that might unduly influence an equidistance line, or deflect it so that it cuts across the coastal front of either Party. The so-called “concavity” along Côte d’Ivoire’s coast, if it exists at all, lies well beyond the relevant coasts, exerts no influence on the provisional equidistance line, and is accordingly irrelevant to this case. Only by disregarding well-

270 MG, para. 5.80.
271 Ibid.
Base Points for Côte d‘Ivoire‘s Provisional Equidistance Line within 200M

Mercator Projection, Datum: WGS 84
(Scale accurate at 1%)

Prepared by International Mapping

For purposes of illustration only

Figure R 3.11
established case law on relevant coasts, and unjustifiably treating the entire coastlines of both States as though they were relevant, can Côte d’Ivoire even pretend that there is a “concavity” that needs to be taken into account in this case.

2. Côte d’Ivoire’s Contrived Base Points and Provisional Equidistance Line

3.52 Once the relevant coasts have been determined, appropriate base points along those coasts must be identified. Here again, the Parties agree on the method, but Côte d’Ivoire errs in the application.

3.53 The Counter-Memorial criticizes the base points Ghana identified in its Memorial, which were drawn from the most current nautical chart available from the United Kingdom Hydrographic Office, BA 1383. Ghana has relied upon BA 1383 as its official chart since well before the commencement of the present dispute. Côte d’Ivoire finds fault with that chart based on its scale and the age of its survey data.272 Yet the British Admiralty chart remains the largest scale and most current chart officially recognized by either State. And the official chart recognized by Côte d’Ivoire—Sévice hydrographique de la marine française (SHOM) Chart 7786—is virtually identical to BA 1383 in its depiction of the coastline on either side of the land boundary terminus.273 Ghana’s reliance on BA 1383 and Caris LOTS software for determining the location of the base points for the construction of the provisional equidistance line is thus entirely appropriate.

3.54 Indeed, during bilateral negotiations prior to the commencement of these proceedings, Ghana and Côte d’Ivoire expressly agreed that their respective low water lines should be as shown on their official charts. The Minutes of the 9th Meeting of Ghana-Côte d’Ivoire Maritime Boundary Negotiations, held in Accra on 23-24 April 2014, state, under the heading “Evaluation of Base Points and Nautical Charts”:

272 See CMCI, para. 6.14.
During the 9th session, the two parties presented their international hydrographical charts and noted that they had been using the same series of international hydrographical charts, for example:

a. INT 2805 on a scale of 1:350 000 covering Sassandra to Aby Lagoon for the Ivorian side.

b. Detailed map, reference n° 3113 on a scale of 1:150 000, from the Cape Three Points region to Cape Coast for the Ghanaian side.

The two parties agreed, from now on, to use the same international hydrographical charts on a scale of 1:150,000, where they exist, or on a scale of 1:350,000 or other scale appropriate for delimitation of maritime boundary or relevant remote sensing data.\(^{274}\)

3.55 Nevertheless, in the Counter-Memorial Côte d’Ivoire appears to reject the use of official charts, including its own, and claims to have conducted its own new analysis of the low water line in the vicinity of the land boundary terminus, and identified a more “reliable” coastline\(^ {275}\) that yields more “accurate” base points.\(^ {276}\) The Counter-Memorial explains that this coastline data was obtained by a combination of topographic surveys and recent satellite photographs.\(^ {277}\) Côte d’Ivoire considers this data to be more accurate because it is more “recent” than the data underlying the official charts recognized by both States.\(^ {278}\) This claim is not justified. First, the new analysis was developed subsequent to the commencement of, and entirely for the purposes of, this case. Second, the Counter-Memorial fails to fully disclose the data underlying its made-for-litigation analysis, which makes verification of the purported results impossible at the present time. Third, it appears from the limited data that has been made available that Côte d’Ivoire has been highly selective in its use of satellite photography, which is vulnerable to manipulation because photographs taken on different dates can produce different depictions of the low water line. Consequently, a desired result can be achieved by means of basing the analysis on photographs that are most favourable to such a result.


\(^{275}\) See CMCI, para. 7.9 (“fiable”).

\(^{276}\) Ibid., para. 6.14 (“précis[]”). See also ibid., para. 7.9.

\(^{277}\) Ibid., para. 6.15.

\(^{278}\) Ibid., para. 7.9 (“récent”). See also ibid., para. 7.14.
Nevertheless, some useful observations can be made about Côte d’Ivoire’s recent “findings”. First, the low water line proffered by Côte d’Ivoire is not very different from the one shown on the official charts (BA 1383 and SHOM 7786). This is clear from Figure 3.12, following page 102, which compares the new Ivorian depiction with that derived from the official charts. Their striking similarity confirms (1) the reliability of the official charts and their underlying data; and (2) the fact that, assuming quod non the accuracy of Côte d’Ivoire’s new data, the coastline has not changed significantly in over 175 years, and is therefore very stable. Second, the base points placed by Côte d’Ivoire along its new low water line yield a provisional equidistance line that is very close to the equidistance line constructed by Ghana in the Memorial, based on the official charts and the selection of base points along the low water line shown in those charts. Côte d’Ivoire’s provisional equidistance line follows the same general southwesterly direction as Ghana’s, along a very similar azimuth (191.2° in the case of Côte d’Ivoire’s line; 279° 191.9° in the case of Ghana’s). As Côte d’Ivoire itself states, the distance between the two equidistance lines at the limit of the territorial sea is less than one nautical mile; at 200 M it is less than five nautical miles.

In an effort to understand the basis of the new low water line presented by Côte d’Ivoire in its Counter-Memorial, Ghana contracted EOMAP, a leading provider of satellite-derived coastal information and pioneer in satellite-derived bathymetry monitoring, which is based in Munich, Germany. EOMAP concluded that contrary to Côte d’Ivoire’s assertions, its new low water line was unlikely to have been based on “latest satellite bathymetry techniques”. Further, as EOMAP explained, satellite bathymetry is an inappropriate means of constructing a low water line in cases, such as the present one, where the waters display very high turbidity and breaking waves. EOMAP thus concluded that the low water line produced by Côte d’Ivoire is unlikely to accurately represent the long-term coastline shape and extent.

279 Ibid., para. 7.27.
280 Ibid., para. 7.30.
281 Ibid., para. 7.18 (“les dernières techniques de bathymétrie satellitaire”); EOMAP GmbH & Co. (EOMAP), Ghana-Côte d’Ivoire Coastline Analysis (19 July 2016), §§ 2.3.2, 2.4. RG, Vol. IV, Annex 167.
282 EOMAP, Ghana-Côte d’Ivoire Coastline Analysis, § 2.3.2. RG, Vol. IV, Annex 167.
283 Ibid., §2.4.
Ghana maintains the view that, for purposes of maritime delimitation under the 1982 Convention, the relevant low water line is that depicted on the official charts recognized by both Parties. To confirm the reasonableness of relying on such official charts—as the Parties agreed to do during their bilateral negotiations on 23-24 April 2014—EOMAP developed a survey of the coastline employing the most modern and reliable technology suitable for the purpose. EOMAP did so by analysing the most recent satellite image data available—a series of 15 satellite images taken between November 2015 and May 2016. In EOMAP’s judgment, using recent satellite data collected over a period of seven months yields a stable result unaffected by short-lived tidal or storm events. Using this data, coastlines were manually digitized and associated with predicted tidal values at the exact time of image capture. The most seaward portions of the lowest low water lines were then composited together, and statistically analysed to produce a low water line that reduces the short-term effects of wave patterns and localized beach features.\textsuperscript{284} The resultant low water regression line is depicted in Figure 3.13, following Figure 3.12.

Figure 3.13 compares the low water regression line derived by EOMAP with the coastline depicted on the official charts. What is readily apparent is that the low water line developed by EOMAP is very similar to that on both official charts. As depicted in Figure 3.14, following Figure 3.13, the provisional equidistance line constructed from the base points identified by Caris LOTS on BA 1383’s low-water line, and one drawn from EOMAP’s regression line, follow the same southwesterly direction along very similar azimuths. EOMAP’s analysis thus confirms, and justifies the use of, the Parties’ official charts to determine the low water line, find appropriate base points along it, and construct a provisional equidistance line.

For reference purposes, Figure 3.15, following Figure 3.14, compares the customary equidistance line that has been tacitly agreed by the Parties, for its first 100 M, with the two lines discussed above. The most obvious observation is how similar the tacitly-agreed line is to both of the lines—and especially to the provisional equidistance line based on BA 1383.

In Ghana’s view, for the reasons stated above, if the Special Chamber concludes that a delimitation of any part of the boundary is called for, the proper starting point would be the

\textsuperscript{284} Ibid., § 3.
Comparison of Charted Coastlines

Mercator Projection, Datum WGS-84
(Scale accurate at 576)

- Côte d'Ivoire's Chart 2016 low water line
- BA Chart 1383 (SHOM Chart 7786) low water line

Figure R 3.12
Comparison of EOMAP’s Regression Line to the Coastline from Official Charts

Mercator Projection, Datum: WGS-84
(Scale accurate at 7N)

0 1 2 3
Nautical Miles

0 2 4 6
Kilometers

Prepared by International Mapping

Figure R 3.13
provisional equidistance line that is based on official charts. This is consistent with the Convention, and it also has the merit of giving effect to the Parties’ April 2014 agreement that delimitation of the maritime boundary should be based on their official charts. It would also avoid the problems inherent in relying on technical data developed by the Parties after the commencement of these proceedings.

3.62 This approach necessitates the rejection of the provisional equidistance line presented by Côte d’Ivoire in Chapter 7 of the Counter-Memorial. Côte d’Ivoire’s abrupt abandonment of the agreement to use official charts, including its own, is unjustifiable, and a further example of its willingness to abandon settled practice and agreement. Nor can it rely on an ostensibly technical analysis using newly obtained data that is subject to manipulation and omits full disclosure of its underlying methodology. As a consequence, the Counter-Memorial’s versions of the low water line, the base points along that line, and the provisional equidistance line drawn from those base points are unacceptable and should be rejected by the Special Chamber.

3.63 This means that the base points to be used in the construction of the provisional equidistance line should be those derived from the official charts recognized by both Parties as of the time the present dispute arose. However, in the alternative, if the Special Chamber has doubts about the reliability of the official charts—because of the age of the survey information or other factors—it would be appropriate to identify the low water line, select base points, and construct the provisional line based on EOMAP’s analysis. Unlike the approach taken by Côte d’Ivoire, this analysis is based on data and methodology that have been fully disclosed.

B. Step Two: Adjustment for Relevant Circumstances

3.64 The Parties agree that the second step of the three-step methodology is to determine if there are relevant circumstances that merit shifting the provisional equidistance line. They disagree, however, on what circumstances are relevant and how the line should be shifted. In the Counter-Memorial, Côte d’Ivoire argues that there are three relevant circumstances to be taken into account. As shown below, Côte d’Ivoire is wrong in regard to all three circumstances. None of these is relevant, and none justifies an adjustment of the provisional equidistance line (or a departure from the customary, equidistance-based boundary line that
has been tacitly agreed). In contrast, Ghana has identified one relevant circumstance that would justify an adjustment of the provisional equidistance line to conform to the tacitly-agreed boundary line.

1. *Côte d’Ivoire’s Relevant Circumstances*

3.65 In its Counter-Memorial, Côte d’Ivoire argues that an adjustment of the provisional equidistance line is warranted because: (a) the allegedly concave nature of Côte d’Ivoire’s coast causes an inequitable cut-off; (b) Ghana’s coast should be discounted because it is the result of an “accident of history”; and (c) Côte d’Ivoire should benefit from hydrocarbon resources located on Ghana’s side of the equidistance line. None of these arguments finds any support in the case law.

a. *Concavity*

3.66 A concave coast, without more, is not a relevant circumstance. ITLOS’s statement of the principle in *Bangladesh v. Myanmar* bears emphasis: “[C]oncavity *per se* is not necessarily a relevant circumstance. However, when an equidistance line drawn between two States produces a cut-off effect on the maritime entitlement of one of those States, as a result of the concavity of the coast, then an adjustment of that line may be in order to reach an equitable result.”\(^{285}\) The Counter-Memorial concedes this: “It is not the concavity in itself that constitutes a relevant circumstance, but the effect of cut-off it generates.”\(^{286}\)

3.67 Applying this standard, the alleged concavity along the Ivorian coast cannot constitute a relevant circumstance in the delimitation of the boundary between Côte d’Ivoire and Ghana. As explained above in paragraphs 3.21 to 3.23, this is because the putative concavity exerts no influence whatsoever on the equidistance line. It does not pull the line closer to the coast, and it does not cause a cut-off of any potential Ivorian maritime space. To the contrary, as Côte d’Ivoire ultimately admits, the coasts of both Parties in the vicinity of the land boundary terminus, from which the equidistance line is derived, “are perfectly straight and do not reflect the concavity of the Ivorian coast or convexity of the Ghanaian coast and notably the


\(^{286}\) CMCI, para. 7.40 (“Ce n’est pas la concavité en tant que telle qui constitue une circonstance pertinente, mais l’effet d’amputation qu’elle engendre”).
influence of Cape Three Points". Thus, there is no concavity that constitutes a relevant circumstance, or a justification for adjustment of the equidistance line.

3.68 Given this reality, the claimed “cut-off” shown in Côte d’Ivoire’s Croquis 7.9 is non-existent. The figure creates the illusion of a cut-off by using arrows that do not project on a bearing perpendicular to Côte d’Ivoire’s relevant coastline. Figure 3.16, following page 106, which replicates in larger scale Figure 5.5 from Ghana’s Memorial, shows that both Parties’ coasts in the vicinity of the land boundary terminus project seaward in parallel with the equidistance line, and with each other, without being cut off. Côte d’Ivoire manufactures a false cut-off by deliberately drawing its arrows in the direction of its bisector rather than perpendicular to the coast. Figure 3.7, following page 86, compares Ghana’s presentation of the seaward projection of the Ivorian coast with the way in which Côte d’Ivoire has chosen to depict that projection in Croquis 7.9. The result is that the “cut-off” disappears.

3.69 The direction of Côte d’Ivoire’s arrows appears not to be determined by the coast itself, but by Côte d’Ivoire’s contrived “general direction” line which it employs as a “coastal façade” in its angle bisector analysis. That is the same “coastal façade” that, as discussed above, touches the coast only at Côte d’Ivoire’s two land boundary termini; the rest of it traverses only sea, treating more than 13,700 square kilometres of water as though it were land. It is this fictitious rendition of the Ivorian coast, not the real coast, which generates the so-called “cut-off” depicted in the Counter-Memorial. And even under these manipulated circumstances, there is no significant cut-off, because Côte d’Ivoire remains able to “extend[]

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287 Ibid., para. 6.22 (“Moreover, the portions of coastline in question (8.7 km for Côte d’Ivoire and Ghana by 13.4 km) are perfectly straight and do not reflect the concavity of the Ivorian coast or convexity of the Ghanaian coast and notably the influence of Cape Three Points.”) (“Bien plus, les portions de côtes en cause (8,7 km pour la Côte d’Ivoire et 13,4 km selon le Ghana) sont parfaitement rectilignes et ne reflètent donc pas la concavité des côtes ivoiriennes, ni la convexité des côtes ghanéennes et notamment l’influence du cap des Trois-Points.”).

288 See also Cameroon v. Nigeria, Judgment, para. 297 (“[T]he Court stresses that this [concavity as a relevant circumstance] can only be the case when such concavity lies within the area to be delimited. Thus, in the Guinea v. Guinea-Bissau case, the Arbitral Tribunal did not address the disadvantage resulting from the concavity of the Coast from a general viewpoint, but solely in connection with the precise course of the delimitation line between Guinea and Guinea-Bissau …. In the present case the Court has already determined that the coastlines relevant to delimitation between Cameroon and Nigeria do not include all of the coastlines of the two States within the Gulf of Guinea. The Court notes that the sectors of coastline relevant to the present delimitation exhibit no particular concavity …. Consequently the Court does not consider that the configuration of the coastlines relevant to the delimitation represents a circumstance that would justify shifting the equidistance line as Cameroon requests.”) (emphasis added).

289 CMCI, 7.43 (“amputation”).
its maritime territory as far seaward as international law would permit”. As shown, Côte d’Ivoire suffers no cut-off from the customary equidistance line. This is also apparent from Figure 3.6, following page 86, which shows the seaward projections of the entire relevant coasts of both Parties. As shown, the customary equidistance boundary allows Côte d’Ivoire’s relevant coast (to an even greater extent than Ghana’s) to project seaward without impediment, providing unconstrained access to the outer continental shelf and beyond.

b. The Ghanaian Coast

3.70 The land boundary between Côte d’Ivoire and Ghana has been fully agreed since 1905, when the last of a series of Agreements between France and the United Kingdom delimiting it was concluded. The Counter-Memorial accepts this. It accepts, in particular, that the stretch of coast lying east of the land boundary terminus at BP 55 belongs to Ghana; it also accepts that this portion of the Ghanaian coast is relevant to the delimitation, and supplies the base points necessary for the construction of the equidistance line: “Côte d’Ivoire does not dispute the fact that the strip of land is part of the territory of Ghana and it is therefore acceptable to place the base points on this segment of the Ghanaian coastline”.

It argues, however, that the Special Chamber should re-imagine the location of the land boundary, and title to the Ghanaian coast, in order to adjust its effect on the equidistance line.

3.71 Geographic and historical realities cannot so easily be swept aside. The land boundary is the land boundary, and the territory on Ghana’s side is inevitably and inalterably Ghanaian. It cannot be ignored or imagined away, even if Côte d’Ivoire considers it inconvenient to its interest in expanding its maritime entitlements. As the ICJ emphasized in Burkina Faso v. Mali, it is “an undeniable fact” that uti possidetis juris is a “firmly established principle of international law where decolonization is concerned” and has “exceptional importance for the

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292 See CMCI, para. 2.29.

293 Ibid., para. 7.46 (“La Côte d’Ivoire ne conteste nullement le fait que la langue de terre fait partie du territoire du Ghana et qu’il est dès lors acceptable de placer des points de base sur ce segment du littoral ghanéen”).
African continent”.

The land border between Ghana and Côte d’Ivoire must continue to be respected, as it always has been by the Parties themselves. The Ghanaian coast, which indisputably falls on Ghana’s side of the long-agreed boundary, must therefore be treated as the Ghanaian coast in this delimitation proceeding.

3.72 There is nothing anomalous, let alone accidental, about a meticulously negotiated, delimited and long-respected boundary that follows the southerly course of a major river (the Tano) until it empties into a lowland lagoon (the Tendo) and then divides the lagoon roughly in half between the Parties along an east/west axis. It is readily apparent that the boundary was carefully intended by the colonial powers to divide these waters in such a manner as to provide equal access to and enjoyment of them by the peoples of both territories. Neither history nor geography—nor case law—provide any basis whatsoever for regarding the land boundary, and its distribution of land territory between the two States, as a relevant circumstance warranting an adjustment of the provisional maritime boundary.

3.73 Côte d’Ivoire implausibly argues that a substantial portion of Ghana’s mainland (comprising 253 km², and home to approximately 80,000 inhabitants) should be treated as though it were “an island that is located on the wrong side of the equidistance line”. This is an area that includes: Half Assini, the capital of Ghana’s Jomoro District; centuries-old settlements whose inhabitants depend on marine fishing for their livelihoods; and Fort Apollonia, which has been in continuous existence since the late eighteenth century, when it was built by English merchants. It hardly seems necessary for Ghana to respond to Côte d’Ivoire’s argument on this point. Plainly, Ghana’s mainland territory is not an island, let alone situated on the wrong side of an equidistance line. The coastline of this indisputably Ghanaian territory unquestionably forms part of Ghana. It cannot be ignored simply because Côte d’Ivoire considers it disadvantageous. The historical events that rendered it to Ghana

294 Frontier Dispute (Burkina Faso v. Republic of Mali), Judgment, ICJ Reports 1986, p. 554, para. 20 (“firmly established principle of international law where decolonization is concerned …. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs”); ibid., para. 22 ("The elements of uti possidetis were latent in the many declarations made by African leaders in the dawn of independence. These declarations confirmed the maintenance of the territorial status quo at the time of independence, and stated the principle of respect both for the frontiers deriving from international agreements, and for those resulting from mere internal administrative divisions").


296 CMCI, para. 7.46 ("une île qui se situe du mauvais côté de la ligne d’équidistance").
cannot constitute relevant circumstances justifying adjustment of the equidistance line. It may be possible, over a long period of time, for a coast to be washed away; but it cannot suddenly be wished away. That would result in an extreme and unprecedented “judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes”. 297

c. The Location of Hydrocarbons

3.74 Côte d’Ivoire admits that “[r]esource-related criteria have been treated more cautiously by the decisions of international courts and tribunals, which have not generally applied this factor as a relevant circumstance”. 298

3.75 Nevertheless, the Counter-Memorial tries to counter this precedent by arguing that access to hydrocarbons has an “exceptional nature …” in this case. 299 But what it considers “exceptional” is that hydrocarbons are proven to be located in the disputed area. 300 That is not exceptional enough to constitute a relevant circumstance, at least not according to the ICJ and arbitral tribunals that have faced similar facts, and deemed them not relevant to the delimitation of the maritime boundary. Such was the finding of the ICJ in Cameroon v. Nigeria. There, the Court accepted Nigeria’s argument that it was not the Court’s role to “redistribute” oil concessions, and rejected Cameroon’s argument that the presence of hydrocarbon resources should be treated as a relevant circumstance. 301 As the arbitral tribunal in Guinea v. Guinea-Bissau observed:

Some States may have been treated by nature in a way that favors their boundaries or their economic development, others may be disadvantaged. … The fact is that the Tribunal does not have the power to compensate for the economic inequalities of the States concerned by modifying a delimitation which it considers is called for by objective and certain considerations. 302

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297 Romania v. Ukraine, Judgment, para. 149 (“To count Serpents’ Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine’s coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes”).

298 CMCI, para. 7.51 (quoting Barbados v. Trinidad and Tobago, Award, para. 241).

299 Ibid., para. 7.52 (“caractère si exceptionnel …”) (citing Nicaragua v. Colombia, Judgment, para. 223).

300 Ibid., paras. 7.55-7.59.


302 Guinea v. Guinea-Bissau, Decision, para. 123. MG, Vol. VIII, Annex 97 (“Certains Etats peuvent avoir été dessinés par la nature d’une manière favorable à l’établissement de leurs frontières ou à leur développement économique; d’autres peuvent avoir été désavantagés. … Il est vrai que le Tribunal n’a pas le pouvoir de compenser les inégalités économiques des Etats intéressés en modifiant une délimitation qui lui semble
3.76 Côte d’Ivoire strains to find support for its argument in two cases, neither of which helps it. In Gulf of Maine, the Chamber of the Court, in fact, rejected both parties’ arguments that access to resources should be taken into account in the delimitation of the maritime boundary between Canada and the United States. The Chamber observed that one exception where access to resources could be a relevant circumstance would be where “the application of equitable criteria … should unexpectedly be revealed as radically inequitable, that is to say, as likely to entail catastrophic repercussions for the livelihood and economic well-being of the population of the countries concerned”. Côte d’Ivoire has made no such assertion, let alone offered proof that it would suffer any “catastrophic repercussions”.

3.77 Côte d’Ivoire’s approach finds no support in the Jan Mayen case, either. Although the Court adjusted the median line to provide Denmark with access to the capelin fish stock, (as well as to reflect a disparity of more than 9:1 in relevant coastal lengths) the circumstances in that case were very different from those presented here. Both Denmark (Greenland) and Norway (Jan Mayen) had fished extensively in the disputed waters, and both populations had become dependent on the fish stocks and the income that they generated. The Chamber shifted the boundary, in part, expressly to avoid “catastrophic repercussions for the livelihood and economic well-being for the population for the countries concerned”. Here, Côte d’Ivoire has never conducted any oil-related activities in the disputed area—indeed, for over five decades Côte d’Ivoire recognized it as belonging exclusively to Ghana, and, until recently, had never expressed any interest in the area. Unlike the parties in Jan Mayen, Côte d’Ivoire’s population has never depended on these waters (or seabed) for the

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s’imposer par le jeu de considérations objectives et certaines”). See also Barbados v. Trinidad and Tobago, Award, para. 244 (“There will rarely, if ever, be a single line that is uniquely equitable. The Tribunal must exercise its judgment in order to decide upon a line that is, in its view, both equitable and as practically satisfactory as possible, while at the same time in keeping with the requirement of achieving a stable legal outcome”).

303 See Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America), Judgment, ICJ Reports 1984, p. 246 (hereinafter “Canada v. United States of America, Judgment”), para. 237 (“the respective scale of activities connected with fishing—or navigation, defence or, for that matter, petroleum exploration and exploitation—cannot be taken into account as a relevant circumstance or, if the term is preferred, as an equitable criterion to be applied in determining the delimitation line”).

304 Ibid.

305 CMCI, para. 7.54.


307 Ibid., para. 75.
income they generate. It could not, therefore, suffer any catastrophic repercussions to its population from an adjusted equidistance line that conforms to the same boundary that was tacitly agreed—and indisputably acknowledged and respected by both Parties—for over 50 years.\footnote{Ibid., para. 74. Moreover, Denmark, Iceland and Norway had reached an agreement requiring joint cooperation to conserve and manage the capelin stock in the now disputed waters. In contrast to this agreement to jointly operate within the dispute waters, here the evidence of cooperation shows Côte d’Ivoire’s historic understanding that Ghana alone would exploit the resources in the disputed area. \textit{See supra} Chapter 2, Sections II.A & III.A.}

2. Gluten’s Relevant Circumstance

3.78 In the Black Sea case, the ICJ observed that access to natural resources could be a relevant circumstance when the conduct of the parties relating to the resources demonstrates the existence of tacit agreement or \textit{modus vivendi} in relation to the location of the maritime boundary.\footnote{\textit{Romania} v. \textit{Ukraine}, Judgment, paras. 197-198. The Court noted that in that case Ukraine was “not relying on State activities in order to prove a tacit agreement or \textit{modus vivendi} between the Parties on the line which would separate their respective exclusive economic zones and continental shelves” and that it had submitted no evidence of catastrophic repercussions if a boundary line other than the one it claimed were applied. \textit{Ibid.}, para. 197.} This condition exists here, and calls for an adjustment of the provisional equidistance line in Ghana’s favour, so that it conforms to the customary equidistance boundary that the Parties observed in practice for more than half a century.

3.79 The long-standing bilateral practice of the Parties, aligning the limits of their oil and gas concessions along what they both regarded as an equidistance line, consistently treating and referring to that line publicly, and to each other, as the international boundary, officially depicting the boundary line as extending along and beyond these concession limits, and conducting exploration, drilling and extraction activities for 50 years only on their own side of the commonly agreed line, is a relevant circumstance requiring adjustment of the provisional equidistance line. This common and consistent practice—supported on the Ivorian side by national legislation, Presidential decrees, concession agreements and official maps published by State entities—reflects both a tacit agreement on the location of the maritime boundary and a \textit{modus vivendi} on the basis of such agreement that was uniformly observed by both States.
3.80 In *Tunisia v. Libya*, the ICJ observed that a line employed “separately” by each party “delimiting the eastward and westward boundaries of petroleum concessions” was of “great relevance”\(^{310}\) and “one of the circumstances proper to be taken into account in defining the angulation of the initial line from the outer limit of territorial waters …”\(^{311}\) The Court elaborated on this aspect of *Tunisia v. Libya* in subsequent cases. In *Gulf of Maine*, for example, it explained that the evidence of bilateral conduct in the earlier case showed what “amounted to a *modus vivendi*” between the two States which was “respect[ed] when … they began to grant petroleum concessions”.\(^{312}\) In *Cameroon v. Nigeria*, the Court, again referring to *Tunisia v. Libya*, explained that the practice of the parties there had “confirmed the existence of a *modus vivendi*”,\(^{313}\) the “result” of which “was the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorized by one Party, without interference, or (until 1976) protests, by the other”.\(^{314}\)

3.81 The differences between *Tunisia v. Libya* and the present case serve only to strengthen Ghana’s position that the practice of the Parties establishes, at the very least, a *modus vivendi* that constitutes a relevant circumstance to be taken into account in what has since become the second step of the equidistance process. As compared to Tunisia and Libya, the common practice of Ghana and Côte d’Ivoire with respect to their oil and gas concession limits lasted far longer (more than 50 years versus 10\(^{315}\)). Moreover, in the present case, the coinciding oil concession limits were formally and expressly described by Côte d’Ivoire as the international boundary with Ghana in Presidential decrees, official maps published by State entities, representations to international organizations and the oil industry, and in the concession agreements themselves. None of this had occurred in *Tunisia v. Libya*.

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\(^{310}\) *Tunisia v. Libyan Arab Jamahiriya*, Judgment, para. 118.

\(^{311}\) *Ibid.*., para. 125. See also MG, paras. 5.40-5.44.

\(^{312}\) *Canada v. United States of America*, Judgment, para. 150.

\(^{313}\) *Cameroon v. Nigeria*, Judgment, para. 304.

\(^{314}\) *Tunisia v. Libyan Arab Jamahiriya*, Judgment, para. 117.

\(^{315}\) *Ibid.*, para. 21 (noting that Tunisia “granted its first offshore concession in 1964[,]” 10 years before Libya, in 1974, “granted a concession … further west than the equidistance line”, resulting in “an overlapping of claims”).

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3.82 Côte d’Ivoire challenges the relevance of *Tunisia v. Libya* on three grounds. *First*, it notes that the judgment is from 1982, prior to the entry into force of UNCLOS. That may be true, but the Special Agreement of the parties submitting the dispute to the Court “specifically called upon [the ICJ] … to take account of … relevant circumstances which characterize the area”, and to “take into account ‘new accepted trends’”, amongst which was included the draft text of UNCLOS. Thus, the Court was well aware of the Convention and its standards when it issued its Judgment. And, as shown above, in cases decided subsequent to the Convention’s entry into force, the Court has cited approvingly its earlier finding that the conduct of the parties in respect of their oil concessions can constitute a relevant circumstance to be taken into account in delimitation of the maritime boundary when it establishes the existence of a *modus vivendi*.

3.83 *Second*, Côte d’Ivoire mistakenly suggests that *Tunisia v. Libya* sets a higher standard for *modus vivendi* than Ghana is able to meet. In Côte d’Ivoire’s reading of the Judgment, which it claims to be based on the interpretation given in *Gulf of Maine*, there is no *modus vivendi* unless the parties’ practice establishes that the *de facto* boundary is an “all-purpose” one, and not just for oil and gas related activities. That is a misinterpretation of both cases. In fact, the Chamber in *Gulf of Maine* explained that the *modus vivendi* in *Tunisia v. Libya* was based on the longstanding conduct of the parties both during the colonial period and after independence when “they began to grant petroleum concessions”.

3.84 *Third*, Côte d’Ivoire argues that cases subsequent to *Tunisia v. Libya* demonstrate that the location of oil and gas concessions cannot constitute a relevant circumstance justifying modification of the provisional equidistance line. According to the Counter-Memorial: “oil practice does not constitute a relevant circumstance”. This, too, is an erroneous interpretation of the case law. To be sure, there are no other cases in which a *modus vivendi* sufficient to affect delimitation of the maritime boundary was found to exist. But that is

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316 CMCI, para. 4.64.
317 *Tunisia v. Libyan Arab Jamahiriya*, Judgment, para. 23.
318 Ibid., para. 24.
319 CMCI, para. 4.66.
320 *Canada v. United States of America*, Judgment, para. 150.
321 CMCI, para. 7.61 (“*la pratique pétrolière ne constitue pas une circonstance pertinente*.”).
because of lack of evidence of the existence of a *modus vivendi*, not because the Court, or any arbitral tribunal, ever held that *modus vivendi* could not be a relevant circumstance.

3.85 An objective reading of the cases shows that in each of them the Court or arbitral tribunal was careful to distinguish it from *Tunisia v. Libya* on the facts, and find that, in the case before it, there was no or insufficient evidence of a tacit agreement or *modus vivendi*. In *Gulf of Maine*, for example, the Chamber “underlined the importance of those findings when it stressed that in that case there did not exist any *modus vivendi*”,322 because unlike *Tunisia v. Libya*, the United States and Canada’s concessions overlapped and did not align with one another. In *Libya v. Malta*, neither party argued “that the circumstances in th[e] case gave rise to ‘the appearance on the map of a *de facto* line dividing concession areas which were the subject of active claims…””.323 The arbitral tribunal in *Guinea v. Guinea-Bissau* similarly “declined to take into consideration an oil concession granted by Portugal”324 because the parties’ claims and “measures of application” were “enough to exclude any notion of implicit agreement …” on delimitation.325 In the arbitration regarding *St. Pierre et Miquelon (Canada v. France)*, the tribunal disregarded “the potential mineral resources” because the parties had issued permits in “areas of overlapping claims”.326

3.86 Côte d’Ivoire relies principally on an out-of-context reading of the ICJ’s *dictum* in *Cameroon v. Nigeria* that “oil concessions and oil wells are not in themselves to be considered as relevant circumstances” and “may be taken into account” “[o]nly if they are


323 *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, Judgment, ICJ Reports 1985, p. 13, para. 24. See also *ibid.*, para. 25 (“The Court has considered the facts and arguments brought to its attention in this respect, particularly from the standpoint of its duty to ‘take into account whatever indicia are available of the [delimitation] line or lines which the Parties themselves may have considered equitable or acted upon as such’ …. It is however unable to discern any pattern of conduct on either side sufficiently unequivocal to constitute either acquiescence or any helpful indication of any view of either Party as to what would be equitable differing in any way from the view advanced by that Party before the Court’.”) (emphasis added).


based on express or tacit agreement”.327 About this language, two observations are pertinent. First, it must be read together with the Court’s endorsement of the judgment in Tunisia v. Libya insofar as it was based on the existence not of an express or tacit agreement, but of a modus vivendi reflected in “a de facto line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorized by one Party, without interference, or (until 1976) protests, by the other”.328 Thus, the Court did not rule out modus vivendi in regard to oil concessions as a relevant circumstance where the evidence established its existence.

3.87 Second, Côte d’Ivoire fails to mention that the Court’s reluctance in Cameroon v. Nigeria to attribute relevance to oil concessions was based on its concern that one State, by granting concessions in a disputed area, could present the other with a “unilateral fait accompli”.329 Hence the Court found that “oil concessions and oil wells are not in themselves to be considered as relevant circumstances”.330 But that concern does not apply here. Ghana’s argument is not that its unilateral granting of oil concessions on its side of the equidistance line constitutes a relevant circumstance; it is that, to use the Court’s language in Tunisia v. Libya, the consistent conduct of the Parties over five decades resulted in “a de facto line dividing concession areas which were the subject of active claims, in the sense that exploration activities were authorized by one Party, without interference, or (until [2011]) protests, by the other”.331

3.88 Confirming Ghana’s reading of the jurisprudence, cases subsequent to Cameroon v. Nigeria uniformly recognize that, where the evidence shows a modus vivendi, it may appropriately be treated as a relevant circumstance. In the Newfoundland v. Nova Scotia arbitration, in which the applicable law was UNCLOS, the tribunal emphasized that each case “depended on its own facts”, and found that “to establish that a boundary (not settled or determined by agreement) has been established through conduct, it is necessary to show an unequivocal pattern of conduct as between the two parties concerned, relating to the area and

328 Tunisia v. Libyan Arab Jamahiriya, Judgment, para. 117.
330 Ibid., para. 304 (emphasis added).
331 Tunisia v. Libyan Arab Jamahiriya, Judgment, para. 117.
supporting the boundary”. And in *Guyana v. Suriname*, the Annex VII tribunal expressly recognized that “the practice of the Parties with regard to oil concessions and oil wells” could “be taken into account in the delimitation of the maritime boundary”, but found that in that case it could not because the parties had issued overlapping concessions in the area in dispute. The distinguishing factor here is that Ghana’s and Cote d’Ivoire’s oil concessions were perfectly aligned with one another along the customary equidistance boundary; there was never any overlap.

3.89 Ghana’s extensive reliance on Côte d’Ivoire’s acceptance of the customary equidistance boundary makes it especially appropriate to treat the Parties’ longstanding *modus vivendi* as a relevant circumstance in this case. Based on Côte d’Ivoire’s acknowledgment and observance of that boundary, and Côte d’Ivoire’s own practice of conducting all of its oil-related activities exclusively on its side of the line, Ghana issued concessions to international oil companies covering all of its maritime space—right up to the line—out to a distance of more than 87 M. As depicted in Figure 3.17, following page 116, at least five areas have been awarded by Ghana in reliance on Côte d’Ivoire’s acceptance of the customary equidistance boundary. Significantly, although all of these were publicly known, Côte d’Ivoire never objected to any of them. To the contrary, as discussed above, Côte d’Ivoire actually facilitated Ghana’s activities in these areas by expressly authorizing Ghanaian-licensed vessels conducting seismic surveys adjacent to the boundary line to cross the border in order to turn around in Ivorian waters to the west of the line. These areas are, from north to south:

- The Expanded Shallow Water Tano Block;
- The Wowa Discovery Area;

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332 *Arbitration between Newfoundland and Labrador and Nova Scotia concerning Portions of the Limits of Their Offshore Areas (Newfoundland and Labrador/Nova Scotia)*, Award of the Tribunal in the Second Phase (26 Mar. 2002), para. 3.5.


334 See ibid., paras. 231, 235, 390. *Barbados v. Trinidad and Tobago* is not inconsistent. There, the arbitral tribunal found that the unilateral and sporadic oil activities by Trinidad and Tobago did not “themselves constitute a factor that must be taken into account in the drawing of an equitable delimitation line”. *Barbados v. Trinidad and Tobago*, Award, para. 366.

335 See supra paras. 2.102-2.110; MG, paras. 3.71-3.76.
• The Deepwater Tano Block;

• The Deepwater Tano/Cape Three Points Block; and

• The South Deepwater Tano Block.

3.90 All of these areas are the subject of formal agreements between Ghana and its concessionaires, by which Ghana undertook a host of legal and financial obligations. Pursuant to these contracts, Ghana and the concessionaires invested heavily, and incurred major expenses, in carrying out and supervising exploration and production activities, including in the area immediately east of the customary equidistance boundary.\textsuperscript{336} In light of Côte d’Ivoire’s recognition of the customary equidistance boundary for more than fifty years, its facilitation of Ghana’s oil-related activities in areas immediately east of the line, and its failure to protest any of Ghana’s concessions or other activities, it cannot seriously be argued that Ghana’s reliance on Côte d’Ivoire’s acceptance of the boundary was unreasonable. In these conditions, especially, the longstanding \textit{modus vivendi} in relation to the treatment of the customary equidistance line as a maritime boundary must be regarded as a relevant circumstance justifying adjustment of the provisional equidistance line.

3.91 In sum, what distinguishes the present case, and brings it under the umbrella of \textit{Tunisia v. Libya}, is the incontrovertible evidence, set forth in Chapter 2 of this Reply (and Chapters 3 and 4 of the Memorial), that there was a boundary between Ghana and Côte d’Ivoire that was based on a customarily agreed equidistance line which both States agreed to, recognised and scrupulously respected for more than five decades. Indeed, the evidence of both a tacit agreement and a \textit{modus vivendi} based on that agreement is much stronger in this case than in \textit{Tunisia v. Libya}. Either there is a tacitly agreed boundary that follows what both Parties regarded as an equidistance line (which Ghana has referred to as “the customary equidistance boundary”), or, alternatively, there was a longstanding practice, or \textit{modus vivendi}, that constitutes a relevant circumstance justifying a shift of the provisional equidistance line (drawn according to official charts) so that it matches the customary equidistance line.

\textsuperscript{336} \textit{See} MG, paras. 3.82-3.96; Second Statement of Paul McDade on behalf of Tullow Oil plc (11 July 2016) (hereinafter, “Second Statement of Tullow”), para. 7. RG, Vol. IV, Annex 166.
The Customary Equidistance Boundary and Ghana's Oil Exploration/Exploitation Areas

Mercator Projection, Datum: WGS-84
(Scale accurate at 4°N)

Nautical Miles
0  20  40  60  80  100

Kilometers
0  20  40  66  80  100

Prepared by International Mapping

For purposes of illustration only
3.92 Côte d’Ivoire misconceives Ghana’s alternative argument as a contradiction of its principal one. According to the Counter-Memorial, to the extent that Ghana invokes Tunisia v. Libya and modus vivendi this constitutes an admission that Ghana “did not provide sufficient evidence of the existence of a tacit agreement”, and “formally contradicts the current position of Ghana”. Côte d’Ivoire is again mistaken. Ghana firmly maintains that the evidence before the Special Chamber demonstrates the existence of a tacit agreement between the Parties on the location of the maritime boundary. For this reason, Ghana’s position is that the boundary is already agreed, and no delimitation is required; the Special Chamber need only confirm the existence of the boundary and its precise coordinates.

3.93 Ghana’s argument on modus vivendi as a basis for adjustment of the provisional equidistance line is made only in the alternative, should the Special Chamber conclude that the evidence is insufficient to establish an agreement on the boundary in whole or in part. In either case, whether by finding that the boundary has been agreed, or that the provisional equidistance line should be adjusted to conform to the de facto boundary, the result should be the same: the boundary should follow the line that both Parties considered an equidistance boundary for half a century. As shown below, in subsection C (and at paragraphs 5.75 to 5.94 of the Memorial), such a boundary constitutes an equitable solution to the present dispute.

3. Location of the Land Boundary Terminus

3.94 The Parties have recognized BP 55 as the terminus of their land boundary since independence. However, it was not until December 2013 that they agreed on the coordinates of that point. As explained in the Memorial, at paragraphs 4.15 and 4.68, the new coordinates differ slightly from those previously relied on by the Parties to determine the western (for Ghana) and eastern (for Côte d’Ivoire) limits of their respective oil concessions, and the equidistance-based line that they had recognized as the international border since the 1960s.

3.95 As a consequence of the Parties’ agreement on the coordinates of BP 55, a modest departure from the customary equidistance boundary is required, whether the Special

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337 CMCI, para. 4.65 (“ne fournissaient pas de preuves suffisantes sur l’existence d’un accord tacite”; “contredit formellement la position actuelle du Ghana”).

338 See MG, paras. 4.13-4.14.
Chamber considers it to have been tacitly agreed, or the solution is to be achieved by adjustment of the provisional equidistance line. In particular, because the agreed coordinates place BP 55 slightly to the east of where the Parties had long presumed it to be, an adjustment must be made to connect the land boundary terminus to the customary equidistance line. This has the effect of transferring a small amount of maritime space in the near shore area from Ghana to Côte d’Ivoire.

3.96 In the Memorial, Ghana proposed that this should be accomplished by means of a straight line connecting the land boundary terminus to the customary equidistance boundary at the 12 M territorial sea limit,\(^{339}\) as shown in Figure 3.18, following this page. This remains Ghana’s position because of its ease of application, and because it departs only minimally—and only in the territorial sea—from the customary equidistance boundary. Because BP 55 is the most seaward agreed-upon point on the land boundary, Ghana has connected it to the low water line by running a geodetic line from BP 55 to where the customary equidistance boundary intersects the 12 M territorial sea limit.

3.97 In the Counter-Memorial, Côte d’Ivoire surprisingly ignores the Parties’ agreement on the coordinates for BP 55,\(^{340}\) and postulates an entirely different LBT.\(^{341}\) Côte d’Ivoire effectively treats BP 54 (2.7 km north of BP 55) as the land boundary terminus. It connects BP 54 to the low water line by means of a line following the same azimuth as a geodetic line from BP 54 to BP 55. This is both legally and technically unjustifiable. There is no basis for departing from the Parties’ agreement on the location of the land boundary terminus at BP 55.

C. Step Three: Test for Disproportionality

3.98 The Parties agree that the final step in the application of equidistance methodology is to test whether the provisional equidistance line, as adjusted based on relevant circumstances, produces “a result which is significantly disproportionate in terms of the lengths of the

\(^{339}\) Ibid., Submission No. 6.

\(^{340}\) See Republic of Côte d’Ivoire, Fifth Reunion, Côte d’Ivoire-Ghana Joint Committee Meeting on the Delimitation of the Maritime Boundaries between Côte d’Ivoire and Ghana: Communication of the Ivorian Party in Response to the Ghanaian Proposals of 27-28 April 2010 (31 May 2010), p. 11. MG, Vol. V, Annex 51 (“the Ivorian Party agrees with the Ghanaian Party, that the delimitation of the maritime boundary between Côte d’Ivoire and Ghana must start from the terminal border post n°55 which is the last terrestrial terminal border post delimiting the adjacent coasts of our two Coastal states”). MG, paras. 4.12-4.18.

\(^{341}\) See CMCI, paras. 7.23, 7.27.
relevant coasts and the division of the relevant area. The purpose is to assess the equitable nature of the result.\textsuperscript{342} Here, again, Côte d’Ivoire errs in its application of this test.

3.99 The case law prescribes that the disproportionality test consists of comparing the ratio of the Parties’ relevant coasts to the ratio of the allocated portions of the relevant maritime area to determine if they are significantly disproportionate.\textsuperscript{343} This is what Ghana has done in the Memorial, where, at paragraphs 5.80 to 5.81, it showed that the customary equidistance boundary, which Ghana considers to have been tacitly agreed, produces a result that is not disproportionate. As Ghana showed, the ratio of the Parties’ relevant coasts is 2.55 to 1 in favour of Côte d’Ivoire, and the ratio of distribution of the relevant maritime area, including that beyond 200 M, is 2.02 to 1. This is depicted in Figure 3.19, following page 120. There is no disproportionality, let alone the gross disproportionality that is required to warrant further adjustment to the equidistance line.\textsuperscript{344}

3.100 Côte d’Ivoire acknowledges that Ghana’s employment of the disproportionality test is consistent with the case law, but then it employs a different disproportionality test, one of its own creation, which finds no support in the jurisprudence.\textsuperscript{345} Côte d’Ivoire’s novel method entails “checking if there is an obvious disproportion between the maritime area of each Party”, “rather than trying to make an arithmetic calculation between the relevant coasts and the relevant area”.\textsuperscript{346} This appears to be a vehicle for escaping what Côte d’Ivoire obviously


\textsuperscript{343} CMCI, para. 8.42.

\textsuperscript{344} See Bangladesh v. Myanmar, Judgment, paras. 498-499 (finding no disproportionality where the ratio of relevant coasts was 1:1.42 and the allocated area was 1:1.54); Denmark v. Norway, Judgment, para. 61 (finding no disproportionality where the ratio of relevant coasts was 1:9 and the allocated area was roughly 1:2.7, as observed by the ICJ in Nicaragua v. Colombia, para. 246); Nicaragua v. Colombia, Judgment, para. 245 (observing that, in the Continental Shelf (Libyan Arab Jamahiriya v. Malta), Judgment, ICJ Reports 1985, p. 13, “the respective shares of Libya and Malta did not come anywhere near a ratio of 1:8”, which was the ratio of coasts, and such a situation was not unduly disproportionate); ibid., paras. 243, 247 (finding no disproportionality where the ratio of relevant coasts was 1:8.2 and the allocated area was 1:3.44); Canada v. France, Award, paras. 33, 93 (finding no disproportionality where the ratio of relevant coasts was 1:15.3 and the allocated area was 1:16.4); Bangladesh v. India, Award, paras. 495-497 (finding no disproportionality where the ratio of relevant coasts was 1:1.92 and the allocated area was 1:2.81); Romania v. Ukraine, Judgment, paras. 215-216 (finding no disproportionality where the ratio of relevant coasts was 1:2.8 and the allocated area was 1:2.1).

\textsuperscript{345} CMCI, para. 8.42.

\textsuperscript{346} Ibid., para. 8.50 ("vérifier s’il existe une disproportion évidente entre les zones maritimes attribuées à chacune des Parties"; “plutôt que d’essayer de faire un calcul arithmétique entre les côtes pertinentes et la zone pertinente”).
regards as an uncomfortable exercise: determining the Parties’ relevant coasts. For Côte d’Ivoire, determining the relevant coasts is “difficult or arbitrary”, and thus to be avoided notwithstanding the fundamental requirement of first establishing the relevant coasts in applying the three-step process.\textsuperscript{347}

3.101 Côte d’Ivoire’s refusal to consider relevant coasts is understandable, if indefensible. The relevant coasts are always those that project onto the area to be delimited and generate overlapping maritime entitlements.\textsuperscript{348} In this case, as has been shown, they are remarkably straight and devoid of anomalous features, and give rise to an equidistance line running in a nearly ruler-straight, southwesterly direction, unaffected by either the alleged concavity along the Ivorian coast or the alleged convexity along the Ghanaian coast. Further, contrary to Côte d’Ivoire’s unsupported assertions, the relevant coasts are stable, showing little change over the past two centuries. This means that, when the relevant coasts are taken into account, the basis for the approach taken by Côte d’Ivoire is undermined. There is no justification for abandoning equidistance in favor of angle bisector methodology. And there are certainly no relevant circumstances justifying modification of the equidistance line in Côte d’Ivoire’s favour.\textsuperscript{349}

3.102 Côte d’Ivoire’s manipulation of the relevant maritime area exposes the contortions it has had to make in order to present its argument on disproportionality. After spending considerable effort arguing that an equidistance boundary is both inappropriate and detrimental for Cote d’Ivoire and for the Parties’ West African neighbours, and after depicting Ghana’s as-yet undelimited eastern boundary with Togo as following an angle bisector in \textit{Croquis} 6.10, it takes an opposite view for purposes of determining the ratio of the Parties’ maritime areas in its argument on disproportionality. There, the Counter-Memorial applies \textit{equidistance} boundaries between Ghana and Togo and between Côte d’Ivoire and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{347} \textit{Ibid.}, para. 8.48 (“\textit{difficile ou arbitraire}”).
\item \textsuperscript{348} See \textit{Barbados v. Trinidad and Tobago}, Award, para. 331; \textit{Nicaragua v. Colombia}, Judgment, para. 150; \textit{Romania v. Ukraine}, Judgment, para. 99.
\item \textsuperscript{349} There is thus no reason to perform a disproportionality test on Côte d’Ivoire’s angle bisector. For the sake of completeness, however, it may be worth noting \textit{in passim} that Côte d’Ivoire’s angle bisector, which takes each Party’s entire coast—not just the relevant coast—into account, and arbitrarily skews the relevant maritime area, yields a ratio for allocated maritime areas of 6.62 to 1 in favour of Côte d’Ivoire, as compared to a coastal ratio of 1.02 to 1 in favour of Côte d’Ivoire. \textit{See MG}, para. 5.82.
\end{itemize}
\end{footnotesize}
The Ratios of Relevant Coasts and Relevant Areas

Mercator Projection, Datum: WGS-84
(Scale accurate at 4°N)

COASTS
Ratio 2.55 to 1
CIV 72%
GHA 28%

Kilometers

Prepared by International Mapping

For purposes of illustration only

Figure R 3.19

Change in angle of coast near Sassandra

Change in angle of coast near Abidjan

Change in angle of coast near Axim

Cape Three Points

12 M limit
200 M limit

308 km
121 km

126,790 km²
62,757 km²

AREAS
Ratio 2.02 to 1
CIV 67%
GHA 33%

Customary Equidistance Boundary
Outer Continental Shelf
Liberia, rather than bisectors. This results in a larger area for Ghana and a smaller area for Côte d’Ivoire. The disingenuousness of this approach is apparent.350

3.103 In summary, the customary equidistance line is an equitable solution. Côte d’Ivoire’s angle bisector is not.

IV. Conclusion

3.104 For the foregoing reasons, Ghana submits that, in the territorial sea, EEZ and continental shelf out to 200 M, the Special Chamber should confirm the customary equidistance boundary tacitly agreed by Ghana and Côte d’Ivoire, subject only to the modest adjustment required to accommodate a new starting point for that boundary necessitated by the Parties’ 2013 agreement on the coordinates of BP 55.351 Alternatively, an equitable solution can be achieved by delimiting the maritime boundary between Ghana and Côte d’Ivoire by means of the now-standard equidistance/relevant circumstances methodology. The provisional equidistance line would be based on the low water lines shown on the official charts recognized by both Parties. At the second step of the three-step process, the line would be adjusted to conform to the customary equidistance line based on the relevant circumstance identified and discussed at paragraphs 3.78 to 3.93 above. Moreover, the fact that this delimitation line avoids a disproportionate sharing of the relevant maritime area is indisputable.

3.105 The resulting boundary line runs along an average bearing of 191.92° out to the 200 M limit from the coast (located at 01°48’30”N - 03°47’18”W). Its precise coordinates, in reference to WGS84, are set forth below:

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350 A comparison of Côte d’Ivoire’s original Annex C6, which it claims to have submitted in error and then quickly sought to withdraw, with the version that replaces it reveals that Côte d’Ivoire considers its boundary with Liberia to be based on an angle bisector, not an equidistance line. Compare Republic of Côte d’Ivoire, Carte Marine: De Nanakru (Liberia) à Dix Cove (Ghana) [Nautical Chart 001: From Nanakru (Liberia) to Dix Cove (Ghana)] (2016). RG, Vol. II, Annex M66 with Republic of Côte d’Ivoire, Nautical Chart 001: From Nanakrou (Liberia) to Dix Cove (Ghana) (2016). CMCI, Vol. II, Annex C6. See also Figure 3.20 (in Vol. II only). Thus, it uses putative equidistance boundaries in its disproportionality test only to assure a favourable outcome.

351 See supra paras. 3.94-3.97.
<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEB-1 (LBT)</td>
<td>05° 05’ 28.4” N</td>
<td>03° 06’ 21.8” W</td>
</tr>
<tr>
<td>CEB-2</td>
<td>04° 53’ 39” N</td>
<td>03° 09’ 18” W</td>
</tr>
<tr>
<td>CEB-3</td>
<td>04° 47’ 35” N</td>
<td>03° 10’ 35” W</td>
</tr>
<tr>
<td>CEB-4</td>
<td>04° 25’ 54” N</td>
<td>03° 14’ 53” W</td>
</tr>
<tr>
<td>CEB-5</td>
<td>04° 04’ 59” N</td>
<td>03° 19’ 02” W</td>
</tr>
<tr>
<td>CEB-6</td>
<td>03° 40’ 13” N</td>
<td>03° 23’ 51” W</td>
</tr>
<tr>
<td>CEB-7 (200 M)</td>
<td>01° 48’ 30” N</td>
<td>03° 47’ 18” W</td>
</tr>
</tbody>
</table>
CHAPTER 4
DELIMITATION OF THE CONTINENTAL SHELF BEYOND 200M

I. Introduction

4.1 This Chapter responds to Côte d’Ivoire’s arguments concerning the delimitation of the continental shelf beyond 200 M. It builds on the previous Chapters regarding the tacit agreement between the Parties on the existence and location of a customary equidistance boundary from BP 55 to 200 M.

4.2 As set out in the Memorial, the agreement between the Parties on the customary equidistance boundary extending beyond 200 M is reflected in their respective 2009 Submissions to the Commission on the Limits of the Continental Shelf (CLCS). Those Submissions confirmed their mutual recognition of the applicability of the principle of equidistance, as well as the equitable result of the customary boundary that is based on it. Côte d’Ivoire’s May 2009 Submission (“Original CLCS Submission”) asserts a claim beyond 200 M only to the west of an equidistance boundary with Ghana, which follows the same azimuth beyond 200 M as the customary equidistance line within 200 M.352 Likewise, Ghana’s April 2009 Submission to the CLCS (“April 2009 Submission”), in a manner that is entirely consistent with Côte d’Ivoire’s Original CLCS Submission and its actions over five decades on which Ghana relied, asserts a claim only to the east of the customary equidistance boundary.353 Figure 4.1, following page 124, depicts the respective continental shelf entitlements of the Parties beyond 200 M, as reflected in their 2009 CLCS Submissions.

4.3 On the basis of the Parties’ 2009 CLCS Submissions, the western limit of Ghana’s outer continental shelf and the eastern limit of Côte d’Ivoire’s outer continental shelf are the same. Their respective claims beyond 200 M fall on either side of the customary equidistance line. Neither Party’s continental shelf claim beyond 200 M extends beyond that line. There is


no overlap. Thus as of 2009, the Parties were in perfect agreement. Their respective claims aligned with a customary equidistance line that defined their boundary up to the first 200 M of the continental shelf and then extended to the full extent of their maritime entitlements, including the outer continental shelf.

4.4 Côte d’Ivoire’s Original CLCS Submission reflected an unequivocal recognition of the location of the maritime boundary both within and beyond 200 M, and an acceptance of the customary equidistance line on which the Parties had a tacit agreement. This situation continued until 2016, when Côte d’Ivoire apparently recognized that the position it wished to advance in its Counter-Memorial was manifestly incompatible with the Original CLCS Submission it had filed seven years earlier. On 24 March 2016, less than a fortnight prior to filing its Counter-Memorial, Côte d’Ivoire replaced its Original CLCS Submission with a new and enlarged submission (“Revised CLCS Submission”).

4.5 This Revised CLCS Submission was made some 18 months after this case commenced. Emblematic of Côte d’Ivoire’s negotiation and litigation strategy, it is a dramatic and abrupt change of position intended to buttress Côte d’Ivoire’s new claims. But in accordance with normal principles of international litigation, the Revised CLCS Submission can have no effect on the situation as it was at the moment that Ghana commenced the present proceeding.

4.6 Yet that is not to say that the Revised CLCS Submission is entirely without significance. The fact that it has been made at all serves to underscore the changed approach now adopted by Côte d’Ivoire, and its earlier recognition of the existence and location of the customary equidistance boundary. Côte d’Ivoire’s reliance on it only serves to strengthen Ghana’s case on the existence of an agreed customary equidistance boundary, including in the outer continental shelf, and Côte d’Ivoire’s belated attempts to depart therefrom.

4.7 Before responding to Côte d’Ivoire’s arguments, it is pertinent to set out the important areas of agreement and disagreement between the Parties regarding the delimitation of the continental shelf beyond 200 M. First, the Parties agree that they have entitlements to a

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Extended Continental Shelf Claims

Mercator Projection, Datum: WGS-84
(Scale accurate at 4°N)

0 25 50 75 100 109 Nautical Miles
0 50 100 150 200 Kilometers

Prepared by International Mapping

For purposes of illustration only

Figure R 4.1
continental shelf beyond 200 M,\textsuperscript{355} subject to the CLCS’s recommendations regarding Côte
d’Ivoire’s entitlement. Côte d’Ivoire’s acceptance of Ghana’s entitlement over the continental
shelf beyond 200 M “is even less contestable” since the CLCS has adopted recommendations
regarding the extension of the continental shelf which have been accepted by Ghana, in
accordance with Article 76(8).\textsuperscript{356}

4.8 \textit{Second}, the Parties are in agreement that the Special Chamber has jurisdiction to
delimit the continental shelf beyond 200 M.\textsuperscript{357}

4.9 \textit{Third}, in principle, there is agreement regarding the respective roles of the CLCS and
the Special Chamber.\textsuperscript{358} The CLCS’s role is to make recommendations on the delineation of
the outer limits of the continental shelf and the Special Chamber is tasked with the
delimitation of the maritime boundary between the two States, both within and beyond 200
M. As set out in the Memorial, both bodies have different but complementary mandates.\textsuperscript{359}
Both Parties cite with approval the \textit{Bay of Bengal} cases in this regard.\textsuperscript{360}

4.10 \textit{Finally}, there is also agreement that the same principles of delimitation are applicable
both within and beyond 200 M.\textsuperscript{361}

4.11 The Parties, however, remain divided on two issues: (i) the extent of the other Party’s
entitlement, particularly after Côte d’Ivoire’s Revised CLCS Submission and the CLCS’s
recommendations regarding Ghana’s entitlement (which are now final), and (ii) the
methodology to be applied to the delimitation of the continental shelf beyond 200 M.\textsuperscript{362}
These areas of disagreement are significant, and are addressed in the remaining parts of this
Chapter.

\textsuperscript{355} MG, para. 6.6; CMCI, para. 8.5.
\textsuperscript{356} CMCI, para. 8.5 (“\textit{est d’autant moins contestable}”). See also \textit{ibid.}, paras. 8.8-8.9.
\textsuperscript{357} MG, paras. 6.14-6.28; CMCI, para. 8.2.
\textsuperscript{358} MG, para. 6.21; CMCI, para. 8.3.
\textsuperscript{359} MG, paras. 6.21 \textit{et seq.}
\textsuperscript{360} \textit{Ibid.}, paras. 6.21-6.23; CMCI, paras. 8.3-8.4.
\textsuperscript{361} See MG, paras. 6.29-6.36; CMCI, paras. 8.22-8.23, 8.25.
\textsuperscript{362} CMCI, para. 8.6.
4.12 In **Section II**, Ghana addresses the Parties’ respective entitlements to the areas beyond 200 M as set out in their Submissions to the CLCS in 2009. This reflects their tacit agreement on the existence and location of their maritime boundary beyond 200 M. It also addresses Côte d’Ivoire’s Revised CLCS Submission. **Section III** demonstrates that the equitable solution called for by Article 83(1) of UNCLOS consists of an extension of the customary equidistance boundary that separates the Parties’ maritime areas within 200 M, to the limits of the outer continental shelf as defined by the CLCS. As Chapter 3 has responded to Côte d’Ivoire’s contrived angle bisector proposal, and demonstrated conclusively that there is no justification for its application in this case, those arguments are not repeated in this Chapter.

II. **The Entitlements of the Parties to the Continental Shelf Beyond 200 M: A Reflection of their Agreement on the Boundary**

4.13 Chapter 6 of the Memorial addressed the Parties’ respective entitlements to the continental shelf beyond 200 M, and described in detail their Submissions to the CLCS on the outer limits of their continental shelves pursuant to Article 76(8) of UNCLOS. Neither Party objected to the other’s Submission.363

4.14 The cooperation between the Parties when making their 2009 Submissions is not in dispute, and is reflected in the fact that both were advised on their respective CLCS Submissions by the same expert, Professor Karl Hinz, a former member of the Commission.364 Additionally, noting that the 9 May 2009 deadline for coastal States to make their Submissions was fast approaching and that Côte d’Ivoire risked missing this deadline, Ghana offered assistance by placing at its disposal the same vessel Ghana was using to acquire data for its own Submission—the *R/V Akademik A. Karpinsky*. Consequently, after the Ghanaian team disembarked at Tema Harbour on 12 December 2008, the Ivorian team embarked on the vessel to collect data for its Submission.365 This fact reflects the absence of a dispute between the Parties.

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363 MG, paras. 6.6 *et seq.*

364 CMCI, para. 4.115.

4.15 In its Counter-Memorial, Côte d’Ivoire argues against the existence of a tacit agreement extending to the area beyond 200 M manifested by their respective 2009 CLCS Submissions.366 These arguments are unconvincing, and may be dealt with briefly. Côte d’Ivoire refers, in particular, to the 2009 ECOWAS Meeting, where the participants agreed “in a spirit of cooperation to not object to each other’s requests for extension of the outer limits of their continental shelf”,367 and the Parties’ statements in their respective 2009 CLCS Submissions that they had overlapping maritime claims with adjacent States, but had not yet signed any maritime boundary delimitation agreements.368

4.16 The 2009 ECOWAS meeting and the resulting statements in the Parties’ respective 2009 CLCS Submissions do not assist Côte d’Ivoire. In 2009, the Parties’ claims over the continental shelf beyond 200 M clearly reflected their acceptance of the customary equidistance boundary, and a tacit agreement. This is demonstrated by the fact that the customary equidistance boundary described in the previous Chapters continued along the same azimuth beyond 200 M. The Parties’ claims were adjacent and there was no overlap. Given that there was no formal written agreement on delimitation, a fact that Ghana accepts, and the deadline for the participating ECOWAS States to present their continental shelf extension applications was imminent, the ECOWAS States adopted the “no objection” language which they subsequently replicated in their Submissions. Further, while both Ghana’s and Côte d’Ivoire’s 2009 CLCS Submissions mention the existence of unspecified “overlapping claims” with other States, their respective Submissions clearly and explicitly demonstrate the lack of any overlapping claims between them.

4.17 Similarly, Côte d’Ivoire’s invocation of the Revised CLCS Submission it produced—on the eve of filing its Counter-Memorial—against the existence of a tacit agreement

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366 CMCI, paras. 4.111-4.128.

367 Ibid., para. 4.114 (“dans un esprit de coopération de ne pas formuler d’objections à leurs demandes respectives d’extension des limites extérieures de leur plateau continental”).

368 Ibid., paras. 4.117-4.118.
extending to the area beyond 200 M\textsuperscript{369} is irrelevant to the issue as to whether there was tacit agreement up to 2009.

A. Ghana’s Entitlement

4.18 As set out in the Memorial, Ghana made a Submission to the CLCS for the establishment of the outer limits of its continental shelf pursuant to Article 76 (8) of UNCLOS, on 28 April 2009.\textsuperscript{370} The Submission identified two areas of continental shelf beyond 200 M along the same margin: the Eastern Extended Continental Shelf Region and the Western Extended Continental Shelf Region. Only the Western Extended Continental Shelf Region is relevant for the present case because it is adjacent to the extended continental shelf that Côte d’Ivoire claims beyond 200 M.\textsuperscript{371} On 25 August 2009 Ghana submitted an Addendum to the April 2009 Submission with respect to the eastern side of the Western Extended Continental Shelf Region.\textsuperscript{372} The Addendum to the April 2009 Submission does not have any bearing on this dispute.

4.19 The outer edge of Ghana’s Western Extended Continental Shelf region, as presented to the CLCS, was defined by four fixed points:

- point OL-GHA-8, located where the sediment thickness formula line intersects with the 200 M line measured from Ghana’s territorial sea baseline;
- points OL-GHA-7 and OL-GHA-4, defined by the sediment thickness formula in accordance with Article 76(4)(a)(i); and
- point OL-GHA-9, located adjacent to the point where the customary equidistance boundary line meets the outer limit of the continental shelf.\textsuperscript{373}

\textsuperscript{369} Ibid., para. 4.121.
\textsuperscript{371} Côte d’Ivoire agrees. See CMCI, paras. 8.7, 8.8 n. 534.
\textsuperscript{373} MG, paras. 6.8-6.9.
4.20 On 10 March 2014, the Subcommission appointed to assess the outer limits of Ghana’s continental shelf presented its unanimous recommendations to the CLCS. On the same day, Ghana made a presentation to the CLCS accepting the recommendations of the Subcommission. While the CLCS accepted the points submitted by Ghana, it refrained from considering point OL-GHA-9 because of its relationship with, and dependence on, delimitation of the boundary with Côte d’Ivoire, which will be determined in this arbitration.

4.21 On 5 September 2014, the CLCS adopted the Subcommission’s recommendations regarding the outer limits of Ghana’s continental shelf beyond 200 M, “agree[ing] with the determination of the fixed points… establishing the outer edge of the continental margin of Ghana”. It found that Ghana had fulfilled the conditions set out in Article 76. It follows by operation of Article 76(8) that the recommended outer limits of Ghana’s continental shelf beyond 200 M are final and binding.

B. Côte d’Ivoire’s Entitlement

4.22 Côte d’Ivoire made its Original Submission to the CLCS on 8 May 2009. This was not merely “a brief initial presentation”, as Côte d’Ivoire now claims. Ghana’s Memorial describes this Submission in some detail. Côte d’Ivoire’s continental shelf beyond 200 M encompassed an area that it referred to as the “Eastern Extended Continental Shelf Region”, the outer limit of which was defined by six fixed points. The Ivorian Submission also noted the “absence of disputes” at that time.

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375 Ibid., para. 16.


377 CMCI, para. 8.14 (“une brève présentation initiale”).

378 See MG, para. 6.12.

4.23 As set out in the Memorial, and as recognised by Côte d’Ivoire, in 2009 (and until March 2016) there was no overlap between the entitlements of Ghana and Côte d’Ivoire in the continental shelf beyond 200 M. The western limit of Ghana’s continental shelf and the eastern limit of Côte d’Ivoire’s continental shelf were adjacent, and this adjacency continued along the extension of the customary equidistance line to the outer limit of national jurisdiction.

4.24 Côte d’Ivoire’s recognition of the customary equidistance boundary both within and beyond 200 M contained in its Original CLCS Submission remained in place for almost seven years. Unchallenged and unchanged until shortly before Côte d’Ivoire responded to Ghana’s Memorial with the Counter-Memorial, the Original CLCS Submission remained fully effective throughout the Provisional Measures phase, and was relied upon by Ghana in those proceedings. At no point did Côte d’Ivoire indicate to the Special Chamber that the Original CLCS Submission had been withdrawn, or that it intended to revise it. It was effective when Ghana filed its Memorial. It was only eleven days before filing its Counter-Memorial that Côte d’Ivoire sought to withdraw this Submission. This course of action serves to underscore the significance of its previous position, not least the fact that Côte d’Ivoire did not consider a boundary based on the line reflected in its Original CLCS Submission to be in any way inequitable in its effect. That Submission also reflects Côte d’Ivoire’s recognition of the customary equidistance line for the five decades that preceded the 2009 Submission.

4.25 According to Côte d’Ivoire, its 2016 Revised CLCS Submission “replaces” the Original CLCS Submission and is “based on data that were not used in the initial request”. In this manner Côte d’Ivoire belatedly seeks to withdraw its 2009 admission in order to reconcile its CLCS Submission with the latest evolution of its delimitation claim. As it has done in the past, it attempts to support its new position by creating and relying on new material developed specifically for the purposes of this litigation.

380 MG, para. 6.13.
382 CMCI, para. 8.15 ("se substituer; "se fondant sur des données qui n’avaient pas été exploitées lors de la demande initiale"); Republic of Côte d’Ivoire, Revised Submission to the CLCS, para. 1.4. CMCI, Vol. VI, Annex 179.
4.26  As a result of Côte d’Ivoire’s Revised CLCS Submission, the entitlements of Ghana and Côte d’Ivoire in the outer continental shelf are now said to overlap, whereas previously there was no overlap. Four of the six outer limit points identified by Côte d’Ivoire are almost at the same places as Ghana’s outer limit points. Figure 4.2, following page 132, compares Côte d’Ivoire’s original outer continental shelf claim with its revised claim (taken from Côte d’Ivoire’s respective CLCS Submissions), overlaid with the customary equidistance boundary. In this way, Côte d’Ivoire simply purports to discard and set aside seven years of common practice and agreement.383

4.27  It is particularly striking that in its Revised CLCS Submission Côte d’Ivoire makes no mention of the current proceedings. It merely refers to the 2009 ECOWAS meeting where the Parties agreed to make “no objections” with regard to their 2009 CLCS Submissions, stating that it “wishes to inform the Commission that in its view, the consideration of [its] submission will not prejudice matters relating to the determination of boundaries between Côte d’Ivoire and any other State(s)”.384 This is clearly inaccurate, and in view of Côte d’Ivoire’s silence as to these proceedings, Ghana has transmitted a written communication to the CLCS informing it of the existence of the dispute and setting out its concerns.385

4.28  Equally striking are the differences between the description of the Revised CLCS Submission set out in Côte d’Ivoire’s Counter-Memorial and the Revised Submission itself. For example, the Counter-Memorial identifies 131 fixed points, whereas the Executive Summary of the Revised CLCS Submission identifies 146.386 Ghana further notes that the precise locations of the outer limit points are also different, and that Croquis 8.2 in the Counter-Memorial, which purports to depict the outer limits of the continental shelf, differs

383 Other differences between Côte d’Ivoire’s Original CLCS Submission and its Revised CLCS Submission include the following: the 2009 Submission only sets out a claim with respect to an Eastern Extended Continental Shelf, whereas the 2016 Submission encompasses claims over both an Eastern and Western Extended Continental Shelf; in the Original CLCS Submission the outer limit was defined by six points whereas the outer limit is now defined by 146 points; the Original CLCS Submission used only the sediment thickness formula to define the fixed points (the Gardiner Formula) whereas the Revised CLCS Submission uses both the sediment thickness formula and the distance formula (the Hedberg formula); the Original CLCS Submission indicated the foot-of-slope points on the outline map in the Executive Summary whereas no foot-of-slope points are indicated in the Revised Executive Summary.

384 Republic of Côte d’Ivoire, Revised Submission to the CLCS, paras. 5.1-5.4. CMCI, Vol. VI, Annex 179.


386 CMCI, para. 8.16; Republic of Côte d’Ivoire, Revised Submission to the CLCS, para 6.1 and Table 1. CMCI, Vol. VI, Annex 179.
from the corresponding figure in the Executive Summary of the Revised Submission. It appears that the drafters of the Counter-Memorial were not aware of the final text of the Revised CLCS Submission, submitted just eleven days earlier, inevitably because the two submissions were being prepared in parallel.

4.29 Moreover, Ghana notes that Côte d’Ivoire’s Revised CLCS Submission also appears to include certain technical limitations. These will be for the CLCS to address in due course.387

4.30 As noted earlier, the timing of the Revised CLCS Submission also raises questions regarding its probative value for the purpose of the current proceedings. Côte d’Ivoire appears to be fully aware of this as its presentation on the effect of the Revised CLCS Submission is defensive. It states inter alia that “[s]uch changes are met, in principle, with no objection”, citing Bangladesh v. India in support.388 It admits however that the tribunal in that case “took no position on this issue”.389 In any case, the Bangladesh v. India case is irrelevant here. India simply claimed before the tribunal an allocation of the outer continental shelf that was different from what it had claimed before the CLCS.390 Unlike Côte d’Ivoire, India did not present an entirely different submission before the CLCS several years after its original submission to the CLCS.

4.31 Côte d’Ivoire also tries to defend its Revised CLCS Submission by noting that Ghana too changed its initial requests.391 Yet it fails to take account of the fact that Ghana made its initial submission on 28 April 2009, and submitted a minor addendum on 25 August 2009, that is to say less than six months later.392 There is a world of difference between making a timely and modest change, and replacing one submission with an entirely different one seven years later in the course, and for purposes, of litigation.

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387 For example, there are technical limitations concerning the extent to which Côte d’Ivoire can demonstrate natural prolongation from its land territory to the outer edge of the margin, given its very narrow physical margin.
388 CMCI, para. 8.18 (“[d]e telles modifications ne se heurtent, dans leur principe, à aucune objection”) (citing Bangladesh v. India, Award, paras. 82, 442, 443, 452).
389 Ibid. (“n’a pas pris de position à cet égard”; “telles modifications ne posent pas de problème”).
390 See Bangladesh v. India, Award, paras. 442, 452.
391 CMCI, para. 8.18
392 MG, para. 6.10 n. 355. Ghana also provided additional data regarding new outer limit points for Ghana’s Eastern Extended CS region in 2013.
Côte d'Ivoire ECS Claim, 2009
Excerpt from submission to CLCS
in 2009, annotated

Customary Equidistance Boundary

Figure R 4.2a

Côte d'Ivoire ECS Claim, 2016
Excerpt from CI CM Annex 179,
annotated

Customary Equidistance Boundary

Figure R 4.2b
4.32 In any case, Ghana acknowledges Côte d’Ivoire’s right to amend or substitute its CLCS Submission in light of new scientific data in accordance with the rules of procedure of the CLCS. The point is that such a revised submission, coming several years after the commencement of the dispute can be of little probative value for the Special Chamber in assessing the existence of a tacit agreement between the Parties and determining an equitable maritime boundary.\(^{393}\)

4.33 Moreover, Côte d’Ivoire’s about-face before the CLCS serves as further support for the application of the estoppel principle addressed in Chapter 2.\(^{394}\) Having exhibited to the world the existence of a customary equidistance boundary with Ghana in its Original CLCS Submission, Côte d’Ivoire should be estopped from seeking a different boundary before the Special Chamber seven years after its Original CLCS Submission.

III. Delimitation of the Boundary Beyond 200 M

4.34 The customary equidistance boundary, described in the Memorial and in Chapter 3 of this Reply, extends both within and beyond 200 M until it reaches the outer limits of continental shelf entitlement. The arguments made in Chapters 2 and 3 apply \textit{mutatis mutandis} to the delimitation of the continental shelf beyond 200 M, save where otherwise indicated. Nothing in the Counter-Memorial can lead to any other conclusion.

4.35 As set out in the jurisprudence there is in law “only a single ‘continental shelf’ rather than an inner continental shelf and a separate extended or outer continental shelf”.\(^{395}\) Article 83 of the Convention governing the delimitation of the continental shelf also makes no distinction between “inner” and “outer” continental shelves. It applies equally to the delimitation of the continental shelf both within and beyond 200 M. Côte d’Ivoire agrees.\(^{396}\) It follows from this that the appropriate method for delimiting the continental shelf remains the same, irrespective of whether the area to be delimited lies within or beyond 200 M. This

\(^{393}\) See \textit{Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua (intervening))}, Judgment, ICJ Reports 1992, p. 351, paras. 1, 362, 364 (finding that, where the dispute was submitted to the Court in 1986, Honduras’s 1991 letter of protest to El Salvador’s long-standing demonstration of sovereignty over the disputed islands lacked evidentiary value).

\(^{394}\) See supra paras. 2.8, 2.119-2.125.

\(^{395}\) \textit{Bangladesh v. Myanmar}, Judgment, paras. 361, 362; \textit{Bangladesh v. India}, Award, para. 77.

\(^{396}\) CMCI, paras. 8.22-8.23; MG, para. 6.29.
is reflected in the case law. Côte d’Ivoire does not disagree with this approach. It submits that it “fully supports” this notion “in principle”.

4.36 In both of the Bay of Bengal cases, ITLOS and the Annex VII tribunal found that the delimitation method to be employed within and beyond 200 M was not different. In both cases, ITLOS and the Annex VII tribunal followed the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 M, and proceeded with the same method beyond 200 M. In both cases, the continental shelf beyond 200 M was delimited by extending the continental shelf boundary that had been established within 200 M along the same azimuth.

4.37 In Bangladesh v. Myanmar, ITLOS determined that the boundary “continues in the same direction beyond the 200 nm limit of Bangladesh until it reaches the area where the rights of third States may be affected”. In Bangladesh v. India the tribunal continued the delimitation line established within 200 M until it reached the boundary between Bangladesh and Myanmar beyond 200 M. As set out in the Memorial, the same approach should be adopted in the present case. Côte d’Ivoire has offered no principled position for disagreeing with this approach.

4.38 As set out in the preceding Chapter, the boundary within 200 M follows the customary equidistance boundary tacitly agreed by the Parties and respected in practice for more than 50 years. It follows from the reasoning of the Bay of Bengal cases that the Special Chamber should continue the customary equidistance boundary beyond 200 M, in the same direction until it reaches the outer limit of national jurisdiction, as determined by the CLCS.

4.39 Accordingly, the customary equidistance line identified in Chapters 2 and 3 continues from where it crosses the 200 M limit measured from the LBT (subject to the modest

397 CMCI, para. 8.23 (“adhère sans réserve”; “de principe”). See also ibid., paras. 8.25-8.26
398 Bangladesh v. Myanmar, Judgment, para. 455; Bangladesh v. India, Award, para. 465.
399 Bangladesh v. Myanmar, Judgment, para. 455; Bangladesh v. India, Award, para. 465.
400 Bangladesh v. Myanmar, Judgment, para 462.
401 Bangladesh v. India, Award, para. 478.
adjustment explained in Chapter 3\textsuperscript{402}), to the point where national jurisdiction ends, along an average bearing of 191.92°.

4.40 Even if the Special Chamber were to conclude there was no tacit agreement between the Parties on the part of the maritime boundary that extends beyond 200 M, an equitable solution would be obtained by delimiting the maritime boundary between Ghana and Côte d’Ivoire beyond 200 M as set out in Chapter 3. The adjusted provisional equidistance line identified and discussed in Chapter 3, which conforms to the customary equidistance that separates the Parties’ maritime spaces within 200 M, should be extended beyond 200 M along the same azimuth up to the limits of national jurisdiction. No further adjustments are called for.

4.41 Côte d’Ivoire’s application of the non-disproportionality test is flawed and its failure to identify the relevant coasts and relevant areas constitutes a significant omission.\textsuperscript{403} As set out in Chapter 3, the length of Ghana’s relevant coast is 121 km. The length of Côte d’Ivoire’s relevant coast is 308 km.\textsuperscript{404} The ratio of the lengths of the Parties’ relevant coasts is 2.55 to 1 and the ratio of distribution of the relevant maritime area is 2.02 to 1. This is depicted in Figure 3.19, following page 120. This ratio does not produce any gross, or even significant, disproportion in the maritime areas of the Parties that would require further adjustment of the equidistance line identified in Chapter 3.

4.42 Accordingly, the boundary beyond 200 M extends from point CEB 7, where it crosses the 200 M limit from the LBT, to the point where national jurisdiction ends, along an average bearing of 191.92°. Figure 4.3, following page 136, sets out the entire boundary proposed by Ghana in these proceedings.

4.43 Finally, Ghana notes that any delimitation effected by the Special Chamber beyond 200 M would have to be contingent on the CLCS finding that Côte d’Ivoire does, in fact, have an outer continental shelf entitlement that extends to the established outer continental shelf entitlement of Ghana in the area to be delimited. If the CLCS were to reject Côte

\textsuperscript{402} See supra paras. 3.94-3.97.
\textsuperscript{403} See supra paras. 3.100-3.102.
\textsuperscript{404} See supra paras. 3.21, 3.49.
d'Ivoire’s outer continental shelf claim, then the delimitation award between Ghana and Côte d'Ivoire would naturally terminate at the 200 M limit, since there would be no possibility of overlapping entitlements to delimit beyond this point.
CHAPTER 5

GHANA IS NOT RESPONSIBLE FOR ANY INTERNATIONALLY WRONGFUL ACTS

I. Introduction

5.1 In Chapter 9 of its Counter-Memorial, Côte d’Ivoire argues that Ghana’s activities contravene international law in four respects, by violating:

(1) Côte d’Ivoire’s sovereign rights under general international law and UNCLOS;

(2) “the general obligation to negotiate in good faith”;

(3) obligations under Article 83(3) of UNCLOS a) to make every effort to enter into provisional arrangements of a practical nature and b) not to jeopardize or hamper the reaching of a final agreement; and

(4) the Special Chamber’s Order for provisional measures of 25 April 2015 (the “Order”).

5.2 Côte d’Ivoire’s arguments throughout Chapter 9 are based on a repeated characterisation of Ghana’s activities in the maritime area now claimed by Côte d’Ivoire as “unilateral”. It seeks to portray Ghana as forging ahead with unilateral activities in an area to which Côte d’Ivoire has always laid claim. This is simply inaccurate. Ghana’s activities in the relevant area are not, and have never been, “unilateral”. On the contrary, as has been explained in the Memorial and in this Reply, Ghana’s activities have been conducted openly and with Côte d’Ivoire’s cooperation, on the basis of a common understanding of the location of the international maritime boundary, and in reliance on representations made by Côte d’Ivoire.

5.3 Pursuant to the Parties’ tacit agreement, each Party has not only permitted, but has encouraged the other, to operate on its side of the customary line. The present situation—which Côte d’Ivoire seeks to portray as a cynical fait accompli designed to further Ghana’s illegitimate claims—has arisen step by step, over many decades, through acts undertaken

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\(^{405}\) See supra Chapter 2; MG, Chapter 3.
publicly by Ghana, until recently without any objection by Côte d’Ivoire, and in many cases with Côte d’Ivoire’s express consent. It is not appropriate to treat such activities as “unilateral” for the purposes of the legal framework applying to activities in a “disputed area”. Until 2009, when Côte d’Ivoire proposed a new maritime boundary line, there was no “disputed area”. 406

5.4 In Section II of this Chapter, Ghana demonstrates why, against this factual background, there has been no violation of Côte d’Ivoire’s sovereign rights. As shown, Côte d’Ivoire’s arguments on this issue are unsupported by authority, principle, or the evidence. Accordingly, the question of compensation does not arise. In any event, as also explained in Section II, there is no legal basis for Côte d’Ivoire’s claimed right to information. Further, its demands for information are over-broad and, as framed, fail to take into account the contractual and intellectual property rights concerned, and the fact that if, quod non, the Special Chamber considered that any such information should be provided by Ghana in due course, this should only be after a subsequent period of negotiations and on the basis that Côte d’Ivoire would pay for this commercially valuable information, which Ghana and its concessionaires have gathered at considerable expense. Moreover, in respect of compensation for any oil extracted by Ghana from any area found to belong to Côte d’Ivoire, the Parties are in agreement that this should, in the first instance, be a matter for negotiation between the Parties following the Special Chamber’s Judgment, and that it would be premature to put forward arguments at this stage. If the issue arises, Ghana reserves the right to advance, at that stage, its own claim for damages in respect of losses caused by the conduct of Côte d’Ivoire.

5.5 Nor, as discussed in Section III, has there been a violation of any “general obligation to negotiate in good faith”. On the contrary, the record shows that Ghana has consistently sought to engage constructively with Côte d’Ivoire, despite the latter’s frequent changes of position and unreasonable demands for a complete suspension of Ghana’s long-established activities in the “disputed area”. Côte d’Ivoire now seeks to portray Ghana’s consistent position on the agreed boundary as a manifestation of bad faith; this attempt fails. There has

406 The term “disputed area” in this Chapter refers to the area that Côte d’Ivoire has identified as the disputed area, namely, the area between Côte d’Ivoire’s angle bisector line and the customary equidistance boundary. As discussed in Chapter 3, Ghana maintains that the actual area in dispute is that between Côte d’Ivoire’s provisional equidistance line and the customary equidistance boundary. See supra para. 3.3.
been no violation of Article 83(3) of UNCLOS. It cannot be the case that the reaching of a final agreement on the Parties’ maritime boundary is hampered or jeopardized by the continuation of peaceful economic activities which have represented the status quo for many years.

5.6 Finally, as shown in Section IV, Ghana has faithfully complied with every requirement of the Order of 25 April 2015.

5.7 In relation to Côte d’Ivoire’s submissions on sovereign rights and compensation for alleged breaches of those rights, Ghana’s response is, of course, advanced in the alternative to its case as set out in the Memorial and the preceding Chapters of this Reply. Ghana’s case is that all of the area in dispute belongs to Ghana: there arises no question of any violation of Côte d’Ivoire’s sovereign rights.

II. Sovereign Rights

A. Côte d’Ivoire’s Case on the Law

5.8 Central to Côte d’Ivoire’s argument is what it describes as a “rule against such activities in a disputed area pending the final delimitation”. In support of this proposed, extremely broad, prohibition, Côte d’Ivoire appears to advance the following line of argument: First, that the sovereignty of a State entails exclusive sovereign rights over the State’s territory. Second, that a judicial determination of a disputed boundary is declarative, not constitutive. And third, that, therefore, if the Special Chamber declares the boundary between Côte d’Ivoire and Ghana to lie in such a way as to include within the territory of Côte d’Ivoire any area in which Ghana had been conducting petroleum operations, Ghana will ipso facto have violated Côte d’Ivoire’s sovereign rights and will be liable to compensate Côte d’Ivoire. The alleged violation of Côte d’Ivoire’s sovereign rights is not consistently defined, and takes various forms throughout the argument: a) the “rule against such activities in a disputed area pending the final delimitation”: in other words, a violation of Côte d’Ivoire’s rights, as retrospectively established by the eventual Judgment of the Special

407 CMCI, para. 9.15 (“règle prohibant de telles activités dans une zone litigieuse dans l’attente de la délimitation finale”). See also ibid., para. 9.18.

408 Ibid., paras. 9.3-9.14.
Chamber, based on the bare fact of Ghana having conducted petroleum operations in the “disputed area”; and b) alleged prejudice caused by Ghana’s activities to Côte d’Ivoire’s future enjoyment of its sovereign rights in any part of the “disputed area” which the Special Chamber awards to Côte d’Ivoire.

5.9 The first proposition, as a general principle, is not disputed. Under general international law and the cited provisions of UNCLOS, a State has sovereignty and sovereign rights over its territory; these include exclusive rights to exploit the natural resources of the territorial sea, over which it has sovereignty, and to do so on its continental shelf, over which it has sovereign rights. This straightforward position is reflected in paragraph 61 of the Order of 25 April 2015. The second proposition is also uncontroversial as a general principle, in the sense that a disputed maritime area is not to be treated as terra nullius until a tribunal rules on the location of the maritime boundary.

5.10 But neither of these propositions supports the far-reaching conclusion that Côte d’Ivoire seeks to draw, namely that Ghana’s operations over many decades in the now-disputed area have, all along, been violating Côte d’Ivoire’s rights. If this were correct, and Articles 77, 81 and 193 of UNCLOS are automatically violated by any State which conducts activities in a disputed maritime area, then one would expect to see international courts and tribunals finding such violations in every boundary case in which such activities have been undertaken, yet none has ever done so. Moreover, were this argument to be correct, it would mean that the mere advancement of a claim by one State against another would oblige the latter to cease all activities in the relevant territory until the claim had been resolved. Given the radical practical consequences of Côte d’Ivoire’s argument, it is unsurprising that there is no authority which supports its case on this point.

5.11 In support of its argument that “the rights of a State over its continental shelf exist ipso facto and are not dependent on a proclamation by the coastal State”,409 Côte d’Ivoire cites the decision of the ICJ in the North Sea Continental Shelf cases. However, there is a considerable difference between the proposition that, as the ICJ indicated, a State is not obliged to proclaim its rights over the continental shelf within 200 M (or territorial sea), and

409 Ibid., para. 9.9 (“les droits d’un État sur son plateau continental existent ipso facto et ne sont pas dépendants d’une proclamation par l’État côtier”).
the proposition that a State can act inconsistently with such claimed rights and then assert them retrospectively—with financial consequences—over an area which it has belatedly declared to be in dispute. Nothing in the *North Sea Continental Shelf* cases supports such a startling conclusion.

5.12 Continuing its attempt to find support for its case, Côte d’Ivoire relies heavily on *Guyana v. Suriname*. That decision is considered further below in the context of Article 83 of UNCLOS. It offers no assistance to Côte d’Ivoire’s case on either sovereign rights or Article 83. In the paragraphs relied on by Côte d’Ivoire, the tribunal was addressing Suriname’s argument that “in a maritime delimitation case, an incident engaging State responsibility in a disputed area renders a claim for reparations for the violation of an obligation provided for by the Convention and international law inadmissible”. The incident in question involved the threat or use of force in the disputed area. In other words, Suriname was advancing the extreme proposition that no claim for reparation can be advanced in respect of the use or threat of force in disputed territory. Rejecting this argument, the tribunal declined to “create a large and dangerous hole in a fundamental rule of international law”.

5.13 Côte d’Ivoire argues that, in light of *Guyana v. Suriname*, there is “no doubt that, in some cases at least, the activities of a State in a disputed territory (whether land or sea) before delimitation is acquired, may constitute violations of sovereignty or state sovereign rights of which competing claims were recognised …”. The words underlined are critical. It is apparent from paragraphs 423 to 424 of *Guyana v. Suriname* that the tribunal was exclusively concerned with the applicability of the rules on the use of force to disputed territory, and the admissibility of claims arising out of such incidents. The decision offers no assistance when considering the very different facts of the present case, namely the peaceful carrying out of longstanding economic activity in an area which has eventually become the subject of a

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411 *Guyana v. Suriname*, Award, para. 423.
413 CMCI, para. 9.14 (emphasis added) (“aucun doute que, dans certains cas au moins, les activités d’un État dans un territoire contesté (qu’il soit terrestre ou maritime) avant que la délimitation soit acquise, sont susceptibles de constituer des violations de souveraineté ou des droits souverains de l’État dont les prétentions concurrentes ont été reconnues …”).
boundary dispute, all the more so where such activity is carried out with the cooperation and support of the State alleging a violation.

5.14 It is also important to note that, while for the compelling reasons given at paragraphs 423 and 424 the tribunal declared Guyana’s claims relating to the use of force admissible, it did not either (i) rule on whether Suriname’s responsibility was in fact engaged by the relevant incident; or (ii) award Guyana any compensation. In reaching this decision, the tribunal cited *Cameroon v. Nigeria*, in which the ICJ held that:

> In the circumstances of the case, the Court considers moreover that, by the very fact of the present Judgment and of the evacuation of the Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon by reason of the occupation of its territory will in all events have been sufficiently addressed. The Court will not therefore seek to ascertain whether and to what extent Nigeria’s responsibility to Cameroon has been engaged as a result of that occupation.\(^{414}\)

This was despite the fact that, pursuant to the land boundary fixed by the Court in its Judgment, Nigerian armed forces were stationed on territory found to be Cameroonian. If Côte d’Ivoire’s argument were correct, then this amounted to a violation of Cameroon’s sovereign rights, and was so all along; it is difficult to imagine a more serious violation of territorial sovereignty than an armed occupation. But the Court held that rectification of this situation in compliance with the Judgment was sufficient.

5.15 Having cited this passage of *Cameroon v. Nigeria*, the *Guyana v. Suriname* tribunal went on to hold that: “In a like manner this Tribunal will not seek to ascertain whether and to what extent Suriname’s responsibility to Guyana has been engaged as a result of [the incident involving the threat or use of force]”.\(^{415}\) This was because “as a result of this Award, Guyana now has undisputed title to the area where the incident occurred—the injury done to Guyana has thus been ‘sufficiently addressed’”.\(^{416}\)

5.16 Properly analysed, *Guyana v. Suriname* not only fails to support Côte d’Ivoire’s argument on sovereign rights, but actually undermines it. If the issuing of a binding award on


\(^{416}\) *Ibid.*
delimitation renders it unnecessary for a tribunal even to “seek to ascertain whether and to what extent” a State is responsible for an alleged breach of one of the most fundamental rules of international law, still less should a tribunal engage in such an exercise where the alleged violation concerns peaceful economic activity (in this case, peaceful economic activity carried out with the long knowledge and cooperation of the State now alleging the violation).

5.17 The question of compensation for acts carried out in a disputed maritime area was also considered by the ICJ in *Nicaragua v. Colombia*. Nicaragua sought a declaration that “Colombia is not acting in accordance with her obligations under international law by stopping and otherwise hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian”. This included incidents in which Colombia had allegedly used warships to arrest Nicaraguan fishing vessels. If Côte d’Ivoire’s analysis of the law is correct, then the Court in that case should—if the evidence supported Nicaragua’s claims—have awarded a remedy for the interference with Nicaragua’s sovereign rights in the parts of the disputed area which the Court ultimately assigned to it, or at the very least held that there had been a violation of Nicaragua’s sovereign rights. The use of warships to prevent a State from fishing in territory which was subsequently found to belong to it would, on Côte d’Ivoire’s case, amount to a serious, and potentially compensable, violation of its sovereign rights. But the Court did not take this approach. Rather, it stated that:

The Court observes that Nicaragua’s request for this declaration is made in the context of proceedings regarding a maritime boundary which had not been settled prior to the decision of the Court. The consequence of the Court’s Judgment is that the maritime boundary between Nicaragua and Colombia throughout the relevant area has now been delimited as between the Parties. In this regard, the Court observes that the Judgment does not attribute to Nicaragua the whole of the area which it claims and, on the contrary, attributes to Colombia part of the maritime spaces in respect of which Nicaragua seeks a declaration regarding access to natural resources. In this context, the Court considers that Nicaragua’s claim is unfounded.

417 Ibid.
418 See CMCI, para. 9.11 (citing *Nicaragua v. Colombia*, Judgment, para. 250).
419 *Nicaragua v. Colombia*, Judgment, para. 248.
420 Ibid., para. 250.
5.18 The cases relied on by Côte d’Ivoire demonstrate that the ICJ and Annex VII tribunals have not treated maritime boundary awards as rendering the parties liable for activities in the area when it was disputed. The effect of the case law is not, as Côte d’Ivoire seeks to argue, that the Special Chamber should declare that the pre-existing petroleum operations conducted by Ghana constitute violations of international law, or that they could give rise to any right to compensation. This is particularly so given the fact that, as set out above, the activities of which Côte d’Ivoire now complains have taken place for decades without Côte d’Ivoire having raised an objection.421

B. Côte d’Ivoire’s Factual Arguments in Support of Its Allegations of Breach

5.19 Côte d’Ivoire alleges that Ghana conducted the activities in question while it was well aware of the claims of Côte d’Ivoire, and that they undermined its sovereignty. 422 Paragraphs 9.16 to 9.25 of the Counter-Memorial contain a number of factual allegations, none of which Côte d’Ivoire is able to support with evidence. The actual facts disprove these allegations.

5.20 By way of brief summary, Ghana has not engaged in any “unilateral” activities. First, its activities in the disputed area have been conducted in accordance with a common understanding of a customary boundary, and reflect the status quo which it has maintained for many years. Second, that customary boundary reflects the ordinary principles of maritime delimitation based on equidistance.

5.21 Ghana did not pursue any path of unilateral action. To the contrary, it made agreements with its concessionaires on the basis of a mutual understanding of the location of the customary border as reflected, inter alia, in Côte d’Ivoire’s own maps over a lengthy period, and with Côte d’Ivoire’s full knowledge and support. That customary border followed equidistance principles. It was only after the discovery of oil, as a result of Ghana’s activities and the activities of its concessionaires, to which Côte d’Ivoire made no contribution, that Côte d’Ivoire began to assert the claims that it now advances. Côte d’Ivoire changed the position it had taken over many decades. Its changed position was advanced in a clear attempt to lay unjustified claim to the hydrocarbon resources in Ghana’s territory.

421 As to Côte d’Ivoire’s claim to have objected to such activities on specific occasions, see supra paras. 2.9-2.13, 2.38-2.57.
422 CMCI, para. 9.15.
C. Côte d’Ivoire’s Claim for Compensation for the Alleged Breaches

5.22 For the reasons given above, there have been no breaches of Côte d’Ivoire’s sovereign rights; accordingly, there arises no question of compensation or other remedies. However, for the sake of completeness, Ghana will briefly address Côte d’Ivoire’s submissions on *restitutio in integrum* and damages.

1. Restitutio in Integrum

5.23 As Ghana observed in its Written Statement of 23 March 2015, in Côte d’Ivoire’s request for provisional measures it “cited no source or legal authority for a right to information, let alone information relating to commercial activities …”. 423 Although the Special Chamber considered such a right to be “plausibly” among the rights of the coastal State over its continental shelf, 424 Ghana notes that Côte d’Ivoire’s failure to cite any relevant authority in support of the existence of such a right continues in the Counter-Memorial. Côte d’Ivoire cites only two cases in support of its alleged right to information, neither of which supports its argument:

1. *Temple of Preah Vihear*: An order for the return of property removed from a disputed area 425 does not assist Côte d’Ivoire to establish a right to information about activities conducted in a disputed area.

2. *Timor-Leste v. Australia*: The right which the Court considered to be “plausible” for the purposes of Timor-Leste’s application for provisional measures was narrowly defined as “the right to conduct arbitration proceedings or negotiations without interference by Australia, including the right of confidentiality and of non-interference in its communications with its legal advisers”. 426 The Court considered it necessary to order Australia to keep the seized information confidential so as not to create irreparable prejudice to

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426 *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, Order, ICJ Reports 2014, p. 147, para. 28.
Timor-Leste’s position in the Timor Sea Treaty arbitration.\(^\text{427}\) The decision is of no assistance to Côte d’Ivoire in establishing the necessary underlying right to information: the right claimed by Timor-Leste (which had clear pre-existing ownership rights over the relevant information) was fundamentally different to that claimed by Côte d’Ivoire.

5.24 Accordingly, Ghana submits that Côte d’Ivoire has failed to establish the existence of the right to information which it seeks to protect by way of its claim for *restitutio in integrum*. There is no legal basis to order Ghana to provide the extensive information which Côte d’Ivoire now seeks. For the sake of completeness, however, Ghana deals briefly below with the nature and scope of the information requested.

5.25 Côte d’Ivoire’s claim for *restitutio in integrum* relates to the collection of information about the “disputed area” by Ghana’s operators. Information of this kind has long been gathered in the area in question, with the knowledge and acquiescence of Côte d’Ivoire.\(^\text{428}\) The request for such information, and the claim that access to it flowed from a State’s sovereign rights, was raised for the very first time in Côte d’Ivoire’s request for provisional measures. Although Ghana considers that there is no legal basis for Côte d’Ivoire’s claim to the information sought, Ghana made clear at the provisional measures stage that it is carefully recording the relevant information so as to be able to provide it if ordered to do so in due course.\(^\text{429}\) As to the allegation that Côte d’Ivoire’s requests for information dated 27 July 2015\(^\text{430}\) “were rejected out of hand”,\(^\text{431}\) see paragraphs 5.41 to 5.43 below.

5.26 Significantly, Côte d’Ivoire has never previously sought nor paid for any of the information in question and, even in its Counter-Memorial, does not offer to do so. In contrast, Ghana and its operators have for many years devoted significant resources to the gathering of information from maritime territory legitimately believed to belong to Ghana,
with the knowledge and consent of Côte d’Ivoire to use its territorial waters in the process. The information is, by its nature, confidential commercial information gathered at great expense. It is protected in the hands of those responsible technically and commercially for generating it under international and domestic laws.432

5.27 Côte d’Ivoire submits that the Special Chamber should, in its Judgment, order disclosure of certain categories of information.433 As noted above, the information in question does not belong to Côte d’Ivoire, and it has had no part in its creation or generation. If, contrary to Ghana’s submissions as to the absence of any legal basis for such an order, there were to be any order for disclosure, the Special Chamber would need to ensure that Côte d’Ivoire was not unjustly enriched by receiving information for which it has not paid. Ghana considers that it does not arise, but it is in any event an issue which it would be appropriate to address, if necessary, at a later stage. Moreover, such an issue would potentially affect third parties such as Ghana’s operators, who, in principle, may wish to be heard on an issue of this kind.

2. Financial Compensation

5.28 It is not entirely clear from paragraphs 9.33 to 9.39 of the Counter-Memorial whether Côte d’Ivoire claims financial compensation purely for the loss of oil revenues from any part of the disputed area which the Special Chamber’s Judgment may assign to it, or whether it also claims an additional element of compensation to take into account the fact that exploitation activities involve permanent change to the seabed and subsoil.434

5.29 The exploitation activities carried out by Ghana have proceeded for many years, with the knowledge and acquiescence of Côte d’Ivoire. Ghana notes that this is not a case in which one party intends to keep a disputed area pristine, while the other party seeks to develop it. Côte d’Ivoire has exploited the maritime resources in a similar way on its side of the customary border. The same or similar physical changes to the marine environment would


433 CMCI, paras. 9.29-9.32.

434 See Order on the Prescription of Provisional Measures, paras. 89-90 (recognizing that exploitation activities involve permanent change to the seabed and subsoil).
take place if any part of the disputed area lay within the territory of Côte d’Ivoire; the question is purely that of the economic benefits flowing from those activities. The only financial loss which Côte d’Ivoire will have suffered, if awarded any part of the disputed area, is the loss of the net revenues derived from oil production in that area (having regard to the costs). As Côte d’Ivoire accepts, such issues should be reserved for negotiation between the Parties following the Judgment of the Special Chamber and, on Ghana’s case, they do not arise at all.435 Accordingly, Ghana does not address them at this stage.

5.30 Ghana does, however, note that Côte d’Ivoire has made no offer to compensate Ghana for its own losses, including delays in potential exploration and exploitation of the disputed area. If there were to be any award of compensation, it would have to be even-handed. Côte d’Ivoire’s application for provisional measures reflected an abrupt and total change of position after many years of cooperation in the exploration and exploitation of natural resources along an agreed boundary, holding up activities which Ghana is entitled to pursue. That change of position, and the consequent Order halting new drilling in the “disputed area” for the lifetime of this case, have caused Ghana substantial losses. For this, Ghana reserves the right to seek corresponding compensation in due course, if necessary and as appropriate.

III. Article 83 of UNCLOS

5.31 Côte d’Ivoire claims that Ghana has violated both Article 83 of UNCLOS and the “general obligation to negotiate in good faith”.436 This argument is without merit.

A. The “General Obligation To Negotiate in Good Faith”

5.32 Côte d’Ivoire’s submissions in support of this serious but unsubstantiated allegation are contained in just two paragraphs.437 Côte d’Ivoire refers to Ghana’s “inflexibility in negotiations …” and states that: “There can be no doubt that Ghana was aware of the illegality of its attitude …”.438 Côte d’Ivoire does not refer to any specific facts in support of

436 Ibid., para. 9.57 (“l’obligation générale de négocier de bonne foi”).
437 Ibid., paras. 9.40-9.41.
438 Ibid. (“inflexibilité dans les négociations …”, “Il ne peut faire de doute que le Ghana était conscient de l’illicéité de son attitude …”).
Ghana’s alleged violation of international law; it fails to set out the respects in which Ghana is said to have been “inflexible” or to explain why it claims that Ghana was “aware of the illegality of its attitude …”. An allegation of breach of an obligation to act in good faith is, in reality, an allegation of bad faith. This is a serious allegation to make about any State, let alone a neighbour with which the State making the allegation has always enjoyed close neighbourly relations. Ghana is disappointed that such an allegation has been made in such a vague and unparticularised manner.

5.33 In response, Ghana emphasises that, after five decades of consistent, mutual and stable practice, upon which Ghana placed reliance, Côte d’Ivoire abruptly and unexpectedly changed position, abandoning its commitment to the customary boundary which both Parties had consistently recognised and respected. Notwithstanding this abrupt change of position, Ghana engaged with Côte d’Ivoire in good faith in order to negotiate a settlement, including engaging in ten bilateral meetings over five years. A full account of those negotiations is set out at paragraphs 3.100-3.119 of Ghana’s Memorial. Ghana finally initiated the present proceedings when it became essential to do so, after a negotiated settlement appeared to be impossible and Côte d’Ivoire was sending threatening letters to Ghana’s operators, with the potential to affect exploration and exploitation operations.439

5.34 During those lengthy negotiations, Ghana consistently maintained its commitment to the customary equidistance boundary, while making—as the minutes of the meetings show—every effort to understand and engage with the various new (and inconsistent) positions put forward by Côte d’Ivoire. Although it became clear that the substantive negotiations were not likely to be fruitful, it is significant that the Parties managed to agree on the BP of the LBT, and the use of official charts in relation to formal delimitation of the boundary.

5.35 It appears to be precisely Ghana’s consistent and responsible approach which Côte d’Ivoire now seeks to portray as bad faith and, indeed, as a violation of international law. Such a serious finding simply cannot be based on a State’s seeking to maintain a status quo on which both States have relied for decades, and upon which significant commercial investments have been made, in the face of a series of ill-founded and inconsistent claims. To find for Côte d’Ivoire on this point would be to allow States radically to change their position

439 See MG, paras. 1.6-1.21.
on boundary delimitation based on conflicting and novel theories of why and to where the boundary should be moved, and then to threaten their neighbours with findings of bad faith if they did not cede some of the territory long recognised to be theirs or cease activity which had been going on for many years in that territory.

B. Article 83

5.36 Article 83(3) of the Convention provides that

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.

According to Côte d’Ivoire, this provision means that “unilateral economic activities are prohibited in a zone under litigation”. This is a far-reaching and draconian interpretation of Article 83(3) which, Ghana submits, should be rejected for the reasons given below.

5.37 Article 83(3) imposes no obligation actually to enter into provisional arrangements, and a State does not violate that provision by not entering into such arrangements, so long as a good faith effort has been made in that direction. If such arrangements are not made, the question is whether this requires a complete moratorium on activity in the relevant area. In support of its argument that Article 83(3) does require such a moratorium, Côte d’Ivoire cites a passage of the Virginia Commentary which, it claims, shows that the framers of the Convention intended that “the only permitted activities on the continental shelf of a disputed area are those conducted under interim arrangements”. But nothing in the drafting history bears out this far-reaching interpretation. The position is clearly unsupported by the passage

440 CMCI, para. 9.45 (“les activités économiques unilatérales sont prohibées dans une zone litigieuse”).
cited, and also by the article cited at Annex 111 to the Counter-Memorial. The author of that article, in a thorough review of the drafting history of Article 83, records that proposals were put forward by Ireland and Papua New Guinea, embodying precisely the position now being advanced by Côte d’Ivoire, namely that, in the absence of provisional arrangements, unilateral economic activities should be prohibited in a zone under litigation. But as he makes clear, such proposals received very little support, and were abandoned. The drafters of the Convention specifically chose not to impose the kind of moratorium for which Côte d’Ivoire contends, precisely because of concerns about the impact of such moratoria on the economic development of coastal States.

5.38 After its failed attempt to rely on the drafting history of UNCLOS, Côte d’Ivoire goes on to seek support from Guyana v. Suriname, the only case in which, to date, Article 83(3) has been applied. There, the tribunal had to consider the underlying rationale of this provision: it took the view that it “constitutes an implicit acknowledgment of the importance of avoiding the suspension of economic development in a disputed maritime area, as long as such activities do not affect the reaching of a final agreement”. Contrary to Côte d’Ivoire’s submission that “the only permitted activities on the continental shelf of a disputed area are those conducted under interim arrangements”, the tribunal considered that “this obligation was not intended to preclude all activities in a disputed maritime area”. In attempting to define the class of permissible acts in a zone under litigation, the tribunal distinguished between, on the one hand, unilateral acts which, broadly speaking, “cause a physical change to the marine environment” and those “which do not”. The former would “generally be comprised in a class of activities that can be undertaken only jointly or by agreement between the parties. This is due to the fact that these activities may jeopardize or hamper the reaching of a final delimitation agreement as a result of the perceived change to the status quo that

444 Guyana v. Suriname, Award, para. 460.
445 Ibid., para. 465.
446 Ibid., para. 480.
447 Ibid., para. 467.
they would engender”. The latter would “generally” fall into the category of acts which, although unilateral, would not have the effect of jeopardizing or hampering the reaching of a final agreement on the delimitation of the maritime boundary. Of course, everything turns on the facts of the particular case. Article 83(3) does not require States to refrain from any particular type of activity—however defined—in a disputed area; rather, it requires them “not to jeopardize or hamper” the reaching of the final agreement. Any activity in a disputed area must therefore be judged, not on the basis of its physical effects, but on the basis of its likely effect on the process of reaching a final agreement. It would have been open to the framers of the Convention to proscribe certain categories of activity in a disputed area but, as shown above, they chose not to do so. Accordingly, Ghana agrees with the proposition advanced by Côte d’Ivoire at paragraph 9.46 of the Counter-Memorial, namely that the criterion for the obligation not to “jeopardize or hamper” cannot simply be the invasive or non-invasive nature of the act. Everything will depend on the circumstances. In some cases, a non-invasive act such as seismic surveying could be highly provocative and inflammatory; in other cases, an act such as drilling and extraction may have no negative effect on the reaching of an agreement. In every case, it is necessary to examine how the acts in question fit into the framework of relations between the two States.

5.39 For this reason, the examples cited by Côte d’Ivoire at paragraphs 9.46-9.48 of the Counter-Memorial are of very limited assistance. The steps considered by States to be appropriate—for reasons which are likely to be diplomatic just as much as legal—in the context of a specific dispute offer little guidance when assessing the conduct of other States in other circumstances. None of the examples cited led to any judicial consideration of

448 Ibid., para. 480 (emphasis added). When defining such acts, the tribunal’s use of language is inconsistent: it refers variously to: “physical change to the marine environment”; “permanent physical change to the marine environment”; “physical damage to the seabed or subsoil”; “permanent physical impact on the marine environment”; “any unilateral activity that might affect the other party’s rights in a permanent manner”; “permanent damage to the marine environment”. Ibid., paras. 467, 469, 470, 481. For analysis of the tribunal’s inconsistent use of language on this point, see Youri van Logchem “The Scope for Unilateralism in Disputed Maritime Areas”, pp. 184-185. CMCI, Vol. V, Annex 111.

449 Guyana v. Suriname, Award, para. 467.

450 As Logchem states: “The prominent position the circumstances surrounding the dispute have in the reasoning of the Arbitral Tribunal makes it difficult to draw any firm conclusions what the outcome will be in other maritime delimitation disputes or, to take the argument one step further, to conclude that the standard of ‘permanent damage to the marine environment’ is a rule of international law pinpointing the scope for unilateralism in disputed maritime areas”. Youri van Logchem “The Scope for Unilateralism in Disputed Maritime Areas”, p. 186. CMCI, Vol. V, Annex 111.
Article 83(3). Moreover, none of them involved demands by one State that the other State cease activities which it had undertaken without opposition for decades.

5.40 Of particular significance to the present case are the tribunal’s reasons for considering that unilateral acts causing physical change to the marine environment may be prohibited under Article 83(3) in Guyana v. Suriname. As noted above, the tribunal considered that “these activities may jeopardize or hamper the reaching of a final delimitation agreement as a result of the perceived change to the status quo that they would engender”. This presupposes, of course, that such activities do change the status quo. In Guyana v. Suriname, wholly new and unilateral activities had been undertaken following the emergence of the dispute. This is in stark contrast to the present case, where, as Ghana has shown, its activities in the relevant area are simply the continuation of decades of previous activity of a kind which would have been conducted by Côte d’Ivoire. Rather than changing the status quo, Ghanaian activity in the relevant area is the status quo. Côte d’Ivoire fails to identify any respect in which the continuation of long-established activities in the relevant area, coupled with ten rounds of bilateral negotiations and the eventual submission of the dispute to peaceful dispute settlement, could “jeopardize or hamper” the reaching of a final agreement.

5.41 At paragraphs 9.52 to 9.55 of the Counter-Memorial, Côte d’Ivoire appears to move from the “jeopardize or hamper” argument to a submission that Ghana has failed to “make every effort to enter into provisional arrangements of a practical nature”. It claims that Ghana has acted with an “uncooperative spirit …”: Ghana “has not informed Côte d’Ivoire of its activities nor has it proposed practical arrangements of exploitation. On the contrary, upon resumption of negotiations, when Côte d’Ivoire had reiterated its request for suspension of the unilateral activities and dialogue on oil activities, Ghana responded with a brutal rejection out of hand”. Notably, given the broad scope and serious nature of these allegations, Côte d’Ivoire points to only one example of alleged “uncooperative” behaviour by Ghana: a single sentence from the 12-page minutes of the fifth round of negotiations, which took place

451 Guyana v. Suriname, Award, para. 480.
452 CMCI, para. 9.54 (“esprit peu coopérant …”; “n’a pas informé la Côte d’Ivoire de ses activités ni proposé des arrangements pratiques d’exploitation. Au contraire, lors de la reprise des négociations, lorsque la Côte d’Ivoire avait réitéré sa demande de suspension des activités unilatérales et de dialogue sur les activités pétrolières, le Ghana y a répondu par une fin de non-recevoir brutale”).
453 Ibid., para. 9.55.
on 2 November 2011. 454 A full account of the Parties’ negotiations is set out at paragraphs 3.100 to 3.119 of Ghana’s Memorial. It will be noted that the fifth meeting in November 2011:

(1) Involved a further change of position by Côte d’Ivoire, from a meridian to bisector approach—this was in effect a significant volte face with respect to thousands of square kilometres of maritime territory;
(2) Was the first time that Côte d’Ivoire had ever raised the bisector method;
(3) Was coupled with a blanket demand for Ghana to “suspend all economic activities in the areas concerned”, 455 with obviously severe economic consequences; and
(4) Took place just over a month after Côte d’Ivoire had unilaterally written to international petroleum companies operating in Ghanaian waters demanding that they halt all activities in areas it claimed as Ivorian. 456 Attached to the communiqué was a map designating Ivorian blocks to the east of the customary equidistance boundary, for the first time in more than five decades.

5.42 Côte d’Ivoire submits that Ghana’s response to the demand, at the fifth meeting, to suspend all economic activity in the relevant area “did not demonstrate a great spirit of openness”. 457 Ghana regrets this characterisation of its response to Côte d’Ivoire’s demands. In fact, the record of the meeting indicates that the Ghanaian delegation responded in a constructive and measured fashion. Ghana invites the Special Chamber to review the minutes of the meeting in full. Following that meeting, Ghana then, as promised, gave Côte d’Ivoire’s proposals careful consideration, and the Ghana Boundary Commission provided a detailed written response on 15 February 2012, setting out concrete and constructive proposals for the way forward. 458 Faced with Côte d’Ivoire’s unrealistic demands and repeated changes of position, Ghana responded with restraint and made every effort to continue to make progress in the talks. The record shows that Ghana was conscious of, and took very seriously, its

455 Ibid., p. 7.
457 CMCI, para. 9.55 (“ne faisait pas preuve d’une grande ouverture d’esprit”).
obligation not to jeopardize or hamper the reaching of a final agreement, and acted throughout in a spirit of good faith and neighbourliness.

5.43 Ghana is also criticised for failing to “consider entering into provisional arrangements …”. But as the record shows, Côte d’Ivoire was not proposing any such arrangements: rather, as reflected in its claim for Provisional Measures, it demanded a moratorium on all economic activity in the area to which it had abruptly laid claim. Such a demand was wholly unrealistic, and Ghana cannot be criticised for failing to give in to it; still less does Ghana’s entirely reasonable position amount to a violation of Article 83.

IV. Compliance with the Order of 25 April 2015

5.44 In Section III of Chapter 9, Côte d’Ivoire appears to allege that Ghana has violated the Order, although it is not clear what specific breaches are alleged. Côte d’Ivoire goes so far as to suggest that Ghana has “ignored” the provisional measures prescribed by the Special Chamber. This is a wholly unfounded allegation: Ghana has positively complied with every aspect of the Order. The obligations imposed by the Order are considered in turn below. Ghana has also provided a witness statement from Mr. Thomas Manu, Deputy Chief Executive Officer (Exploration and Production) of GNPC, setting out Ghana’s compliance with the Order.

A. “Ghana shall take all necessary measures to ensure that no new drilling either by Ghana or under its control takes place in the disputed area…”

5.45 Ghana has complied with its obligations under this part of the Order in full; it has ensured that there is no new drilling in the disputed area.

5.46 Following receipt of the Order, Ghana communicated it verbatim to all of the operators who were or might be active in the disputed area, under cover of a letter dated 4 May 2015, which stated that:

\[\text{Quote from the letter}\]

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459 CMCI, para. 9.52 (“envisage la conclusion des arrangements provisoires …”).

460 Ibid., para. 9.75 (“fait fi”).

I invite you to read the Order carefully and take appropriate steps to ensure that your company’s activities comply with it. Please also ensure that you keep adequate records of the steps that you take to comply with the Order. Please revert to us with any clarifications that you require.\footnote{462 Report of the Republic of Ghana to the Special Chamber of the International Tribunal for the Law of the Sea (25 May 2015) (hereinafter “Report of Ghana to the Special Chamber”), Annex B (Letter to Petroleum Operators) (emphasis added). CMCI, Vol. IV, Annex 53. See also Report of Côte d’Ivoire to the Special Chamber of the International Tribunal for the Law of the Sea (25 May 2015). CMCI, Vol. IV, Annex 52 (recording a meeting between the parties’ Agents which took place on 18 May 2015, in which the Agent of Ghana made clear that Ghana had written to each of its concessionaires, enclosing a copy of the Order and ordering them to comply with it.).}

5.47 Ghana thereby required its operators to comply with the Order. Additionally, Ghana asked the companies to keep adequate records of the steps taken to comply with the Order. Given that the operators are responsible companies and that their representatives had attended the hearing on the application for provisional measures, they were well aware of the Order and its requirements immediately upon its publication.

5.48 Further, in accordance with the Order, Ghana reported the sending of such letters to the Special Chamber and to Côte d’Ivoire shortly after that correspondence had been sent.\footnote{463 Report of Ghana to the Special Chamber. CMCI, Vol. IV, Annex 53.} This gave Côte d’Ivoire the opportunity to raise any concerns which it may have had about the terms of Ghana’s letter to its operators; no such concerns were raised.

5.49 So far as Ghana is aware—its knowledge being founded on a process of rigorous oversight and monitoring, as described by Mr. Manu—the operators have complied in full with their obligations under the Order. Specifically, since the date of the Order, there has been no new drilling in the disputed area. The only activity undertaken by the operators has been work on the wells already drilled that is necessary to ready those wells for production. Such activity is contemplated by the Order, otherwise, the whole of Ghana’s production from the fields in the area would have been held up, contrary to the terms of the Order.

5.50 Ghana has not interpreted the Order as a “green light” to continue all of its activities in the area. To the contrary, in accordance with the Order, Ghana’s operators have carried out completion work on wells already drilled, but have drilled no new wells. The position is fully
set out in the annexed statement of Mr. Paul McDade, Chief Operating Officer of Tullow Oil.  

5.51 In particular, with respect to the TEN complex, Tullow Oil has continued the work which was already under way at the time the proceedings were commenced, as the Order allowed. The materials that Côte d’Ivoire itself cites show that there has been no breach of the Order. The statements from Tullow cited at paragraph 9.68 of the Counter-Memorial explain that the eleven wells which were drilled prior to the Order have been completed. There is no suggestion that any new wells have been drilled in the disputed area. None have been: eleven wells had been drilled by Tullow in the disputed area as of April 2015, and these are the only wells drilled in the “disputed area” as of today.  

5.52 In summary, prior to the Order, in the course of its ordinary activities, Tullow had already drilled eleven wells, of which ten were to be used for first oil production. The eleventh well was, and is, intended to be used as a water injector well for improving production. That well, Nt07, had been both spudded and drilled to a very substantial depth. This was a pre-existing well and was not, as Côte d’Ivoire suggests, new drilling. Following the Order, in the normal course of activities on pre-drilled wells, Tullow completed that well by drilling it out to its final depth and performing other completion activities permitted by the Order, so as to prepare the TEN field for production. The Order plainly did not require work on already drilled wells to cease in the very area of production. As the statement of Mr. McDade confirms, no new wells have been drilled since the Order, and Côte d’Ivoire is wrong to suggest that there has not been compliance in this respect.  

5.53 As the Special Chamber will appreciate, it is not possible to get a field ready for production and continue the activities in respect of wells already drilled without entering into appropriate contracts for equipment and services and moving relevant production equipment into place. The contracts referred to by Côte d’Ivoire at paragraph 9.69 of the Counter-

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465 Ibid., paras. 6-9.
466 Ibid., paras. 3-10. The confusion in Côte d’Ivoire’s understanding may have arisen because of the fact that the statements from Tullow indicate that 10 of the wells are required for first oil production and the 11th water injector well, while required for later production, is not strictly required for initial production. There is, however, no doubt that this was an existing well at the time of the Order on the Prescription of Provisional Measures.
Memorial were, as Ghana explained at the meeting on 10 September 2015, signed in 2013 and 2014.\textsuperscript{467} Côte d’Ivoire’s complaint at paragraph 9.69 is therefore misplaced. At the time of Côte d’Ivoire’s application for provisional measures, the TEN field was approximately half-completed for production and, as anticipated by the Special Chamber in April 2015, is now closer to readiness. It is anticipated that the first oil will be produced during the summer of 2016, pursuant to agreements originally entered into many years ago, well before Côte d’Ivoire declared there to be a “disputed area”.\textsuperscript{468} In any event, the Order does not prohibit Ghana from entering into contracts.

5.54 More generally, in light of the Order, Ghana has to its detriment held up any new exploration drilling in the disputed area, making it clear to operators who wished to drill new wells that they should not do so pending the resolution of the proceedings before the Special Chamber. This can be seen from Mr. McDade’s statement and the Instructions annexed thereto. As Mr. McDade makes clear, compliance with the “no new drilling” requirement has had an adverse impact on “forecast oil production rates and is likely to result in an inability to sustain the plateau oil production levels catered for in the facilities’ design”, has “the potential to have a material and negative impact on the economics and financial performance of the TEN project”, has resulted in excess contracted capacity on drilling units, has “resulted in job losses in the industries which support drilling activity in Ghana and elsewhere”, and has “resulted in material costs incurred by [Tullow Ghana Limited] and its co-venturers associated with major equipment deliveries, their preservation and storage”.\textsuperscript{469}

5.55 Ghana also took steps to ensure that maritime safety was not compromised by the continuation of the permitted activities in the disputed area, by issuing an appropriate maritime warning to fishermen\textsuperscript{470} and restricting maritime traffic around the TEN field.\textsuperscript{471}


\textsuperscript{468} See Statement of GNPC, paras. 15, 24. RG, Vol. IV, Annex 168; \textit{ibid.}, Appendix II.

\textsuperscript{469} Second Statement of Tullow, para. 7. RG, Vol. IV, Annex 166.


Those were entirely appropriate safety measures of a kind taken by all States engaged in petroleum operations to protect other maritime users, as well as the marine environment and the relevant equipment, from damage which may be caused by a collision or unduly close approach of other vessels.

5.56 All of the questions raised in Côte d’Ivoire’s letter of July 2015⁴⁷² were addressed at a meeting attended by agents of both Parties and numerous specialist representatives in September 2015,⁴⁷³ and in the work undertaken subsequent to that meeting. In some cases, Côte d’Ivoire has requested far more information than reasonably necessary to understand the nature of the activities in the disputed area. The Order did not require that Ghana provide all documents concerning activities in the area at this stage of the proceedings, but required that certain activities cease and permitted certain activities to continue. As can be seen from the agreed record of the meeting in September,⁴⁷⁴ the issues reasonably raised by Côte d’Ivoire were addressed and explained. Côte d’Ivoire requested the production of daily reports of activities in the disputed area and other information. These requests went far beyond anything ordered by the Special Chamber, and far beyond what would be reasonable in the circumstances. Ghana did not agree that such disclosure was required.

B. “Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d’Ivoire”

5.57 Côte d’Ivoire does not suggest that there has been any violation of this provision, and there has been none. For completeness, it is noted that, so far as information has been gathered concerning the disputed area, such information has been kept confidential in accordance with the terms of the relevant agreements relating to its gathering and has, in any event, at no point been used by Ghana at the expense of Côte d’Ivoire. It should be remembered, as noted above, that the information in question is not the intellectual property of Côte d’Ivoire; nor has Côte d’Ivoire contributed to the considerable costs of obtaining it. In any event, Ghana has not used any such information at Côte d’Ivoire’s expense.

⁴⁷⁴ Ibid.
C. “Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment” and “The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end”

5.58 Côte d’Ivoire has not suggested that there has been inadequate control or any damage to the marine environment. The controls previously contemplated, applied and enforced have continued, and there has been no material damage to the marine environment.

5.59 First, in conducting its activities in the disputed area pursuant to the Order, Ghana has exercised full, rigorous and continuous control over the activities of those undertakings. In Ghana’s response to Côte d’Ivoire’s request for preliminary measures, Ghana outlined in detail the stringent environmental and regulatory framework which apply to oil activities.475 Second, there has been close cooperation as regards marine and safety management with respect to continuing operations476. There has been no reported adverse impact on the marine environment.

5.60 Ghana provided Côte d’Ivoire with an environmental monitoring report in January 2016, which constitutes an account of the environmental issues to the end of 2015.477 Further

475 Written Statement of Ghana, paras. 66, 72-83.
476 By way of example of this close and effective cooperation, an initial meeting was scheduled for June 2015. In July 2015, the parties exchanged further correspondence concerning meetings of designated representatives and Ghana invited a delegation from Côte d’Ivoire to Accra in August 2015 (a date which had been rescheduled from June by agreement) to discuss issues within the framework of environmental protection. A full meeting to discuss these issues ultimately took place in October 2015. See Government of Ghana and Government of Côte d’Ivoire, Minutes of the First Meeting of the Côte d’Ivoire-Ghana Joint Committee of Experts on the Protection of the Marine Environment Concerning the Maritime Border Dispute between Côte d’Ivoire and Ghana (6 Oct. 2015). CMCI, Vol. IV, Annex 56. It can be seen from the minutes of the meeting that there was a comprehensive, good faith discussion of the issues concerning environmental protection. Some points, such as whether there should be a joint site visit, were beyond the scope of the meeting and were referred to the Agents for decision, although in the event the Agents did not meet and Côte d’Ivoire did not pursue the matter further. However, a joint site visit was, in the Ghanaian view, unnecessary, particularly in the light of the other information which Ghana had agreed to provide (and has provided) concerning the environmental matters, the monitoring conducted by the operator itself, and the fact that there had already been a site visit by Ghana EPA officials.
477 Kojo Agbenor-Efunam, Ghana Environmental Protection Agency, Environment Report on Petroleum Activities Carried Out Within the Ghana and Côte d’Ivoire Disputed Area from the Period of April to December 2015 (2016) (the “Report”), in Statement of GNPC, Appendix I, Attachment 2. RG, Vol. IV, Annex 168. This Report summarises the environmental risks and the monitoring results, including the results of monitoring following a visit by Ghana EPA officials in June 2015. In summary, the operators are required to monitor a set of environmental parameters specified in the Environmental Quality Standards and submit those regularly. Ghana employs high standards of frequency of measurement of these parameters. The Report provided to Côte d’Ivoire showed that the parameters were within environmentally acceptable standards. See ibid., p. 3, and
reports of a similar kind will be made on an appropriate reporting cycle. The evidence therefore shows that Côte d’Ivoire’s suggestion that Ghana has not been forthcoming with appropriate information is wrong and entirely without foundation.

D. “The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute”

5.61 Ghana has continued its cooperation with Côte d’Ivoire, despite its firm belief that Côte d’Ivoire’s claim to the “disputed area” is an unfounded attempt to interfere with Ghana’s lawful use of its own territory, to its significant detriment. As shown above, Ghana has complied with the Order and has engaged in extensive cooperation with and reporting to Côte d’Ivoire since the issuance of the Order. That will continue.

V. Conclusion

5.62 For the reasons set out above, Côte d’Ivoire’s allegations as to Ghana’s violations of international law are without foundation. Ghana has acted in compliance with international law at all times, including by complying faithfully with the Special Chamber’s Order of 25 April 2015.

Annexes. Côte d’Ivoire has not requested any clarification or further information following submission of those reports, or suggested that there is any deficiency in the environmental standards being applied to the activities in the disputed area.
SUBMISSIONS

On the basis of the facts and law set forth in the Memorial and this Reply, Ghana respectfully requests the Special Chamber to adjudge and declare that:

1) Ghana and Côte d’Ivoire have mutually recognised, agreed, and applied an equidistance-based maritime boundary in the territorial sea, EEZ and continental shelf within 200 M.

2) The maritime boundary in the continental shelf beyond 200 M follows an extended equidistance boundary along the same azimuth as the boundary within 200 M, to the limit of national jurisdiction.

3) In accordance with international law, by reason of its representations and upon which Ghana has placed reliance, Côte d’Ivoire is estopped from objecting to the agreed maritime boundary.

4) The land boundary terminus and starting point for the agreed maritime boundary is at Boundary pillar 55 (BP 55).

5) As per the Parties’ agreement in December 2013, the geographic coordinates of BP 55 are 05° 05’ 28.4” N and 03° 06’ 21.8” W (in WGS 1984 datum).

6) Consequently, the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean starts at BP 55, connects to the customary equidistance boundary mutually agreed by the Parties at the outer limit of the territorial sea, and then follows the agreed boundary to a distance of 200 M. Beyond 200 M, the boundary continues along the same azimuth to the limit of national jurisdiction. The boundary line connects the following points, using loxodromes (the geographic coordinates are in WGS 1984 datum):

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<td>01° 48’ 30” N</td>
<td>03° 47’ 18” W</td>
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<td>CEB-8 (Limit of National Jurisdiction)</td>
<td>01° 04’ 43” N</td>
<td>03° 56’ 29” W</td>
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Respectfully submitted,

Mrs Marietta Brew Appiah-Opong
Attorney-General and Minister for Justice
Republic of Ghana

AGENT OF THE REPUBLIC OF GHANA

25 July 2016
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