

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2017

Public sitting

held on Tuesday, 7 February 2017, at 10 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

Verbatim Record

Uncorrected

Special Chamber
of the International Tribunal for the Law of the Sea

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	Judges	Rüdiger Wolfrum Jin-Hyun Paik
	Judges <i>ad hoc</i>	Thomas A. Mensah Ronny Abraham
	Registrar	Philippe Gautier

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1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

2 Ladies and gentlemen, the hearing of the Special Chamber resumes this morning.
3 Today we will hear the continuation of Ghana's oral arguments. This morning's
4 session will last until 1 o'clock with, as is customary, a break of 30 minutes at
5 11.30 a.m., which we call the "coffee break".
6

7 You will recall that yesterday we stopped at the conclusion of Mr Fui Tsikata's
8 statement. I would like to apologize for having interrupted him, but those are the
9 requirements of the proceedings. I now give him the floor so that he can complete
10 his statement. You have the floor, Mr Tsikata.
11

12 **MR TSIKATA:** Mr President, Members of the Special Chamber, good morning.
13 When we concluded yesterday, I had had begun to explain that, between 1992 and
14 2009, Côte d'Ivoire engaged in numerous, regular, consistent, positive acts of
15 reaffirmation of an existing equidistance-based maritime boundary. One class of acts
16 relates to the conduct of seismic surveys.
17

18 *This slide reproduces a letter dated 28 November 1997, also found tab 28, from*
19 *Rear-Admiral Lamine Fadika, then Ivorian Minister for Petroleum Resources,*
20 *conveying to Ghana's Minister for Mines and Energy approval for the request by*
21 *Ghana's GNPC for the conduct of seismic activity "dans les eaux territoriales*
22 *proches de la frontière maritime entre le Ghana et la Côte d'Ivoire".¹ Not only does*
23 *the Minister grant permission, he recognizes the existence of the boundary and*
24 *expresses the hope that GNPC and PETROCI will exchange results of such surveys*
25 *to help the two countries better know the geology of the sub-region.*
26

27 The letter relates the area in respect of which the request was made as being in the
28 immediate vicinity of the IVCO-26 IBEX well in Côte d'Ivoire.
29

30 *This map indicates the location of the IVCO-26 IBEX well in relation to the customary*
31 *equidistance boundary. This is also at tab 29.*
32

33 *Here is a request by PETROCI addressed to GNPC for a vessel conducting seismic*
34 *surveys on behalf of a licensee of Côte d'Ivoire.² It is asking for permission for*
35 *Ghana to "allow the seismic vessel to turn around in Ghanaian waters". This*
36 *document can be found at tab 30.*
37

38 *Here is the response from GNPC, dated 22 March, 2007, indicating that it has*
39 *advised Ghana's Minister for Energy and that PETROCI should expect to receive*
40 *formal approval from the Minister.³ You can also find this at tab 31. It says that if*
41 *"certain portions of the data happen to fall in the Ghana side, ... we will require that*
42 *those portions that fall in Ghana's side be made available to us".*

¹ *Letter from M. Lamine Fadika, Minister of Petroleum Resources, Republic of Côte d'Ivoire, to F. Ohene-Kena, Minister of Mines and Energy, Republic of Ghana, No. 0907 MIRMP/CAB/dh (28 November 1997) ("the maritime boundary between Ghana and Côte d'Ivoire"). MG, Vol. VI, Annex 68.*

² *Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re Authorization for seismic vessel to turn around in Ghanaian waters (9 Mar. 2007). RG, Vol. IV, Annex 137.*

³ *Fax from Thomas Manu, Ghana National Petroleum Corporation (GNPC) to Boblai V. Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI) (22 Mar. 2007). RG, Vol. IV, Annex 140.*

1
2 *This* is the map accompanying the request by PETROCI, also found at tab 32.

3
4 As you can see, the customary equidistance boundary is clearly indicated, with the
5 word “Ghana” on the east side of the boundary line.

6
7 *Here* is a 2008 letter from Ghana’s Minister of Energy asking for permission for a
8 vessel working for a licensee of Ghana to turn around in Ivorian waters in the course
9 of conducting seismic surveys.⁴ It is also at tab 33. He assures the Minister on the
10 Ivorian side that “data will not be acquired in blocks in la Côte d’Ivoire”.

11
12 The coordinates of the proposed survey area are shown on this sketch
13 accompanying the request and are also in tab 34. I apologize that we do not have a
14 more legible copy. However, we have plotted the survey area using those
15 coordinates. As you can see, the western limits of the area follow the customary
16 equidistance boundary.

17
18 *Here* is the executed copy of the response in its French original on behalf of the
19 Ivorian Minister by his Director of Cabinet by which Côte d’Ivoire authorizes the
20 vessel to “*naviguer dans les eaux ivoiriennes*”.⁵ This is in tab 35.

21
22 Côte d’Ivoire remarks that these are only a few instances. But why would PETROCI,
23 on even a single occasion, ask permission from Ghana for a Côte d’Ivoire-authorized
24 vessel to turn around in waters that were not regarded by it or its Government as
25 Ghanaian waters? Côte d’Ivoire does not suggest that it has, on even a single
26 occasion over the decades, made any protest about vessels authorized by Ghana
27 working in the area that it now disputes as being Ghana’s. Most significantly, it does
28 not address the fact that its Minister accepted Ghana’s assertion as to where the
29 maritime boundary lay in approving Ghana’s request for a vessel to cross that
30 border.

31
32 Mr President, yesterday we received a question submitted on behalf of this
33 Chamber, namely “[c]ould the Parties provide information on any arrangements
34 which could exist between them on fisheries matters or with respect to other uses of
35 the maritime area concerned?”.

36
37 Within the time available to us, we are able to provide the following summary
38 response: there are no arrangements between Ghana and Côte d’Ivoire with respect
39 to fisheries.

40
41 Mr President, in preparing our answer to your question, we are aware that Ghana –
42 and possibly also Côte d’Ivoire – has an arrangement with Collecte Localisation
43 Satellites (or CLS), a private company, that monitors the movement of licensed
44 fishing vessels that move between our waters. I am informed that the map on which

⁴ *Letter* from F. K. Owusu-Adjapong (MP), Minister, Ministry of Energy, Republic of Ghana, to The Minister, Ministry of Mines & Petroleum Resources, Republic of Côte d’Ivoire (3 November 2008) and *Letter* from F. Kadio Morokro, Director of Cabinet for the Minister of Mines and Energy, Republic of Côte d’Ivoire, to The Minister, Ministry of Energy, Republic of Ghana (11 December 2008), pp. 1-2. MG, Vol. VI, Annex 69.

⁵ *Ibid.*, p. 4.

1 CLS relies in its arrangement with Ghana shows an equidistance boundary with Côte
2 d'Ivoire. However, as it is not in the public domain, we are not able, without your
3 permission, to put that material before you. If you think it might be useful to have
4 sight of this material, we can take steps to obtain it.
5
6 Mr President, we are bound to inform you that Ghana has no fisheries agreement
7 with the European Union. However, it is a matter of public record that Côte d'Ivoire
8 concluded a Fisheries Partnership Agreement (FPA) with the European Union for the
9 2007-2013 period, and that it has been extended to 2018. This allows EU vessels to
10 fish in Ivorian waters.⁶ The FPA provides that the parties would subsequently agree
11 to "the coordinates of Côte d'Ivoire's fishing zone", which were not defined in the
12 Agreement.⁷ We understand that the European Commission subsequently funded an
13 expert report evaluating the implementation of the FPA in Ivorian waters.⁸ The report
14 is publicly available on the web; Annex 7 of the report indicates that among those
15 consulted were Côte d'Ivoire's Ministry of Animal Production and Fisheries
16 Resources and the Abidjan port authority. The report cites the 1977 Ivorian law
17 upholding the principle of equidistance and it states that European vessels rely on
18 the equidistance limits provided by the VLIZ Maritime Boundaries Geodatabase in
19 the absence of "exact coordinates of the EEZ limits."⁹ The report includes a map
20 entitled (*Interpretation from French*) "Limits of the EEZ of Côte d'Ivoire as defined by
21 Community shipowners."¹⁰ (*Continued in English*) This is now at tab 37¹¹ of your

⁶ 2008/151/EC: Council Decision of 12 February 2008 concerning the conclusion of the Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013 (*available at* <http://extwprlegs1.fao.org/docs/pdf/bi-87076.pdf>); Agreement in the form of an Exchange of Letters on the provisional application of the protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Côte d'Ivoire on fishing in Côte d'Ivoire's fishing zones for the period from 1 July 2007 to 30 June 2013 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_2&format=PDF); Fisheries Partnership Agreement between the Republic of Côte d'Ivoire and the European Community Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire for the period from 1 July 2007 to 30 June 2013 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_3&format=PDF).

⁷ Protocol setting out the fishing opportunities and the financial contribution provided for by the Agreement between the European Community and the Republic of Côte d'Ivoire on fishing off the coast of Côte d'Ivoire for the period from 1 July 2007 to 30 June 2013, Appendix 3 (*available at* http://eur-lex.europa.eu/resource.html?uri=cellar:b108a1f3-0934-4bd6-b2a9-6b64357713b9.0006.01/DOC_4&format=PDF).

⁸ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (*available at* http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en).

⁹ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (*available at* http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en). See map of Côte d'Ivoire's EEZ in VLIZ Maritime Boundaries Geodatabase at <http://www.marineregions.org/eezdetails.php?mrgid=8473>

¹⁰ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59.

¹¹ *Limites de la ZEE de la Côte d'Ivoire telle que définie par les armateurs communautaires* in COFREPECHE, POSEIDON, MRAG & NFDS, 2012. *Évaluation ex-post du protocole de l'accord de*

1 folder. Accordingly, in applying the Fisheries Partnership Agreement, Ghana
2 understands that European vessels are using an equidistance boundary and are
3 doing so with the full knowledge of both Côte d'Ivoire and the European Union.
4

5 Relatedly, having regard to the question you have asked, we are aware that the UN
6 Food and Agriculture Organization (FAO) has also published material that shows
7 Côte d'Ivoire's eastern limit with Ghana as being an equidistance line. This is shown
8 on *this* map posted on the FAO's website,¹² which shows that the eastern limit of
9 Côte d'Ivoire's fishing zone follows an equidistance boundary. We assume that, as a
10 member of the FAO, Côte d'Ivoire is aware of this map.
11

12 I now return to the suggestion by Côte d'Ivoire that the initiation of maritime
13 boundary delimitation talks in 2008 is evidence that the Parties thought that there
14 was no existing agreement. This is contradicted by the record of what actually took
15 place at that meeting.
16

17 The opening statement of Ghana at that first meeting in Abidjan in July 2008, also at
18 tab 36, expressly "proposes that the international boundary in existence, which is
19 used by International Petroleum Companies, with PETROCI and GNPC as partners,
20 on behalf of Côte d'Ivoire and Ghana respectively ... be formalized and signed as our
21 common maritime boundary."¹³ Among the reasons it gives for the proposal is that
22 this existing boundary "has been used by our two countries for a long time".¹⁴
23

24 The minutes show that what drove the convening of the meeting was not a sense
25 that there was no existing maritime boundary, but rather a concern that submissions
26 to the UN Commission on the Limits of the Continental Shelf would be assisted by
27 parties concluding a treaty formalizing their existing maritime boundary, and doing so
28 by May 2009.¹⁵
29

30 Mr President, distinguished Members of this Special Chamber, I have taken you
31 through some examples of the extensive evidence that is in the written pleadings
32 which shows that: (1) an equidistance boundary existed between Côte d'Ivoire and
33 Ghana, and separated their respective maritime areas for over 50 years; (2) it makes
34 clear that both Parties proceeded on the basis of an "existing" maritime boundary;
35 and (3) that that boundary was agreed upon. This is reflected in numerous
36 documents emanating from Côte d'Ivoire, Ghana and from third parties, which we
37 have made available to you. By contrast, what has Côte d'Ivoire offered as evidence
38 of its freshly developed claims? It has not produced a single map showing a maritime
39 boundary between our two countries other than one following an equidistance line. It

partenariat dans le domaine de la pêche entre l'Union européenne et la Côte-d'Ivoire, Contrat cadre MARE/2011/01 - Lot 3, contrat spécifique n° 2, Bruxelles, (available at https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/cote_ivoire_2012_fr.pdf).

¹² Available at <http://firms.fao.org/firms/fishery/658/fr>.

¹³ Government of Ghana, *Maiden Meeting Between Ghana and Côte d'Ivoire on the Delineation of the Ghana/Côte D'Ivoire International Maritime Boundary: Opening Statement by the Ghana National Continental Shelf Delineation Project* (17-18 July 2008), p. 2 (emphasis added). MG, Vol. V, Annex 46.

¹⁴ See *ibid.*

¹⁵ Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries* (16-17 July 2008). MG, Vol V, Annex 45.

1 has not produced a single legislative, administrative, contractual or other document
2 referring to a boundary other than one that follows an equidistance line. Its attempt to
3 suggest a protest against the agreed line in 1988 and 1992 is not supported by
4 credible or convincing evidence. Such material as it has introduced is, in any case,
5 contradicted by its consistent acts till at least 2009. The overwhelming weight of
6 evidence, in our respectful view, inexorably leads to the conclusion that there has
7 been a tacitly agreed equidistance-based boundary between our two countries for
8 many decades. The evidence also shows that both Parties rightfully placed reliance
9 upon that existing maritime boundary, and did so openly for many decades, without
10 protest of any kind from either side.

11
12 I thank you, Mr President and distinguished Members of this Special Chamber, for
13 your attention and patience. Mr President. May I ask that you invite my colleague
14 Professor Pierre Klein to the bar?

15
16 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I
17 thank Mr Tsikata for his statement and now give the floor to Mr Pierre Klein to
18 present his oral argument.

19
20 **MR KLEIN** (*Interpretation from French*): Mr President, Members of the Special
21 Chamber, it is an honour for me to come before you today to plead on behalf of the
22 Republic of Ghana. My colleague Fui Tsikata recalled yesterday and this morning
23 that the existence of an agreement between Côte D'Ivoire and Ghana on the course
24 of their maritime boundary is factually beyond dispute. I shall focus on confirming
25 that this agreement exists, not only in fact but also in law, and that it can therefore
26 form the basis for determining the course of the maritime boundary that separates
27 the two Parties.

28
29 I shall therefore focus on two key points that still separate the Parties at this stage of
30 proceedings. First, I shall briefly recall that the behaviours which may be taken into
31 consideration to establish the existence of this agreement all emanate from the
32 official authorities of Côte d'Ivoire and indubitably reflect the position of that State.
33 I shall then show that, contrary to what our opponents say, the tacit agreement that
34 has emerged over the course of time between the two States does indeed
35 correspond to the requirements laid down by international jurisprudence.

36
37 We need to dwell for a moment on the first of these points because at several points
38 in the Counter-Memorial as well as in the Rejoinder Côte d'Ivoire states that some of
39 the evidence invoked by Ghana to assert the existence of a tacit agreement has no
40 standing because, they say, it does not come from authorities qualified to delimit the
41 boundaries of the Ivorian State. This argument is then insistently repeated by our
42 opponents, in particular when it comes to the national Ivorian oil company PETROCI.
43 According to our opponents, "[n]othing in the laws establishing PETROCI grants the
44 company any public authority enabling it to delimit Côte d'Ivoire's maritime
45 boundaries." The representations of the maritime boundary on maps published by
46 PETROCI would therefore have no relevance, and the reference by that very same
47 company to the equidistance line as the limit beyond which vessels carrying out
48 seismic surveys for the State would enter "Ghanaian waters" is also of no relevance
49 because there is nothing in Ivorian legislation which confers upon PETROCI "the
50 power to engage Côte d'Ivoire in the matter of establishing maritime boundaries."

1
2 In fact, by presenting this debate on the relevance of the role of an entity like
3 PETROCI in terms of powers to delimit national boundaries, Côte d'Ivoire is
4 inevitably distorting the whole discussion. The point here is not to determine whether
5 the national Ivorian oil company enjoys such powers - which it does not – and indeed
6 Ghana has never alleged that. What we have to determine is whether PETROCI's
7 behaviour reveals the Ivorian authorities' perception of the existence and position of
8 a maritime boundary that follows an equidistance line – which is indeed the case
9 here. Allow me to draw a parallel with the various *effectivités* in territorial disputes.
10 Nobody has ever claimed that the conduct of police forces, administrative bodies,
11 agents and institutions responsible for the administration of justice should be taken
12 into consideration within the context of a territorial dispute because these officers or
13 bodies had "public authority enabling [them] to delimit the boundaries" of their State
14 (to use the words of our opponents). If these actions, or lack of them, are taken into
15 account as *effectivités*, it is simply because they reflect, in a very concrete way, the
16 manner in which the State in question - from which they indisputably emanate -
17 represents the limits of its national jurisdiction. We are in the same situation here:
18 PETROCI is, without any doubt, an emanation of the Ivorian State, identified in a
19 number of oil contracts as "rights-holder of all rights for exploration and exploitation
20 of hydrocarbons on all available areas of Côte d'Ivoire". When PETROCI publishes
21 maps showing to the whole world which areas may be the subject of future oil
22 concessions on the land and maritime territory of Côte d'Ivoire, there is no doubt at
23 all that it is indeed on behalf of the Ivorian State that PETROCI is acting. When these
24 maps systematically show, to the east, a maritime boundary with Ghana following an
25 equidistance line, there is no doubt that this is because this is the perception of that
26 particular boundary by the Ivorian authorities.

27
28 By acting in this way, PETROCI is merely repeating, and indeed confirming, the
29 position adopted since 1970 at the highest level of the Ivorian State, and in the most
30 explicit way when it comes to the maritime boundary with Ghana. As my colleagues
31 have already recalled, from the very first decrees granting oil concessions in the
32 border zone, the President of the Republic of Côte d'Ivoire stated that the region
33 which is covered is defined, seaward, "by the border line separating the Ivory Coast
34 from Ghana", a boundary which already follows an equidistance line. Mr President,
35 Members of the Special Chamber, nobody would have any doubt that the President
36 of the Republic was indeed speaking, in 1970, on behalf of the Ivorian State.

37
38 The tacit agreement that has emerged between Côte d'Ivoire and Ghana on their
39 maritime boundary was indeed the result, on the Ivorian side, of repeated and
40 constant statements from authorities qualified to speak on behalf of the State, and to
41 act for that State, even if they did not all have the public authority to delimit state
42 boundaries. Therefore, we can indeed talk of an agreement which, even though it
43 has remained tacit, is a valid agreement that is likely to have an effect in international
44 law. We need now to confirm whether this agreement meets the requirements laid
45 down by international jurisprudence, to see whether we have a basis here for the
46 course of a maritime boundary.

47
48 According to Côte d'Ivoire, the evidential threshold required in international
49 jurisprudence to assert the existence of such an agreement is not reached in the
50 instant case. They say that the position defended by Ghana is contradicted by all

1 relevant precedents, both before the International Tribunal for the Law of the Sea as
2 well as before the International Court of Justice. If you allow, I would like to recall - or
3 at least mention - each of these precedents to demonstrate that the arguments relied
4 upon by Côte d'Ivoire are in fact flawed.

5
6 First, Côte d'Ivoire claims in its Rejoinder that "the behaviour of which Ghana is
7 seeking to take advantage to defend its contention that a tacit agreement exists is
8 similar to that invoked by Bangladesh before ITLOS and thrown out by the Tribunal
9 in the Bangladesh/Myanmar case." Côte d'Ivoire identifies three categories of
10 evidence presented by Bangladesh to support its argument that a tacit agreement
11 existed: what it calls "shipping permits requested and granted between the Parties";
12 sworn declarations by fishermen; and, finally, maps representing the alleged
13 boundary. The Tribunal indeed considered that the evidence relied upon did not
14 prove "the existence of a tacit agreement or *de facto* agreement on the boundary". In
15 fact, the parallel drawn by Côte d'Ivoire between the conduct invoked by Ghana and
16 the conduct invoked by Bangladesh is erroneous. On the one hand, the evidence
17 presented by Ghana does not correspond to the three aforementioned categories
18 and it is not in any case limited to these three categories.

19
20 The first - and main - category of proof relied upon by Bangladesh consisted of eight
21 sworn declarations. Their evidential value was indeed highly relative because some
22 of these declarations were made by fishermen, private individuals and not officers of
23 the State; and they were not contemporaneous with the actual situation but had been
24 prepared specifically for the case. In particular, they expressed opinions instead of
25 indicating the existence of any objective factual elements. The Tribunal therefore
26 refused to afford any evidential value to these sworn declarations. The same went
27 for declarations made by officers of the State, which the Tribunal felt may well be
28 biased. For that matter, Ghana does not rely on any sworn declarations made by
29 individuals -or anybody else - to assert the existence of the customary border based
30 on an equidistance line. The three affidavits presented by Ghana concern other
31 aspects related to the dispute, namely the economic impact on Ghana of a possible
32 moratorium on oil activity; the type of activities developed by Tullow in the border
33 zone; and the non-violation by Ghana of the order prescribing provisional measures.
34 The parallel drawn between the two cases is thus totally invalid on this first point.

35
36 Côte d'Ivoire then alleges that, like Bangladesh, Ghana bases the existence of a tacit
37 agreement on "shipping permits, requested and granted between the Parties". This is
38 quite simply inaccurate. Bangladesh never submitted shipping permits, "requested
39 and granted" between the Parties, to the Tribunal. It merely relied on a note verbale
40 from 2008 through which Myanmar notified its "intention to carry out surveys on both
41 sides of the border". Furthermore, the Tribunal points out that this particular
42 document expressly recalls that the two States had not as yet delimited their
43 maritime boundaries and that the cooperation of Bangladesh was requested "in a
44 spirit of good neighbourliness". This is quite different from the seismic survey
45 documents presented by Ghana. They represent genuine exchanges between the
46 Parties, with one Party requesting of the other authorization to enter a given maritime
47 area, explicitly recognizing that it falls within the sovereignty of the State to which
48 that request is submitted. As we have seen, these requests were accompanied by
49 maps or sketch maps covering the zone in question, clearly showing the customary

1 border, which follows an equidistance line. Here again, we are tempted to say that
2 the parallel does not hold water.

3
4 Finally, Côte d'Ivoire attempts to argue that, like Bangladesh, Ghana is presenting
5 maps to assert the existence of a tacit agreement on the course of the maritime
6 boundary; but the only maps presented by Bangladesh were those used by its own
7 navy. There is a big difference between the maps presented by Bangladesh and
8 those presented by Ghana in terms of number, origin and content. Twenty-two of the
9 62 maps presented by Ghana for the instant proceedings reflect not only the limits of
10 the oil concessions but also the maritime boundary between the two Parties, which
11 follows the customary equidistance line. Twenty-four of these 62 maps accompany
12 an official document, and therefore have particular evidential value. Finally, do I need
13 to insist at this stage on the fact that a considerable number of these maps do not
14 come from Ghana but from various official sources in Côte d'Ivoire? Therefore, they
15 cannot be deemed to be "self-serving evidence", which is what the Tribunal could
16 legitimately fear in the *Bangladesh v. Myanmar* case. Again, no valid parallel can be
17 drawn here.

18
19 It needs to be said that the exercise was all the more doomed to failure since, not
20 content with forcing similarity between the evidence presented by Ghana in the
21 present case, and that rejected by the Tribunal in the *Bangladesh v. Myanmar* case,
22 our opponents also made no mention of the prime evidence put forward by Ghana in
23 support of its argument. There was no question in *Bangladesh v. Myanmar* of
24 national legislation highlighting the fact that the Parties explicitly recognized the
25 maritime border. There was no question either of a constant, consistent and
26 convergent practice between the two States as regards exploration and exploitation
27 of oil in the area concerned. Those elements are indeed present in the case before
28 you, as has been amply demonstrated. The reasons why the International Tribunal
29 for the Law of the Sea rejected Bangladesh's argument, according to which there
30 was a tacit agreement between the Parties, have in fact very little to do with the
31 circumstances that characterize the present case.

32
33 In the same way as it did for the *Bangladesh v. Myanmar* case, Côte d'Ivoire tries to
34 present the "conventional" jurisprudence of the ICJ as contrary to Ghana's claims.

35
36 I will briefly mention, first, the precedent invoked by Côte d'Ivoire that is the least
37 relevant to our case, to wit the *Gulf of Maine* case. The Court concluded the non-
38 existence of an agreement between the Parties as to the delimitation of their
39 maritime areas. The granting, both by Canada and the United States, of oil
40 exploration concessions and permits in areas that did not always coincide with the
41 median line claimed as the boundary was a major factor in the decision by the Court
42 on this point. According to our opponents, the situation is identical in the present
43 dispute, where we find "overlapping claims" between Côte d'Ivoire and Ghana that
44 date back to 1992.

45
46 However, in support of this assertion, the opposing Party produces nothing,
47 absolutely nothing – not the slightest tangible element – in support of it. It must be
48 said that it would be hard pushed to do so; not a single one of the many concessions
49 granted in the area in question over the years, be it by Côte d'Ivoire or Ghana, is
50 delimited in a way that would lead to the slightest overlap. Not a single one of the

1 dozens of maps that have been published since the end of the 1950s, be it on the
2 Ivorian or the Ghanaian side, whether they come from public or private sources,
3 represent the maritime boundary between the two States along a line other than the
4 equidistance line. Here again, there is no trace, not the slightest shadow of an
5 overlap. All the oil concessions granted by the two Parties since they acceded to
6 independence followed the customary boundary based on an equidistance line. All
7 drilling undertaken by the two Parties respected it in the same way. These activities
8 were conducted together, without the slightest overlap and with no exception for over
9 five decades. It is only in 2009, following the change of position by Côte d'Ivoire, that
10 such overlaps appeared for the very first time. We are therefore very far removed
11 from the situation noted by the Court in the *Gulf of Maine* case.

12
13 Our opponents also seek to use the *Tunisia v. Libya* case as an argument. Indeed, it
14 is a twofold argument. As they see it, the Court defined this agreement, or more
15 precisely a *modus vivendi* between the two Parties, as

16
17 an important factor in the selection of the delimitation method only by taking
18 account of the protracted practice going back many years to the colonial
19 period, pre-dating the time when the Parties gained independence

20
21 This would contrast with,

22
23 the oil activities which Ghana is taking as a basis ... within a far shorter period.

24
25 The opposing side also observes that the *modus vivendi*, whose existence was
26 noted in *Tunisia v. Libya*, only came about as a result of the silence maintained in
27 this respect by the French authorities responsible for Tunisia's foreign policy. Here
28 again, the contrast would be striking, since Côte d'Ivoire

29
30 has never accepted the western limit of the Ghanaian oil concessions which
31 its neighbour was attempting to impose on it by way of a *fait accompli*.

32
33 Let us return to these two arguments. The first - the temporal argument - is
34 somewhat surprising. To Ghana's knowledge, no requirement for a specific time-limit
35 which would allow us to conclude that a tacit agreement on a maritime boundary
36 exists between two States was ever formulated. In any event there is the question of
37 several decades of functioning on the basis of a *modus vivendi* between the Parties
38 in *Tunisia v. Libya*, just as, here, there is the question of the several decades of fully
39 convergent practice of Côte d'Ivoire and Ghana concerning the definition of the
40 maritime areas that form part of their respective jurisdictions, and regarding the use
41 of these areas. This latter practice is in fact similar to that noted by the Court in its
42 judgment of 1982 - or going back even further - and it shows here too an agreement
43 between the Parties in the long term. This practice and the agreement that it
44 highlights are in no way disqualified by the reasoning of the Court in *Tunisia v. Libya*.

45
46 As to the argument regarding the lack of consent and the imposition, to quote the
47 term used by our opponents, of a maritime limit "by way of a *fait accompli*", should
48 we really dwell on it? Is it really Ghana, Mr President, Members of the Special
49 Chamber, that "imposed by way of a *fait accompli*" on the President of Côte d'Ivoire
50 the obligation to define the limits of oil concessions that he granted back in 1970 as
51 following "the boundary line separating Côte d'Ivoire from Ghana", a boundary line

1 that in the present case is formed by an equidistance line? Was it Ghana that
2 "imposed by way of a *fait accompli*" on the Ivorian authorities the obligation to grant
3 concessions which systematically stopped at the equidistance line? Was it Ghana
4 that "imposed by way of a *fait accompli*" on the national oil company of Côte d'Ivoire,
5 PETROCI, the obligation to publish year after year - up until 2011, Mr President -
6 geographic maps representing the eastern limit of the concessions granted by Côte
7 d'Ivoire as well as the maritime boundary between the two countries, according to an
8 equidistance line? I could continue this exercise but I doubt that it is necessary. The
9 Chamber will have understood that there was in the relations between the Parties to
10 the present case no "imposition by way of *fait accompli*" of the equidistance line as a
11 joint maritime boundary and that the consent of Côte d'Ivoire to this line has proven
12 to be very real and, above all, freely given.
13

14 All this amply confirms that a parallel can indeed be drawn between the present case
15 and the conclusions reached by the Court in the *Tunisia v. Libya* case and that the
16 practice in question in our case must carry the same decisive weight as that
17 recognized by the Court in 1982. Allow me to quote the key passage of the 1982
18 judgment. In this respect:

19
20 the Court could not fail to note the existence of a *de facto* line ... which was
21 the result of the manner in which both Parties initially granted concessions for
22 offshore exploration and exploitation of oil and gas. This line of adjoining
23 concessions, which was tacitly respected for a number of years, and which
24 approximately corresponds furthermore to the line perpendicular to the Coast
25 at the frontier point which had in the past been observed as a *de facto* maritime
26 limit, does appear to the Court to constitute a circumstance of great relevance
27 for the delimitation.
28

29 In the case of the present dispute also, the line that separates the oil concessions of
30 Ghana and Côte d'Ivoire, also observed "tacitly for years", similarly has considerable
31 relevance for determining the course of the maritime boundary common to both
32 States, all the more so since the Parties to this case expressly recognized it as
33 maritime border between Côte d'Ivoire and Ghana.
34

35 The facts are there but do they suffice to allow us to conclude that a tacit agreement
36 exists? In this respect, Côte d'Ivoire makes much of the fact that in the one
37 precedent where the ICJ recognized as such a tacit agreement as a basis for
38 maritime delimitation, the *Peru v. Chile* case, it only did so after this agreement was
39 confirmed in writing. Our opponents considered that, even if there is not a *sine qua*
40 *non* condition to recognize the existence of such an agreement, this position
41 confirms that the necessary threshold of proof providing evidence of its existence is
42 particularly high and would not be reached in our case. But, once again, the *de facto*
43 situations that characterize that case and our own differ significantly.
44

45 If the Court placed such emphasis on the 1954 agreement as confirming a pre-
46 existing tacit agreement in *Peru v. Chile*, it is quite simply because it was not in a
47 position to identify tangible elements that formalized this prior agreement. The
48 Parties to the case in fact made little mention of them and the way the Court speaks
49 on this point is particularly eloquent. I quote:
50

1 The 1954 Special Maritime Frontier Zone Agreement does not indicate when
2 and by what means that boundary was agreed upon. The Parties' express
3 acknowledgment of its existence can only reflect a tacit agreement which they
4 had reached earlier.
5

6 But the Court makes no mention of this prior tacit agreement, owing to a lack of more
7 specific elements on this point. On the contrary, in the present case there is
8 abundant evidence of a constant practice, which is entirely sufficient to establish the
9 existence of a pre-existing tacit agreement that thus required no written confirmation.
10 Here again, the parallel made by our opponents between the *Peru v. Chile* case and
11 the current case is quite meaningless.
12

13 In reality, there is no divergence between the Parties to the present case as to the
14 interpretation of the various decisions that I have just referred to. The differences
15 rest exclusively on the parallels or the distinctions that Côte d'Ivoire attempts to
16 make between each of them and the facts of the present case. But each of the
17 representations of our opponents in this respect has proven problematic owing to the
18 distortions in relation to the present case. However, these facts - and their
19 significance - are crucial. Need one recall in this respect that the ICJ indicated in the
20 *Serpents Island* case that the establishment of the existence of a tacit agreement
21 was "a point of fact"? Facts, as we know, are stubborn and what they show in the
22 present case is the duration and the permanence of an agreement between the
23 Parties in respect of which we would be hard-pushed to see the slightest trace of an
24 imposition "by means of a *fait accompli*". Mr President, Members of the Chamber, it
25 is the existence of this agreement by virtue of which the customary maritime border
26 between the Parties to the present case follows an equidistance line of which Ghana
27 kindly asks you to take note.
28

29 Thank you, Mr President, Members of the Special Chamber, for your kind attention
30 and I would ask you, Mr President, to kindly hand the floor to my colleague,
31 Clara Brillembourg.
32

33 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

34 Thank you, Professor Klein, for your statement, and I now give the floor to Ms Clara
35 Brillembourg.
36

37 **MS BRILLEMBOURG:** Mr President, Members of the Special Chamber, good
38 morning. It is my great honour to appear before you today, and it is a particular
39 privilege to do so on behalf of the Republic of Ghana.
40

41 I will address two issues: first, the land boundary terminus from which the maritime
42 boundary begins, and second, the nautical charts establishing the States' respective
43 coastlines. The Parties reached agreement on these two points during their bilateral
44 negotiations, well before this litigation began, and that agreement is one which
45 should be given effect by this Chamber. One might therefore have thought that my
46 submission would not be needed. However, since Côte d'Ivoire now questions these
47 agreements, there is a need for some clarification and elaboration on both subjects.
48

49 I will address each of these two points, beginning with the land boundary terminus.
50

1 It is not in dispute that the Parties have agreed that the last boundary post of the
2 land boundary is the land boundary terminus.¹⁶ Côte d'Ivoire confirmed in its
3 Counter-Memorial that

4
5 during the negotiation process, the two Parties reached express agreement
6 both on the fact that the maritime boundary should start from boundary post 55
7 ... and on the coordinates of this boundary post, which were measured jointly
8 by the two States.¹⁷
9

10 The agreed coordinates determined by the Parties' joint survey¹⁸ are shown on the
11 figure before you, as well as a photograph of the boundary post itself, referred to as
12 BP 55. This and the subsequent slides are available in tab 1 of your Judges' folder.
13

14 Because the Parties have agreed on specific coordinates for BP 55, the small issue
15 arises as to how to connect to this point on the maritime boundary.
16

17 In regards to the customary equidistance boundary, Ghana has provided a solution
18 connecting it to BP 55's agreed coordinates. This solution is needed because
19 previously, during the half-century that the customary equidistance boundary was
20 recognized and respected by both Parties, they used less precise coordinates for
21 BP 55, which placed it a short distance to the west of the point where the Parties
22 located it in their 2013 agreement, using modern equipment.
23

24 Ghana has addressed this issue by effecting a modest shift in the course of the
25 customary equidistance boundary in the territorial sea, to connect it with the more
26 recently agreed coordinates of the land boundary terminus.¹⁹ It did this by running a
27 geodetic line from BP 55 to where the customary equidistance boundary intersects
28 with the territorial sea limit.²⁰ As shown in this figure, the dashed red line is the
29 historically-agreed customary boundary line to the 12-nautical-mile limit. The solid
30 red line shows the modest adjustment to the customary boundary required by the
31 Parties' 2013 agreement on the coordinates of the LBT. As you can see, the
32 adjusted boundary favours Côte d'Ivoire in relation to the customary boundary line.
33 Nevertheless, Ghana accepts the adjustment as a consequence of the Parties'
34 agreement on the coordinates of the land boundary terminus.
35

¹⁶ Memorial of Ghana (4 Sept. 215) (hereinafter "MG"), para. 2.2; Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), para. 2.29; Reply of Ghana (25 July 2016) (hereinafter "RG"), para. 3.70.

¹⁷ CMCI, para. 7.28

¹⁸ Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Seventh Meeting: Côte d'Ivoire/Ghana Maritime Boundary Negotiation* (5-6 December 2013), pp. 1-2. MG, Vol. V, Annex 57.

¹⁹ RG, para. 3.96

²⁰ *Ibid.* A similar solution was adopted by the tribunal in *Bangladesh v. India*, where the tribunal found that, because "the delimitation of the territorial sea begins from [the] equidistance line between the Parties" and "using the land boundary terminus in th[at] case would not begin the delimitation on the 'median line'" due to the fact that the "land boundary terminus ... is not at a point equidistant from the base points[.]" it "decide[d] that the boundary should take the form of a 12 nm long geodetic line continuing from the land boundary terminus in a generally southerly direction to meet the median line" at 12 M. *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, UNCLOS Annex VII Tribunal, Award of 7 July 2014, paras. 273, 276.

1 Ghana respectfully submits that the Chamber should adopt this solution when it
2 adjudges that the Parties' maritime boundary is the customary equidistance
3 boundary applied by the Parties for the last 50 years.

4
5 However, in the alternative, *quod non*, that the Chamber were to fix the maritime
6 boundary by means of the traditional three-step method, I will address the different
7 solutions offered by the Parties to connect BP 55 with the provisional equidistance
8 line.

9
10 The boundary post is located some 150 metres from the low water line on the coast.
11 Thus BP 55 must be connected to the provisional equidistance line through a point
12 on the low water line. Despite its stated agreement that BP 55 is the starting point for
13 the maritime boundary, Côte d'Ivoire has sought to do this by in effect treating BP 54
14 as the starting point, and extending the bearing of the land boundary connecting
15 BP 54 with BP 55 to a new point on the coast it calls Omega, as shown on this
16 figure.²¹

17
18 I should note that this is not the first time that Côte d'Ivoire has attempted to replace
19 its agreed land boundary terminus with a new point. During the provisional measures
20 phase, Côte d'Ivoire provided a different starting point, shown here alongside
21 BP 55.²²

22
23 By contrast, Ghana has fully respected the express agreement to start the maritime
24 boundary from BP 55. Thus, it has consistently begun the provisional equidistance
25 line directly from this point. As shown on this figure, Ghana made this possible by
26 connecting BP 55 to the coastline by means of the shortest distance. By using this
27 technique, BP 55 remains the true starting point of the maritime boundary.

28
29 The slight difference resulting from the Parties' alternative starting points for the
30 provisional equidistance line is shown on this figure, provided in Côte d'Ivoire's
31 Rejoinder, which depicts a sliver of maritime area covering 0.03 square nautical
32 miles.

33
34 Thus, the consequence of choosing one Party's point on the low water line over the
35 other is minimal. Nevertheless, because Ghana's application of BP 55 as the true
36 starting point for both the customary equidistance boundary, or alternatively for the
37 provisional equidistance line, is faithful to the agreement reached by the Parties,
38 Ghana submits that its solution should be the one applied.

39
40 This brings me to the second issue: the choice of charts to represent the Parties'
41 coastlines. The dispute between the Parties on this point is more substantial.

42
43 As with the land boundary terminus, Ghana has honoured the agreement reached by
44 the Parties to use agreed international hydrographical charts. Ghana has plotted its
45 base points, and drawn the resulting provisional equidistance line, on British

²¹ CMCI, para. 7.29

²² The coordinates of this point were 5° 05' 23" N 3° 06' 23" W. *Letter* from Ibrahima Diaby, General Director of Hydrocarbons and Co-Agent, Ministry of Petroleum and Energy, Republic of Côte d'Ivoire, to Philippe Gautier, Registrar, International Tribunal for the Law of the Sea (8 April 2015). MG, Vol. VI, Annex 64.

1 Admiralty Chart 1383.²³ Côte d'Ivoire, on the other hand, has abandoned the use of
2 agreed international charts and has crafted a new nautical chart during the course of
3 this litigation, on which it seeks to rely. This approach is unjustified: Côte d'Ivoire is
4 not entitled to discard its earlier agreement or to create a new chart for these
5 proceedings.

6
7 Despite the text of the agreement memorialized in the Minutes of the Parties' Ninth
8 Meeting in April 2014, Côte d'Ivoire now argues that no agreement was reached.²⁴ It
9 does so by paraphrasing the Minutes to state merely that the States' future work
10 would be facilitated by using a common cartographic base.²⁵ But there is no need to
11 paraphrase; the words are express and they are clear.

12
13 Allow me to draw your attention to the text of the Minutes:

14
15 During the 9th session, the two parties presented their international
16 hydrographical charts and noted that they had been using the same series of
17 international hydrographical charts, for example:

18
19 INT 2805 on a scale of 1:350 000 covering Sassandra to Aby Lagoon for the
20 Ivorian side.

21
22 Detailed map, reference no 3113 on a scale of 1:150 000, from the Cape Three
23 Points region to Cape Coast for the Ghanaian side.²⁶

24
25 Here are the key words:

26
27 The two parties agreed, from now on, to use the same international
28 hydrographical charts on a scale of 1:150,000, where they exist, or on a scale
29 of 1:350,000 or other scale appropriate for delimitation of maritime boundary
30 or relevant remote sensing data.²⁷

31
32 The text expressly states that the two States "agreed" that "from now on" they would
33 continue to use the "same international hydrographical charts."

34
35 This is precisely what they did, until Côte d'Ivoire changed its position, yet again, in
36 the course of this litigation.

37
38 At the next bilateral meeting, in May 2014, the Minutes refer to this agreement in a
39 section entitled "International hydrographic nautical charts used by two sides". The
40 Minutes record that both Côte d'Ivoire and Ghana used charts from the same series
41 of international nautical charts: Ghana used British Admiralty Charts 3100 and 1383
42 and Côte d'Ivoire used INT Charts 2804, 2805, 2806, and 2807.²⁸ This figure shows

²³ See MG, para. 5.87; RG, paras. 3.53-3.54; United Kingdom Hydrographic Office, *Ivory Coast and Ghana, Lagune Aby to Tema, Chart No. 1383, 1:350,000* (14 May 2009, United Kingdom). MG, Vol. II, M61.

²⁴ See RCI, paras. 2.116-2.121.

²⁵ *Ibid.*, para. 2.119.

²⁶ *Minutes of the Ninth Meeting of the Ghana-Côte d'Ivoire Maritime Boundary Negotiations*, p. 4 (emphasis added). MG, Vol. V, Annex 60.

²⁷ *Ibid.* (emphasis added).

²⁸ *Minutes of the Tenth Meeting of the Côte d'Ivoire/Ghana Joint Commission on the Côte d'Ivoire/Ghana Maritime Boundary Delimitation*, p. 3. MG, Vol. V, Annex 62. See also, Government of

1 how these charts relate to one another. As seen, the Gulf of Guinea was charted on
2 a series of international nautical charts produced by the *Service hydrographique et*
3 *océanographique de la marine* (SHOM) in collaboration with the United Kingdom
4 Hydrographic Office (UKHO). The rectangle to the west is of the area covered by
5 INT 2805, which is based on the UKHO or British Admiralty Chart 3100 and the
6 SHOM Chart 7385. To the east is Chart INT 2806, which is based on BA Chart 1383
7 and SHOM Chart 7786.

8
9 Côte d'Ivoire attempts to make something of the fact that at the tenth meeting Ghana
10 presented BA Charts 3100 and 1383 instead of the BA Chart 3113 it had previously
11 provided in the ninth meeting.²⁹ This argument is a red herring. Ghana used these
12 two charts – as it was entitled to do under the agreement – because they covered
13 the area necessary to plot the Parties' base points: Chart 3113 covered an area of
14 coast too far to the east, as shown on the image before you. The agreement did not
15 call for the Parties to use the same charts presented in the ninth session. The States
16 agreed to use charts from now on from the same series of international hydrographic
17 charts. Both States understood this, as shown by the charts they presented at the
18 following tenth session. Ghana continues to adhere to this understanding.

19
20 Côte d'Ivoire now seeks to abandon the agreed approach. Instead it has engaged in
21 new work to plot the coastline, presumably on the basis that it might yield a more
22 favourable provisional equidistance line. Côte d'Ivoire claims that it decided not to
23 rely on the agreed charts because the topographical surveys of the area in question
24 were conducted in the 19th century and because of their scale (1:350,000).³⁰ What
25 was good enough for Côte d'Ivoire in 2014, they say, is not good enough today.
26 Ghana submits that Côte d'Ivoire is not entitled to abandon the 2014 agreement, any
27 more than it is entitled to abandon its recognition of the customary equidistance
28 boundary for over five decades.

29
30 The British Admiralty Chart remains the largest-scale and most current international
31 chart covering the relevant area officially recognized by both States.

32
33 Unlike the charts recently produced by Côte d'Ivoire during the course of this
34 litigation, the agreed international charts are more reliable. Courts and tribunals have
35 applied the principle set forth in the *Beagle Channel Arbitration*, namely that

36
37 maps produced before any controversy ... has arisen will tend to be more
38 reliable than those coming afterwards.³¹

Ghana, *Presentation of Ghana to the 10th Ghana-Côte d'Ivoire Meeting* (May 2014), §1c. MG, Vol. V, Annex 62A. Section title "The International Hydrographic maps to be used by both parties," where it states "The following nautical charts have been sourced for the purpose of the delimitation: 1. Chart 3100 – Sasandra to Lagune Aby (1:350000); 2. Chart 1383 – Lagune Aby to Tema (1:350000)." (emphasis added).

²⁹ See RCI, para. 2.120.

³⁰ See RCI, para. 2.104; CMCI paras. 7.10-7.19.

³¹ *Dispute between Argentina and Chile concerning the Beagle Channel*, Report and Decision of the Court of Arbitration of 18 February 1977, reprinted in 21 RIAA 53 (1977) (hereinafter "*Argentina v. Chile (Beagle Channel)*, Decision"), para. 142(3).

1 The reliability of the official charts recognized by both Parties is also confirmed by
2 both sets of contemporaneous official charts, as well as the coastline analysis by
3 EOMAP.³²

4
5 Côte d'Ivoire attempts to support its claims that Chart 1383 is unreliable because it
6 has a "very different coastline" from UKHO Chart 3100. It demonstrates this
7 supposed difference in Figure 2.7 in its Rejoinder, shown *here*. What is clear,
8 however, is the granular scale that Côte d'Ivoire had to adopt to paint a picture
9 supporting its narrative. Indeed, Côte d'Ivoire admits that it had to cut off four of its
10 nine base points to create this view.³³ If you present a comparison at a less
11 microscopic scale, depicting all nine base points, you can see that Chart 3100
12 confirms the reasonableness of using the Parties' agreed official charts.

13
14 The agreed international charts' reliability is further confirmed by recent analysis of
15 the coast. Ghana requested EOMAP, a leading provider of satellite-derived coastal
16 information, to identify the coast's low water line using the most recent satellite
17 imagery available. Given the straight nature of the coastline and the intense wave
18 activity, EOMAP applied the data to determine the coastline, minimizing the
19 short-term effects of wave patterns and localized beach features. To create the most
20 consistent coastline, EOMAP acquired 15 satellite images from November 2015 to
21 May 2016, and then created a composite of the most seaward portion of the lowest
22 low water lines across the images to create a single regression line.³⁴ The result is a
23 mathematically and objectively depicted coast that minimizes ephemeral changes on
24 the coastline.

25
26 This line is shown in the figure before you. This figure also compares EOMAP's
27 coastline derived from satellite data with the coastline derived from the Parties'
28 agreed official charts. You can see how similar they are. It is clear that the coastline
29 has remained nearly the same despite the passage of time. The resulting provisional
30 equidistance lines are also remarkably similar, as seen *here*. EOMAP's analysis thus
31 confirms, and justifies the use of, the Parties' official charts to determine the
32 coastline, find appropriate base points along it, and construct a provisional
33 equidistance line, if one is needed.

34
35 Côte d'Ivoire represents in its Rejoinder that Ghana has argued that Côte d'Ivoire's
36 new nautical charts are inadmissible.³⁵ This is not Ghana's position. The documents
37 are certainly admissible, as evidence produced and presented by a Party during
38 litigation. What Ghana explained in its pleadings is that Côte d'Ivoire's new material
39 "needs to be treated with caution" for three separate and independent reasons: first,
40 it was developed for and during this litigation; second, because of its technical
41 inadequacies;³⁶ and, third, because of Côte d'Ivoire's breach of its agreement with
42 Ghana to rely on the international hydrographic charts. As I will show, Côte d'Ivoire's
43 defence of these materials is wrong factually, legally and technically.

³² RG paras. 3.57-3.60; EOMAP GmbH & Co. (EOMAP), *Ghana-Côte d'Ivoire Coastline Analysis* (19 July 2016). RG, Vol. IV, Annex 167.

³³ RCI, n. 182: "In view of the large scale of Sketch map D 2.7, only 5 of the 9 base points have been shown on the sketch map."

³⁴ RG, paras. 3.58; EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, §3. RG, Vol. IV, Annex 167.

³⁵ RCI, para. 2.108.

³⁶ RG, para 1.15.

1
2 First, Côte d'Ivoire cannot escape the fact that it prepared these charts for and
3 during this litigation. Côte d'Ivoire cites to the March 2014 work proposal by its
4 expert, Argans, as evidence that it decided to produce new charts five months before
5 this litigation began.³⁷ However, by March 2014, Côte d'Ivoire had already
6 threatened Ghana's concessionaires to leave the disputed waters.³⁸ It was well
7 aware that there was a dispute.³⁹ Indeed, the March proposal bears the logo of
8 Argans accompanied by the logo of the law firm Gide, Côte d'Ivoire's legal counsel in
9 this litigation.⁴⁰ The fact also remains that the material used to create Côte d'Ivoire's
10 coastline was selected, processed, and analyzed in the course of this litigation.
11 Within days of the Parties' agreement to proceed before this Chamber in December
12 2014, Argans was on site collecting survey data of Côte d'Ivoire's coast.⁴¹

13
14 As for the law, Côte d'Ivoire argues that the jurisprudence shows that tribunals are
15 inclined to give preference to the most recent surveys in resolving maritime
16 disputes.⁴² Of course, it bears reason that, where there is no prior agreement
17 between the States about the applicable charts, and where multiple charts of equal
18 evidentiary weight have been presented, tribunals might show a preference for the
19 most recent surveys – all things being equal – but all things are not equal here. In
20 only one of the cited cases, namely *Guyana v. Suriname*, did a tribunal accept the
21 use of a nautical chart prepared by one of the disputing State parties during the
22 proceeding. However, in that case the chart was created by the Netherlands
23 Hydrographic Office, with the assistance of Suriname.⁴³ It applied to only one base
24 point and, most significantly, Guyana admitted that its use had no impact on the
25 provisional equidistance line.⁴⁴ In fact, tribunals have taken pains to avoid relying on
26 evidence created by a party during litigation, instead turning to evidence pre-dating
27 the dispute, such as the parties' agreed international charts.⁴⁵

28
29 Côte d'Ivoire's nautical charts are also technically questionable, as I will explain. The
30 low water line derived from the data collected during this dispute is subjective and
31 vulnerable to short-term, sporadic changes in the coast. It is also vulnerable to
32 technical deficiencies and manipulation.

³⁷ RCI, para. 2.110 (citing Presentation given by Argans to the Ivorian delegation (March 2014). CMCI, Vol. III, Annex 45).

³⁸ See *Letter* from Côte d'Ivoire Ministry of Mines, Petroleum, and Energy to General Directors and Representatives of Oil and Gas Companies (26 September 2011). MG, Vol. VI, Annex 71.

³⁹ See, e.g., MG, para. 3.105 and RG paras. 2.10-2.12.

⁴⁰ Presentation given by Argans to the Ivorian delegation, March 2014, CMCI, Vol. III, Annex 45.

⁴¹ RCI, n. 150.

⁴² *Ibid.*, paras. 2.111-2.114.

⁴³ *Ibid.*, para. 2.114.

⁴⁴ *Guyana v. Suriname*, UNCLOS Annex VII Tribunal, Guyana's Reply of 1 April 2006, para. 1.10.

⁴⁵ See, e.g., *Argentina v. Chile (Beagle Channel)*, Decision, para. 142: "maps produced before any controversy ... has arisen will tend to be more reliable than those coming afterwards."; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, p. 168, para. 61: "The Court will treat with caution evidentiary materials specifically prepared for this case and also material emanating from a single source."; *ibid.*, para. 129: "While a notarized affidavit is entitled to a certain respect, the Court must observe that it is provided by a party in the case and provides at best indirect 'information' that is unverified."; *Territorial and Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, ICJ Reports 2007, p. 659, para. 243: "Affidavits sworn later by a State official for purposes of litigation as to earlier facts will carry less weight than affidavits sworn at the time when the relevant facts occurred."

1
2 It remains unclear, for example, how Côte d'Ivoire derived the low water line
3 presented on its charts. Côte d'Ivoire claims that the line is based on satellite-derived
4 bathymetry combined with ground surveys of beach profiles. However, the data does
5 not align with their results. We have tried our best to replicate what Argans said it did
6 and, despite repeated attempts, the results do not yield the same coastline. In
7 addition, Côte d'Ivoire used two different methods to chart the coast on either side of
8 the land boundary terminus, by applying ground survey data only for Côte d'Ivoire's
9 coast.

10
11 Even if one were to overlook these fundamental issues and accept that Côte
12 d'Ivoire's low water line was based on satellite-derived bathymetry (SDB), this
13 technique is an inappropriate means of constructing a low water line in cases, like
14 this one, where the waters display very high turbidity and breaking waves.⁴⁶ Indeed,
15 Argans readily admits that its analysis required expertise of SDB modelling "under
16 difficult circumstances."⁴⁷

17
18 Let me explain why. SDB is based on sunlight reflecting off the seabed to identify the
19 water's depth, using satellite images, but particles suspended in the water column
20 also reflect the light. The more intense the waves, the more particles will float in the
21 water, tending to interfere with the light's reflection from the sea floor.⁴⁸ A clear way
22 to check if the use of SDB is accurate for a determined area is to take multiple
23 satellite images of that area captured at different times. If the pattern of the reflection
24 is consistent, then it indicates that the reflection is most likely from the sea floor. If
25 not, you are simply seeing the changing reflection from moving particles stirred up by
26 waves. As you can see from *this* slide, showing three satellite images of the same
27 area of the relevant coast on different dates, two of which were used by Côte d'Ivoire
28 in its analysis, the coastline is dominated by intense wave action – what the experts
29 call dynamic turbidity – which interferes with the light's reflection.

30
31 In other words, along the relevant coast, SDB cannot provide accurate information
32 on the bathymetry; and any coastline in this area claimed to be derived from SDB
33 would involve a high degree of uncertainty, as is the case with Côte d'Ivoire's
34 analysis.

35
36 In the end, even if you were to ignore all the factual, legal and technical difficulties
37 inherent in Côte d'Ivoire's charts and resulting coastline, Côte d'Ivoire's newly
38 derived charts merely serve to confirm the reasonableness of using the official charts
39 recognized by and agreed to by both Parties. As shown *here*, the coastline preferred
40 by Côte d'Ivoire is not very different from the one shown on the official charts
41 (BA 1383 and SHOM 7786). Their striking similarity confirms, first, the reliability of
42 the official charts and, second, the fact that, even assuming, *quod non*, the accuracy
43 of Côte d'Ivoire's new data, the coastline has not changed significantly in over 175
44 years. It is a stable coastline, as Mr Reichler has explained.

⁴⁶ EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, §§ 2.3.2, 2.4. RG, Vol. IV, Annex 167. ("Satellite Bathymetry is not possible in cases where, as here, the waters display very high turbidity, as a well as strong surf and breaking waves.")

⁴⁷ Report by Argans (9 November 2016), p. 26. RCI, Vol. III, Annex 190.

⁴⁸ EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*, § 2.3.2. RG, Vol. IV, Annex 167.

1 In conclusion, the Special Chamber should confirm the customary equidistance
2 boundary from BP 55, the Parties' agreed land boundary terminus. In the alternative,
3 if it proves necessary, the Chamber should draw a provisional equidistance line from
4 BP 55 on the basis of the charts agreed by the Parties in 2014. This is consistent
5 with the Convention and respects the Parties' agreements of December 2013
6 regarding the land boundary terminus and of April 2014 regarding their official charts.
7 It also offers a means of avoiding the problems inherent in relying on technical data
8 developed by a Party while litigating its case.

9
10 Mr President, Members of the Special Chamber, thank you for your kind attention.
11 I ask that you call upon Professor Sands.

12
13 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank you, Ms Brillembourg, for
14 your statement, and I now give the floor to Mr Philippe Sands.

15
16 **MR SANDS:** Mr President, it falls to me to begin our presentation on the maritime
17 boundary up to 200 nautical miles.

18
19 As you will now appreciate, Ghana has a strong attachment to the application of the
20 principle of equidistance to confirm the location of its maritime boundary with Côte
21 d'Ivoire. Côte d'Ivoire shared that attachment for over 50 years, until 2009,
22 enshrining the equidistance principle in its own law.⁴⁹ That is why Ghana's primary
23 submission is that there exists a customary maritime boundary up to 200 nautical
24 miles and beyond – one that has been long agreed between the Parties and gives
25 effect to equidistance.

26
27 Côte d'Ivoire suddenly changed position in 2009, apparently prompted by the
28 discovery of oil in significant quantities on Ghana's side of the existing maritime
29 boundary. One can but imagine the discussions that might have taken place in
30 Abidjan at that time. How can we just ditch equidistance, after 50 years? We shall
31 have to come up with something else. Presumably there were conversations as to
32 the alternatives, and it would be surprising if advice was not then received to the
33 effect that if a new boundary had to be delimited, international law directed
34 equidistance methodology – the three-stage approach – as the "standard method".⁵⁰

35
36 If such advice was tendered, it was ignored. Instead, somehow a decision was taken
37 to settle on a new approach – the meridian line. We addressed this in March 2015 in
38 this courtroom at the provisional measures hearings, in a map placed in tab 20 of the
39 Judges' folder on that occasion. Let us go back to that same map, which is now at
40 tab 2.A of today's Judges' folder. As you will see, the map depicted four fresh-minted
41 Ivorian claim lines. The first line was born in February 2009; let us call it Meridian 1.
42 It had but a short life, killed off a year later, presumably because it failed to meet the
43 needs of Côte d'Ivoire, and of course it did not even start at BP55, the land boundary

⁴⁹ Memorial of Ghana (4 Sept. 2015) (hereinafter "MG"), paras., 3.29-3.31 and Vol. IV, Annex 24 (Republic of Côte d'Ivoire, Law No. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of the Ivory Coast, adopted on 17 Nov. 1977, reprinted by United Nations DOALOS/OLA – National Legislation), Art. 8.

⁵⁰ *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)* UNCLOS Annex VII Tribunal, Award of 7 July 2014 (hereinafter "*Bangladesh v. India, Award*"), Transcript Day 4, Friday, 13 December 2013 (hereinafter "*Bangladesh v. India, Transcript*"), p. 390 (Prof A. Pellet).

1 terminus. May 2010 then saw the arrival of Meridian 2, soon deemed inadequate for
2 reasons not explained. Perhaps, like its predecessor, it was insufficiently generous to
3 the needs of Côte d'Ivoire.

4
5 In November 2011 Meridian 2 was pensioned off and a new thought emerged:
6 someone in Abidjan – or maybe it was in Paris or even London – came up with the
7 imaginative idea of using an angle bisector, so Angle Bisector 1 was born, as you
8 can see on the screen, but that too was soon killed off, to be replaced in May 2014
9 by Angle Bisector 2. This, of course, had the fantastic merit of further increasing the
10 area to which Côte d'Ivoire would be able to claim sovereign rights.⁵¹ In the course of
11 five short years then, we have three different Ivorian methodologies and five different
12 claimed boundaries, offering ever more extensive areas of ocean and seabed for
13 Côte d'Ivoire to exploit. Mr President, if this is a trade, in our trades it would be called
14 an ocean grab, totally unconnected to the law, abandoning decades of practice, and
15 offering a clear and simple lesson in how to damage the stability of international
16 relations, how to upset investors and undermine the rule of law.

17
18 The constant changes are unsettling, and not just for Ghana or third parties. Côte
19 d'Ivoire's inconsistency persists into its written pleadings. On the one hand, it argues
20 that the bisector method is, as it puts it, "the most appropriate method",⁵² but then in
21 another part of the very same pleading it argues that the "equidistance/relevant
22 circumstances method" is not only possible but also that it leads to an "equitable
23 result".⁵³

24
25 Having passed across three methodologies and five boundary lines, Côte d'Ivoire
26 seems to have ended up where it began five decades ago: it settles on the classical
27 three-stage approach, first constructing a provisional equidistance line and then
28 adjusting it in light of what it identifies – wrongly in our view – as "relevant
29 circumstances". Miraculously – miraculously, but no doubt entirely by coincidence –
30 the very same factors that Côte d'Ivoire has identified in favour of Angle Bisector 2
31 then just happen to accord, with absolute precision, to the "relevant circumstances"
32 invoked by Côte d'Ivoire to adjust its provisional equidistance line to a location that is,
33 remarkably, exactly along the same line of Angle Bisector 2! Life really is wonderful!
34 The law is wonderful! But, of course, everything comes at a cost: by engaging with
35 the equidistance methodology, Côte d'Ivoire has fatally undermined its own bisector
36 claim, and forces the innocent observer to pose the question: why did you abandon
37 equidistance only to then embrace it again after five years? What was the fuss?

38
39 There is here a fundamental contradiction in Côte d'Ivoire's case. One can but
40 imagine the debates that might have taken place between the Côte d'Ivoire team as
41 it moved from Counter-Memorial to Rejoinder. "Do we stick with bisector, even
42 though it seems to us as reasonable international lawyers to be very obviously
43 hopeless; or do we ditch it? If we ditch it, the Ghanaians will say we've changed
44 position again – change number 5!" So, faced with this situation, Côte d'Ivoire has
45 done perhaps what any litigant would do faced with such an unfortunate difficulty; it
46 has embraced a middle ground, adopting both a half-hearted embrace of bisector,
47 and a half-hearted embrace of its view of equidistance.

⁵¹ MG, pp. 80-86.

⁵² CMCI, paras. 26 ("*la méthode dite de la bissectrice est dans le cas d'espèce la plus appropriée...*").

⁵³ *Ibid.*, para. 7.1 ("*résultat équitable (...) méthode de l'équidistance*").

1
2 Against this curious background, it is time to leave the realm of fantasy and return to
3 the real world, a place where two reasonable States long ago reached agreement
4 as to the location of their maritime boundary. Only in the event that you were to find
5 that there is no existing boundary, no tacit agreement, no representation and
6 reliance, no estoppel, so that a fresh delimitation might be called for – only then do
7 you need to adopt the standard approach to maritime delimitation. On either
8 approach, there are no grounds for the bisector approach, as Côte d’Ivoire and their
9 Counsel, in their heart of hearts, must surely know.

10
11 Let us turn to the law. Articles 74 and 83 of the 1982 Convention do not specify the
12 method to be followed to achieve an equitable solution; but there is now a well-
13 settled jurisprudence in support of the three-stage equidistance/relevant
14 circumstances method. It is reflected in international jurisprudence, at the ICJ, at
15 ITLOS, and in Annex VII arbitrations. The jurisprudence is *constant*. It confirms that
16 in the absence of any compelling reasons that make it unfeasible to identify
17 appropriate base points and to draw a provisional equidistance line, equidistance is
18 the starting point.

19
20 Côte d’Ivoire says in response that we are somehow “biased” towards
21 equidistance.⁵⁴ We are biased, but not in favour of equidistance; we are biased in
22 favour of applying the law as it is, not as Côte d’Ivoire would like it to be. That law is
23 reflected, for example, in the ICJ’s leading judgment, the *Black Sea* judgment of
24 2009:

25
26 So far as delimitation between adjacent coasts is concerned, an equidistance
27 line will be drawn unless there are compelling reasons that make this
28 unfeasible in the particular case.⁵⁵

29
30 The same approach is reflected in the ITLOS judgment of 2012 in *Bangladesh v.*
31 *Myanmar*.⁵⁶ The Tribunal in that case ruled that it could draw an equidistance line
32 between Bangladesh and Myanmar, and it rejected Bangladesh’s argument in
33 support of an angle bisector.⁵⁷ That decision has been very widely supported,
34 including by Bangladesh and Myanmar.

35
36 The law imposes upon Côte d’Ivoire the burden of persuading you, this Tribunal, that
37 there are “compelling” reasons why equidistance is “unfeasible” in this case. With the
38 greatest respect to our friends on the other side of the Bar, Côte d’Ivoire has
39 manifestly failed to do that. Indeed, we say it has disabled itself from making the
40 argument by the very fact that it has, in its written pleadings, easily been able to draw
41 a provisional equidistance line and signalled that it had no difficulty doing so.
42

⁵⁴ Rejoinder Côte d’Ivoire (14 Nov. 2016) (hereinafter “RCI”), para. 1.5.

⁵⁵ *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* Judgment, ICJ Reports 2009, p. 61, para. 116.

⁵⁶ *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 v. Myanmar*, Judgment”), para. 233.

⁵⁷ *Ibid.*, paras. 238-240.

1 Therefore, there is no real disagreement between the Parties as to the feasibility of
2 drawing an equidistance line; in fact the Parties did exactly that for more than five
3 decades, and they have done it again in these proceedings. With that simple
4 observation, a claim to an angle bisector methodology falls away. It collapses.

5
6 In recent times only one case – just one – has employed the bisector methodology,
7 and it is a case that is easily distinguishable from this one. In *Nicaragua v. Honduras*,
8 the ICJ was called upon to delimit a single maritime boundary projecting from the
9 adjacent coasts of the two States. The most salient features of the case seem to
10 have been lost on Côte d’Ivoire. First, the geographical context of that case was
11 highly unusual. Second, in that case neither Party had as its main argument a call for
12 an equidistance-based approach as the most suitable method of delimitation.⁵⁸
13 Against this background, the International Court said that

14
15 the equidistance method does not automatically have priority over other
16 methods of delimitation⁵⁹

17
18 and those words are clutched tightly by Côte d’Ivoire.⁶⁰ The Court found in that case
19 that it was not feasible to construct an equidistance line because of the unique
20 configuration of the land boundary terminus at Cape Gracias a Dios –

21
22 a sharply convex territorial projection abutting a concave coastline and the
23 highly unstable nature of the mouth of the river Coco at the Cape, exhibiting a
24 very active morpho-dynamism.⁶¹

25
26 These factors, said the Court, made it “impossible” to identify reliable basepoints to
27 construct a provisional equidistance line.⁶² The difficulty was compounded by a
28 dispute over title to several small islands and sandbanks located at the river
29 mouth.⁶³ Not one of these factors pertain in the present case. Both Parties have
30 identified base points, and Mr Reichler will have more to say on this in due course.

31
32 (*Continued in French*) Mr President, the time has come to take the coffee break.

33
34 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

35 Thank you, Professor Sands. Indeed, it is 11.28, 11.29, so we will break now for 30
36 minutes and reconvene at 12 o’clock. Thank you.

37
38 (Break)

39
40 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

41 Please be seated. We will now resume the hearing started this morning and I give
42 the floor to Professor Philippe Sands for him to conclude his presentation. You have
43 the floor.

44

⁵⁸ *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea*
(*Nicaragua v. Honduras*), Judgment, ICJ Reports 2007, p. 659., para. 275.

⁵⁹ *Ibid.*, para. 272.

⁶⁰ See e.g. CMCI, paras 3.49, 6.2; RCI, paras 1.14, 1.16.

⁶¹ *Nicaragua v. Honduras*, Judgment, paras. 277-283.

⁶² *Ibid.*, para. 280.

⁶³ *Ibid.*, para. 279.

1 **PROFESSOR SANDS:** Thank you, Mr President. Having taken no assistance from
2 the case of *Honduras v. Nicaragua*, Côte d'Ivoire seeks assistance in a small
3 number of other cases, although it is noticeably reticent about their facts:⁶⁴
4

5 In *Tunisia v. Libya* the use of the bisector for the second segment of the line, from
6 point 2 on the plate, was simply to give half-effect to the Kerkennah Islands. The
7 Court used the standard method of drawing two lines: one giving full effect to the
8 islands, the other disregarding them. The bisector of the angle formed by these two
9 lines then defined the direction of the second segment giving half effect to the
10 islands.⁶⁵ Of course, the case is distinguishable because there are no such small
11 features such as this in our case to distort an equidistance boundary or line.
12

13 The Chamber of the Court in *Gulf of Maine* used a bisector in the first leg of the
14 boundary between points A and B, and it did so to avoid the use of basepoints
15 located, as the Chamber of the Court put it, “on a handful of isolated rocks.”⁶⁶
16 Again, there are no such features in this case, and no analogous difficulties.
17

18 As for the *Guinea v. Guinea-Bissau* (1985) award, it is sufficient to record what
19 Counsel for India had to say about that award in recent proceedings. He described
20 the award as “absurd”,⁶⁷ an “eccentric decision” that was “not principled” and with
21 “no legal basis whatsoever”.⁶⁸
22

23 Cases where courts and tribunals have declined to depart from the established
24 three-stage equidistance approach are equally instructive. Bangladesh argued for
25 an angle-bisector method in the *Bay of Bengal* case, and that was unanimously
26 rejected. If there was no reason to apply it in that case, despite a significant
27 concavity, there can be no conceivable grounds for having recourse to it in this
28 case. In *Bangladesh v. Myanmar* this Tribunal delimited the Bay of Bengal in
29 conformity with prevailing jurisprudence, by equidistance methodology and the
30 three-stage process.⁶⁹ The Annex VII Tribunal in the parallel case with India
31 distinguished Bangladesh’s case from *Nicaragua v. Honduras*: both Parties were
32 able to locate basepoints on the coast of the other; both constructed a provisional
33 equidistance line.⁷⁰
34

35 In *Peru v. Chile*, the International Court adopted an equidistance-based approach
36 over sections of the boundary that had not been delimited by prior agreement. From
37 point A (80 nautical miles from the starting point) onwards the Court employed the
38 three-stage approach, starting with the construction of a provisional equidistance
39 line.⁷¹ Even in the somewhat unusual circumstances of that case, the Court

⁶⁴ E.g. CMCI, paras 6.3-6.7, 6.40-6.41.

⁶⁵ *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18, para. 129.

⁶⁶ *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)*, Judgment, ICJ Reports 1984, p. 246., paras. 210-211.

⁶⁷ *Bangladesh v. India*, Transcript, 13 December 2013, p. 414. (Prof A Pellet)

⁶⁸ *Bangladesh v. India*, Transcript, 18 December 2013, p. 632. (Prof A Pellet)

⁶⁹ *Bangladesh v. Myanmar*, Judgment, para. 240.

⁷⁰ *Bangladesh v. India*, Award, paras. 345-346.

⁷¹ *Maritime Dispute (Peru v. Chile)*, Judgment, ICJ Reports 2014, p.3, paras. 184-186.

1 indicated that an equidistance-based solution was appropriate from point A to
2 point B in the absence of “compelling reasons preventing this.”⁷²

3
4 In *Guyana v. Suriname*, Suriname urged the Tribunal to use the bisector method on
5 the basis of the *Tunisia v. Libya, Gulf of Maine* and *St. Pierre and Miquelon*.⁷³ This
6 was rejected. The Arbitral Tribunal distinguished those cases because

7
8 the general configuration of the maritime area to be delimited does not present
9 the type of geographical peculiarities which could lead the Tribunal to adopt a
10 methodology at variance with that which has been practised by international
11 courts and tribunals during the last two decades ...⁷⁴

12
13 With such limited case law to draw on – and none that is on point or remotely
14 analogous to this one – Côte d’Ivoire has turned to a small number of bilateral
15 agreements where States are said to have used “bisector lines.”⁷⁵ Examples of this
16 State practice are listed but are not analysed by our friends. Even assuming them to
17 be of some relevance, such agreements are to be treated with care, for a number of
18 reasons. First, seven of the eight agreements Côte d’Ivoire invokes pre-date the
19 signing of the 1982 Convention and are far from being representative of the
20 evolution of the law of the sea. Second, there will in these cases inevitably be a
21 number of extra-legal considerations – political, historical, economic or other – that
22 might come into play to determine a negotiated outcome. States are not bound to –
23 and do not – simply apply the law in reaching a formal negotiated agreement to
24 delimit a maritime boundary. Third, the agreements on which Côte d’Ivoire places
25 reliance are not actually helpful to its case, as I noted yesterday. We regret that
26 each has not been presented as accurately or correctly as it might have been.

27
28 I will give a number of examples. The first example: Côte d’Ivoire claims that the
29 1980 Costa Rica-Panama Treaty is, as it puts it, “particularly illustrative”⁷⁶ and offers
30 a *Croquis* D1.4, which is on your screens; yet this Treaty actually describes the
31 Pacific boundary between the two States as a “median line”.⁷⁷

32
33 The 1972 Agreement between Brazil and Uruguay (Côte d’Ivoire’s *Croquis* D1.2)
34 establishes a maritime boundary between the two adjacent countries by means of a
35 single line running nearly perpendicular to the general line of the coast. In a joint
36 declaration in 1969, both States recognized as the lateral limit of their respective
37 maritime jurisdictions the line equidistant from the nearest points of the coastlines of
38 both States. This agreement achieved substantially the same result as a true or
39 strict equidistance line.⁷⁸

40

⁷² *Ibid.*, para 180.

⁷³ *Delimitation of the Maritime Boundary between Guyana and Suriname (Guyana v. Suriname)*, Award of 17 September 2007, 30 UNRIAA I (2007), para. 370.

⁷⁴ *Ibid.*, para. 372.

⁷⁵ RCI, para. 1.8 and n. 25 with associated sketch maps.

⁷⁶ RCI, paras. 2.24, 2.27.

⁷⁷ See Treaty on the delimitation of maritime areas and maritime cooperation between the Republic of Costa Rica and the Republic of Panama, signed on 2 February 1980 (LIS No. 97 (1982)). See also IMB, Vol I, Report 2-6, p 537. Charney has suggested that whilst officially referred to as a median or equidistant line, it might better be classified *strictu sensu*, as a modified equidistant line.

⁷⁸ IMB, Report 3-4; LIS No. 73 (1976).

1 Elsewhere, Côte d'Ivoire appears to have engaged in a degree of artful
2 manipulation, as may be seen in the sketch maps that they rely upon in their
3 Rejoinder.

4
5 Côte d'Ivoire's *Croquis* D1.6, for example, is said to depict the outcome of the 1976
6 and 1978 Treaties between the United States and Mexico. However, as you can
7 see clearly in this following plate Côte d'Ivoire's presentation of the coastal façade
8 does not correspond to the actual coast, or indeed the coast that was used to plot
9 the boundary. Of course, these are times in which there are facts and there are
10 facts; but for the purposes of this Tribunal, you have to rely on the facts. The United
11 States and Mexico have reached three agreements delimiting their boundaries in
12 the Gulf of Mexico and the Pacific. Each boundary is some form of an equidistance
13 line.⁷⁹

14
15 Côte d'Ivoire's *Croquis* D1-7 depicting the 1981 agreement between Brazil and
16 France in respect of French Guiana is, we would suggest, somewhat misleading.
17 Once again, you can see the unsatisfactory coastal fronts drawn by Côte d'Ivoire.
18 They do not follow the actual coast: one is on land, the other at sea. This line
19 actually presents a simplified form of equidistance.⁸⁰

20
21 Côte d'Ivoire's *Croquis* D1.8 is said to depict the 1996 Agreement between Estonia
22 and Latvia. As you can see, this is plainly not relevant in light of the complex
23 geographical configuration of the coasts in that area, as well as the presence of
24 islands. It starts out as a delimitation between adjacent coasts, but then turns into a
25 situation of opposite coasts inside the Gulf of Riga. Outside the gulf the coasts once
26 again become adjacent. The line is described as a "combination of different
27 methods". Besides equidistance, the historic boundary between Estonia and Latvia
28 established during the 1920s, the theory of restricted maritime zones for islands
29 straddling the median line, and a perpendicular were all used in this agreement."⁸¹

30
31 Other agreements invoked by Côte d'Ivoire are similarly irrelevant. For example, it
32 places reliance on two instruments that are not international agreements at all: Côte
33 d'Ivoire's *Croquis* D1.3 and *Croquis* D1.5 depict the delimitation agreement
34 concluded in 1964 between the Sovereigns of Sharjah and Umm al-Qaywayn and
35 the 1968 Boundary Agreement between Abu Dhabi and Dubai. These were
36 elements of a broader package deal brokered by the United Kingdom in relation to
37 two of the constituent elements of what would become the United Arab Emirates in
38 1971. At the time of signature none of the Trucial States, as they were known, were
39 Parties to the 1958 Geneva Convention on the Continental Shelf and a number of
40 non-legal considerations came into play.⁸² Professor Charney referred to both as
41 reflecting "simplified equidistant lines".⁸³ I could go on but there is no need to do so.

⁷⁹ Treaties between the United States and Mexico of 24 November 1976 and 4 May 1978, IMB, Volume I, Report 1-5. See also Treaty between the United States and Mexico on the Delimitation of the Continental Shelf in the Western Gulf of Mexico beyond 200 Nautical Miles, 9 June 2000.

⁸⁰ IMB, Volume I, Report 3-3.

⁸¹ IMB, Volume IV, Report 10-15, pp. 2996, 3008, 3010.

⁸² See *inter alia* Boundary Agreement between Abu Dhabi and Dubai of 18 February 1968 (IMB, Volume II, Report Number 7-1) and the Agreement between the Rulers of Sharjah and Umm al Qaywayn, (IMB, Volume I, Report No. 7-10)

⁸³ See the Agreement between the Rulers of Sharjah and Umm al Qaywayn, (IMB, Volume I, Report No. 7-10, p. 1549. It notes that the "British Foreign Office was of the view that, given the particular

1 You get the point. None of the examples they provide in their written pleadings can
2 possibly justify the use of a bisector in this case.

3
4 Côte d'Ivoire does not have the law on its side. What about geography? Given that
5 Côte d'Ivoire accepted and applied an equidistance boundary for five decades, and
6 given that it has in its pleadings recognized that drawing equidistance is both
7 feasible and, significantly, capable of yielding an equitable result, not much more
8 needs to be said by this Special Chamber to disregard the angle bisector argument.
9 If you feel any need to invoke geography, then Mr Reichler gave you all you need to
10 put the bisector argument out of its misery. There is no concavity. There is no
11 coastal instability. There is no insufficiency of basepoints. There is no "historical
12 accident" at Jomoro. There is no regional dimension. There is no bisector.

13
14 Finally, for the avoidance of any doubt, the angle bisector actually set out in Côte
15 d'Ivoire's pleadings cannot possibly be said to "constitute a fair maritime boundary
16 between the Parties".⁸⁴ To the contrary, like Meridian 1 and 2, and Bisector 1, its
17 short-lived predecessors, this latest bisector operates to produce a grossly
18 inequitable result. It would, in the words of the International Court of Justice in
19 *Nicaragua v. Honduras*, ignore the important caveat on the use of the bisector,
20 namely, the need that special care must be taken to avoid "completely refashioning
21 nature".⁸⁵

22
23 Côte d'Ivoire's angle bisector does exactly that, like its late predecessors, and it is
24 the product of an inherently subjective approach. It is based on a use of artificial
25 coastal façades that bear no relation to the actual directions of the Parties' relevant
26 coasts. You can test this with Côte d'Ivoire's *Croquis 6.7*: the relevant coasts are
27 ignored in favour of lines that purportedly represent the entire coast of both Parties,
28 most of the lengths of which do not even face the maritime area in dispute. On Côte
29 d'Ivoire's approach, Ghana's purported "coastal front ..." ⁸⁶ is not drawn along the
30 coast at all, but is entirely on land, and on occasion at a considerable distance from
31 the sea. Côte d'Ivoire's "coastal front" on the other hand is entirely at sea, and a
32 significant distance from the coast. This is artificial thinking, a major refashioning of
33 geography, one based on an imaginative approach that ignores the actual coasts
34 and replaces them with a wholly new concept, the concept of "*les côtes utiles*" – the
35 "useful coasts"⁸⁷ – useful perhaps to Côte d'Ivoire but not useful, we would submit, to
36 a court of law or to the law itself.

37
38 Mr President, Members of the Special Chamber, there is really no basis for an angle
39 bisector in this case. None. In our submission, it is not even arguable. It is a
40 concoction, intended to expand the area in dispute, to create a larger cake with
41 larger slices. The plausible area in dispute is actually far smaller, as I indicated
42 yesterday and as you can see from the graphic on the screen. This depicts three
43 lines. From west to east, they are, first, the customary equidistance boundary

geographical configuration of the Trucial Coast, the 'simplified' equidistant line could be used for a comprehensive delimitation of seabed boundaries between the Trucial States."

⁸⁴ RCI, para. 7.

⁸⁵ *Nicaragua v. Honduras*, Judgment, para. 289.

⁸⁶ CMCI, para. 6.46 ("*façades côtière ...*").

⁸⁷ RCI, para 3.10 *et seq.* ("*...les côtes utiles...*").

1 recognized by both Parties for over half a century until 2009; second, the provisional
2 equidistance line drawn by Ghana based on official charts; and third, the provisional
3 equidistance line drawn by Côte d'Ivoire in its Counter-Memorial, based on its own
4 recently prepared charts, although we say you should not use those. We say that the
5 first of these lines, the customary equidistance boundary, is the existing boundary,
6 so there is no need for a fresh delimitation at all. Ghana invites this Special Chamber
7 to confirm the existing boundary and to plot its precise coordinates.

8
9 If there is to be a fresh delimitation, the only real issues in this case would be, firstly,
10 determining whether the second or the third line on this chart is the proper
11 provisional equidistance line; secondly, determining whether there are any relevant
12 circumstances that warrant an adjustment of the provisional boundary line – you
13 choose; and thirdly, determining whether the resulting delimitation line is equitable,
14 by application of the disproportionality test that constitutes the third stage of the
15 process, taking into account relevant circumstances.

16
17 Mr Reichler will now address those issues, and I ask that you invite him to the bar.

18
19 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I
20 would like to thank Professor Sands for his presentation and I now give the floor to
21 Mr Paul Reichler.

22
23 **MR REICHLER:** Mr President, Members of the Special Chamber, good afternoon.

24
25 The central premise of Ghana's case is that, having regard to the longstanding
26 practice of the Parties, there is an agreed, existing maritime boundary that follows an
27 equidistance line that the Parties recognized as their international border for half a
28 century. You have seen this in our written pleadings and heard it from my very able
29 colleagues at these hearings. There is no need for me to repeat their presentations.
30 Instead, I will focus on Ghana's alternative argument, which is that, in the
31 geographical circumstances present here, if the Special Chamber determines that a
32 fresh delimitation is required, the boundary should be delimited by the equidistance
33 method, which would place it, in the submission of Ghana, exactly where it has been
34 all along.

35
36 In particular, if the Chamber opts to perform a fresh delimitation in these geographic
37 circumstances, the case law would require it to follow the well-established three-step
38 process that Professor Sands has just articulated.

39
40 This is the procedure that has been adopted both by ITLOS and the ICJ. Professor
41 Sands read to you from the ITLOS judgment in 2012 in *Bangladesh v. Myanmar*.

42
43 ...an equidistance line will be drawn unless there are compelling reasons that
44 make this unfeasible in the particular case.⁸⁸
45

⁸⁸ *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment of 14 March 2012, ITLOS Reports 2012, p. 4 (hereinafter "*Bangladesh v. Myanmar*, Judgment"), para. 233 (quoting *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, ICJ Reports 2009, p. 61, para. 116 (hereinafter "*Romania v. Ukraine (Black Sea)*, Judgment")).

1 That remains the rule today. The three maritime boundary delimitation cases decided
2 since *Bangladesh v. Myanmar* have followed it. The ICJ, in both *Nicaragua v.*
3 *Colombia* and *Peru v. Chile*, and the Arbitral Tribunal in *Bangladesh v. India*,
4 employed equidistance methodology, and performed the delimitation exercise by first
5 drawing an equidistance line.⁸⁹

6
7 There is no reason to break precedent here. This is, if anything, an even more
8 compelling case for equidistance than any of those decided previously. In the first
9 place, there are five decades of consistent and mutual practice recognizing and
10 observing the customary equidistance boundary. Beyond this, even Côte d'Ivoire
11 acknowledges the appropriateness of equidistance methodology in this case. In its
12 Counter-Memorial, Côte d'Ivoire admits in the official English translation:

13
14 If the present Chamber were to consider the bisector method inapplicable to
15 this particular case, it might arrive at an equitable result by delimiting the
16 Parties' maritime areas according to the equidistance/relevant circumstances
17 method.⁹⁰

18
19 This is a significant concession, even though, with respect, our friends on the other
20 side have got the law backwards. The applicability or inapplicability of the angle
21 bisector method is not the first step to be considered. Reliance on the equidistance
22 method does not depend on a prior finding of inapplicability of the angle bisector. The
23 law is the reverse of that. The first consideration, especially in the case of two States
24 with adjacent coasts, is whether equidistance is feasible.⁹¹ If it is, then there is no
25 need to consider an angle bisector or any other alternative to equidistance in the first
26 step of the delimitation process. If it is feasible to draw an equidistance line, then that
27 is the starting point for the process, and our friends have shown that an equidistance
28 line is feasible in the most convincing way: they have drawn one, as I will soon show
29 you.

30
31 Mr President, there are overwhelming reasons, based on the coastal geography, why
32 equidistance is not only appropriate in this case, but is the *only* delimitation
33 methodology that could reasonably be considered appropriate. As you have seen,
34 the coastline in the vicinity of the land boundary terminus is almost perfectly straight.
35 Côte d'Ivoire acknowledges this in the Rejoinder, where it refers to the "fact" that all
36 of the base points used to construct its provisional equidistance line (*Interpretation*
37 *from French*)

38
39 ...lie on a segment of perfectly straight coast.⁹²

89 See *Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, UNCLOS Annex VII Tribunal, Award of 7 July 2014 (hereinafter "*Bangladesh v. India*, Award"), paras. 341-345; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, ICJ Reports 2012, p. 624 (hereinafter "*Nicaragua v. Colombia*, Judgment"), paras. 190-199; *Maritime Dispute (Peru v. Chile)*, Judgment, ICJ Reports 2014, p. 3 (hereinafter "*Peru v. Chile*, Judgment"), paras. 180-195.

90 Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), para. 7.1

91 See *Bangladesh v. Myanmar*, Judgment, para. 233 (citing *Romania v. Ukraine (Black Sea)*, Judgment, para. 116).

92 RCI, para. 2.17.

1 (Continued in English) All of Côte d'Ivoire's base points, and all of Ghana's, are
2 located on this very straight portion of the coast.

3
4 The straightness of the coast in this area means there are no unusual or anomalous
5 coastal features that exert influence on the provisional equidistance line. There are
6 no coastal projections into the sea; no indentations; no coastal concavities that affect
7 the direction or course of the equidistance line; no offshore islands, cays or rocks to
8 skew the equidistance line in favour of, or in prejudice to, either Party.

9
10 As we have said, this is a textbook case for the application of equidistance
11 methodology. That explains why the Parties mutually observed an equidistance
12 boundary for five decades. If equidistance were not a feasible or appropriate starting
13 point in this case, it is difficult to imagine where else it might be justified.

14
15 Côte d'Ivoire has argued, especially in its Rejoinder, that there are factors – some
16 geographical, some not – that militate in favour of a major adjustment of the
17 equidistance line.⁹³ Ghana disagrees, but that is an issue for the second stage of the
18 three-step process: whether to make an adjustment to the provisional line to account
19 for relevant circumstances. It does not affect the feasibility or appropriateness of
20 starting the process, in stage one, with the drawing of a provisional equidistance line.

21
22 The drawing of the line begins at the land boundary terminus. As Ms Brillembourg
23 has demonstrated, the Parties are agreed that the location of the LBT is at BP 55.
24 They have agreed on its precise geographic coordinates.⁹⁴ They also agree that
25 BP 55 is slightly removed from the low water line.⁹⁵ They have chosen different
26 routes from BP 55 to get to the low water line. As you can see here, and at tab 3,
27 Ghana has taken the shortest and most direct route. Côte d'Ivoire has chosen to
28 continue the land boundary between BP 54 and BP 55 along the same azimuth until
29 it reaches the coast, resulting in the placement of the LBT somewhat to the east of
30 where Ghana places it. Despite this difference in approach, their respective starting
31 points for the maritime boundary are so close together that there is very little effect on
32 the provisional equidistance line, as Ms Brillembourg showed you. As shown here, in
33 this segment the two provisional equidistance lines run in parallel with one another
34 only 30 metres apart.

35
36 From the LBT, the direction of the line is determined by reference to specific base
37 points placed along the relevant coasts. This requires an identification of the relevant
38 coasts. The significance of the relevant coasts, in the first stage of the delimitation
39 process, was explained by the ICJ in the *Black Sea* case:

40
41 [I]t is necessary to identify the relevant coasts, in order to determine what
42 constitutes, in the specific context of a case, the overlapping claims to these
43 zones.⁹⁶

⁹³ See *ibid.*, paras. 2.28-2.35 (the alleged cut-off effect), 2.36-2.42 (effect on other states), 2.43-2.48 (allegations of coastal instability), 2.49-2.61 (the so-called "Jomoro Peninsula"), 2.62-2.74 (the "exceptional concentration of hydrocarbon resources"), 3.30-3.32 (disparity in coastal lengths); CMCI, paras. 7.39-7.59.

⁹⁴ See Memorial of Ghana (4 Sept. 2015) (hereinafter "MG"), paras. 2.2, 3.116, 4.13-4.14; CMCI, paras. 2.29, 7.28; Reply of Ghana (25 July 2016) (hereinafter "RG"), para. 3.94; RCI, para. 2.102.

⁹⁵ See CMCI, para. 7.23; RG, paras. 3.95-3.97; RCI, para. 2.102.

⁹⁶ *Black Sea Case*, para. 78.

1
2 Accordingly, in the first stage of the delimitation process, we are concerned with
3 identifying the coasts, or coastal segments, that give rise to overlapping maritime
4 claims. The relevant coasts, therefore, are not synonymous with the Parties' entire
5 coasts. This was observed by the ICJ as far back as 1982, in the *Tunisia v. Libya*
6 continental shelf case, and it continues to represent the law on this point:

7
8 it is not the whole of the coast of each Party which can be taken into account;
9 the submarine extension of any part of the coast of one Party, because of its
10 geographic situation, which cannot overlap with the extension of the coast of
11 the other, is to be excluded from further consideration....⁹⁷

12
13 The ICJ reiterated this more recently in its 2012 Judgment in *Nicaragua v. Colombia*:

14
15 ...in order for a coast to be regarded as relevant for the purpose of a
16 delimitation, it "must generate projections which overlap with projections from
17 the coast of the other Party...."⁹⁸

18
19 This now appears to be a point of agreement between Ghana and Côte d'Ivoire. In
20 their Rejoinder, Côte d'Ivoire acknowledged that the relevant coasts are those that
21 face, or project onto, the area to be delimited, and that any coastal segments that
22 face away from the area to be delimited are to be treated as irrelevant.⁹⁹ We are in
23 agreement with them on that.

24
25 In applying this concept to the coasts at hand, Côte d'Ivoire determines that the only
26 part of Ghana's coast that is relevant is the segment between the LBT and Cape
27 Three Points, which, they say, faces on to the area to be delimited. Côte d'Ivoire now
28 considers that the rest of Ghana's coast – the portion that extends east from Cape
29 Three Points to the border with Togo – can be "disregarded", because, in official
30 English translation:

31
32 The application of the directional projections technique therefore results in the
33 Ghanaian coast located to the east of Cape Three Points being disregarded in
34 so far as its extension could not meet that of the coastline of Côte d'Ivoire
35¹⁰⁰

36
37 Ghana is in complete agreement with Côte d'Ivoire on this point. Only the portion of
38 its coast west of Cape Three Points, which faces to the south-southwest, is relevant
39 to the delimitation of the boundary in this case.¹⁰¹ The Parties also agree that the
40 length of Ghana's relevant coast between Cape Three Points and the LBT is
41 121 km.¹⁰² This stretch of coast continues to face south-west for another 100 km
42 west of the LBT, where it forms part of Côte d'Ivoire's relevant coast. The
43 consequence of the Parties' agreement on this point is that any correctly drawn

⁹⁷ *Continental Shelf (Tunisia v. Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1982, p. 18 (hereinafter "*Tunisia v. Libya*, Judgment"), para. 75.

⁹⁸ *Nicaragua v. Colombia*, Judgment, para. 150 (quoting *Romania v. Ukraine (Black Sea)*, Judgment, para. 99).

⁹⁹ See RCI, paras. 3.17-3.29.

¹⁰⁰ *Ibid.*, para. 3.26.

¹⁰¹ See MG, para. 5.80; RG, para. 3.49; RCI, para. 3.26.

¹⁰² RG, para. 3.49; RCI, para. 3.30

1 equidistance line, whether the one observed by the Parties for more than five
2 decades as their international boundary or one drawn freshly by Ghana or Côte
3 d'Ivoire or this Special Chamber, must inevitably follow a south-westerly direction.
4 These maps are at tab 4 of your folders.

5
6 The Parties do not agree entirely on what constitutes Côte d'Ivoire's relevant coast.
7 In the Rejoinder, Côte d'Ivoire argues that its entire coast is relevant.¹⁰³ But it is
8 undisputed that sections of Côte d'Ivoire's coast are too far from the LBT to have any
9 impact on the equidistance line, or to overlap with the seaward projection of Ghana's
10 coast. This means that they cannot be relevant. In its written pleadings Ghana
11 showed that Côte d'Ivoire's relevant coast ends near Sassandra, some 308 km west
12 of the LBT.¹⁰⁴ Côte d'Ivoire measures its relevant coast as 510 km. However, this
13 disagreement on the length of Côte d'Ivoire's relevant coast, to which I will return in a
14 few moments, does not have any effect on the first stage of the delimitation process
15 – the drawing of a provisional equidistance line.

16
17 This is done by the application of CARIS software, the use of which is agreed by the
18 Parties. Both have used it in establishing their base points and constructing their
19 respective provisional equidistance lines. As shown here, and at tab 5, the software
20 identifies different base points for Ghana and Côte d'Ivoire, because they use
21 different charts to represent the low water line. Ms Brillembourg has discussed the
22 differences in the charts on which Ghana and Côte d'Ivoire rely, that is, the
23 differences between BA Chart 1383, the official chart agreed to by the Parties on
24 which Ghana relies, and *Carte marine* 001, which was prepared by Côte d'Ivoire
25 during this arbitration¹⁰⁵ and made its first appearance in the Counter-Memorial. As
26 she explained, we continue to regard BA Chart 1383, which is virtually identical to
27 SHOM 7786,¹⁰⁶ the chart that Côte d'Ivoire regarded as its official chart prior to the
28 submission of its Counter-Memorial, as the most reliable in regard to depiction of the
29 low water line in the vicinity of the land boundary terminus.

30
31 *This* is the provisional equidistance line produced by application of the CARIS
32 software to chart BA 1383 and to SHOM 7786.

33
34 We have now added the provisional equidistance line constructed by Côte d'Ivoire
35 based on its new *Carte marine*. As you can see on your screens and at tab 6, it is
36 not very different from Ghana's provisional equidistance line. *This* map, also at tab 6,
37 is Côte d'Ivoire's own depiction of the two Parties' provisional equidistance lines, and
38 it again confirms how similar they are. At 12 nautical miles, the two lines are less
39 than one nautical mile apart. At 200 nautical miles, the distance between them is
40 less than 5 nautical miles. Most notably, they both extend seaward to the south-west,
41 along very similar azimuths. Ghana's line follows an azimuth of 191.9 degrees. Côte
42 d'Ivoire says that its line follows an azimuth of 191.2 degrees.¹⁰⁷ The striking
43 similarity of these lines further underscores the appropriateness and reliability of an
44 equidistance boundary.

103 RCI, paras. 3.27-3.28.

104 MG, para. 5.80; RG, para. 3.49.

105 See RG, paras. 3.11, 3.28, 3.53; RCI, para. 2.110.

106 RG, para. 3.53.

107 CICM, para. 7.27.

1 Notwithstanding this, Côte d'Ivoire belittles its own provisional equidistance line in an
2 attempt to discredit equidistance altogether and provide a justification for replacing it
3 with – what else? – an angle bisector. It does this by attacking the base points on
4 which its equidistance line is constructed. Côte d'Ivoire does not argue that CARIS
5 software has identified the wrong base points or provided inaccurate geographic
6 coordinates; to the contrary, it confirms the accuracy and reliability of the software in
7 that regard.¹⁰⁸ It argues, instead, that even though these are the correct base points
8 on which to construct the provisional equidistance line, they are too few in number
9 and located too close to one another to produce a reliable equidistance line.¹⁰⁹

10
11 Our response to this argument is that Côte d'Ivoire has turned the virtue of
12 equidistance into a vice. It is the near perfect straightness of the coast in the vicinity
13 of the land boundary terminus – a straightness that extends for nearly 100 km in
14 either direction, and the complete absence of any changes of direction or anomalous
15 coastal features – that makes this such a classic case for equidistance; and it is that
16 same extended straightness and absence of turning points that accounts for the fact
17 that all the base points are in relatively close proximity to the LBT.

18
19 *This* sketch map, which is also at tab 7, was prepared by our technical experts. It
20 illustrates the point. The coastline here is perfectly straight. Because of that perfect
21 straightness, the equidistance line is a perpendicular that emanates from a single
22 point. The point is located precisely at the land boundary terminus. This point alone
23 controls the equidistance line out to 200 nautical miles, and beyond. No one could
24 reasonably argue that equidistance here is unfeasible, or inappropriate, or that it
25 produces an inequitable result because of a small number of base points. As we
26 introduce very slight changes in the coast, so that it is not perfectly straight but
27 almost so, we begin to produce more base points. However, the number and location
28 of the base points will depend on how close the coastline is to being perfectly
29 straight. Equidistance always uses the closest base points on either side of the LBT.
30 The closer the coast is to perfectly straight, the fewer base points will be needed to
31 construct the equidistance line, and the closer they will be to the LBT. Mr President,
32 this is science, a field of knowledge that has recently come into dispute in my own
33 home city of Washington, but not in Hamburg.

34
35 Thus, when Côte d'Ivoire complains that the provisional equidistance line is derived
36 from a small number of base points located close together – in this case along an
37 8.7 km section of the coast (or, using Ghana's base points, along a 13.4 km coastal
38 segment)¹¹⁰ – what they are actually doing is emphasizing that the coast is almost
39 perfectly straight, that it is so for a significant distance on either side of the land
40 boundary terminus, that there are very few turning points which are very modest in
41 nature, and that this is therefore an especially appropriate case for equidistance.
42 They are also confirming that their own consistent practice between 1957 and 2009,
43 in recognizing an equidistance line as the international boundary, was based on the
44 correct premise.

45
46 In any event, there are more than enough base points to construct a reliable
47 provisional equidistance line. Côte d'Ivoire identifies eight base points along the

¹⁰⁸ RCI, paras. 3.19, 3.21.

¹⁰⁹ See *ibid.*, paras. 3.20-3.23.

¹¹⁰ See CMCI, para. 6.22; RCI, paras. 2.11-2.12.

1 relevant coast;¹¹¹ Ghana identifies nine. International courts and arbitral tribunals
2 have employed equidistance methodology to delimit maritime boundaries using
3 fewer base points than these. We identified these cases in our Reply: *Bangladesh v.*
4 *Myanmar*, which used only six base points in total; *Romania v. Ukraine*, where five
5 were used; and the *Anglo-French Continental Shelf* delimitation, where three base
6 points were used to determine the 170-nautical-miles western section of the
7 boundary.¹¹² The ICJ delimited the boundary between Cameroon and Nigeria using
8 only one base point for each State.¹¹³

9
10 In this case, the geographical circumstances and the law make the three-step
11 process the *only* appropriate methodology for the maritime boundary. There is no
12 basis for any other delimitation method.

13
14 Mr President, this takes us to the second stage of the process: determining whether
15 there are relevant circumstances that require an adjustment to that line in order to
16 produce an equitable solution.

17
18 Unlike stage one, where the end result for both Ghana and Côte d'Ivoire is an
19 equidistance line extending from the LBT to the south-west along an azimuth
20 between 191-192 degrees,¹¹⁴ in very close proximity to the customary equidistance
21 boundary that they both respected in practice, there are real differences between
22 them at stage two, which bear on the ultimate direction of the line. The Parties
23 disagree over relevant circumstances: whether they exist, and, if so, whether they
24 are significant enough to justify an adjustment of the equidistance line.

25
26 Côte d'Ivoire now argues that there are five different factors that justify either an
27 abandonment of equidistance altogether or a radical adjustment of the line. We say
28 that they are wrong on all five. Professor Sands and I have already demonstrated
29 this in regard to at least two of them. These are: first, the alleged cut-off of Côte
30 d'Ivoire's maritime space by the equidistance line, as a result of coastal concavity;¹¹⁵
31 and, second, the alleged cut-off of Côte d'Ivoire's imaginary projection into the sea,
32 caused by the inconvenient presence of Ghanaian territory – the so-called
33 (*Interpretation from French*) strip of land – (*Continued in English*) that prevents Côte
34 d'Ivoire from having a coast in that area.¹¹⁶ We submit there is no need for further
35 discussion of either of these non-existent or irrelevant factors.

36
37 None of the other three factors, newly alleged by Côte d'Ivoire to be relevant
38 circumstances, fares any better. The three factors are: the alleged disparity in
39 lengths of the Parties' relevant coasts; the alleged impacts on third States; and the
40 presence of hydrocarbons in the disputed area. I will address them in turn.

41

¹¹¹ CICM, Figures 7.4 & 8.5.

¹¹² RG, para. 3.33 (citing *Bangladesh v. Myanmar*, Judgment, para. 266; *Romania v. Ukraine (Black Sea)*, Judgment, paras. 141, 148; *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (United Kingdom v. France)*, Decision of 30 June 1977, 18 UNRIAA 3 (1978), pp. 128-129 (Annex (The Boundary-Line Chart and the Tracing of the Boundary Line: Technical Report to the Court by H. R. Ermel)).)

¹¹³ *Cameroon v. Nigeria*, Judgment, para. 292.

¹¹⁴ See CMCI, para. 7.27; RG, para. 3.56.

¹¹⁵ See RCI, paras. 2.28-2.35.

¹¹⁶ See *ibid.*, paras. 2.49-2.50.

1 In regard to the lengths of the Parties' relevant coasts, Côte d'Ivoire produced *this*
2 map in their Rejoinder, which is also at tab 8 of your folders. According to our
3 friends, the relevant coasts are 510 km for Côte d'Ivoire and 121 km for Ghana - a
4 ratio of 4.2:1.¹¹⁷ We say that they are right in regard to Ghana's relevant coast, but
5 that they have been far too generous to themselves with their own, because their
6 510 kilometres include extensive sections of coast whose projections do not overlap
7 with Ghana's coastal projections and are far too removed from the LBT to influence
8 the equidistance line or otherwise be considered relevant.

9
10 In the Memorial, Ghana calculated the relevant coasts as shown *here*, also at tab 8:
11 308 km for Côte d'Ivoire, and 121 km for Ghana- a ratio of 2.55:1.¹¹⁸ Côte d'Ivoire
12 exaggerates its relevant coast to manufacture a more favourable ratio in order to
13 artificially create an alleged relevant circumstance.

14
15 However, all of this is to no avail. Regardless of whether the ratio is 2.55:1, as
16 Ghana says, or 4.2:1, as Côte d'Ivoire contends, the difference in coastal lengths is
17 not great enough to constitute a relevant circumstance that justifies adjustment of the
18 equidistance line at the second stage of the process. The most appropriate place for
19 consideration of a disparity in relevant coastal lengths is the third stage. As the ICJ
20 explained in the *Black Sea* case:

21
22 the relevant coasts need to be ascertained in order to check, in the third and
23 final stage of the delimitation process, whether any disproportionality exists in
24 the ratios of the coastal lengths of each State and the maritime areas falling
25 on either side of the delimitation line.¹¹⁹

26
27 Notwithstanding this very clear statement in the Court's 2009 judgment of the
28 approach to be followed, there have been cases in which courts or tribunals have
29 apparently jumped the gun and adjusted the equidistance line on the basis of
30 significant coastal length disparity ahead of performing the disproportionality test at
31 the third stage of the process, but those cases can easily be distinguished from this
32 one. The other cases were decided either before the three-stage process was
33 developed or the disparities in coastal lengths were far greater than the one here.

34
35 In particular, both *Libya/Malta*, decided in 1985, and *Gulf of Maine*, decided in 1982,
36 pre-date the acceptance of the three-stage process; so does the *Jan Mayen* case,
37 decided in 1993. But, more important, in *Libya/Malta* the disparity in coastal lengths
38 was 8:1 and in *Jan Mayen* more than 9:1.¹²⁰

39
40 More recently, coastal length disparities of 8.2:1 were considered relevant
41 circumstances by the Arbitral Tribunal in *Barbados v. Trinidad and Tobago*¹²¹ and by

¹¹⁷ RCI, Sketch Map D3.5.

¹¹⁸ MG, para. 5.80.

¹¹⁹ *Romania v. Ukraine (Black Sea)*, Judgment, para. 78.

¹²⁰ *Continental Shelf (Libyan Arab Jamahiriya v. Malta)*, Judgment, ICJ Reports 1985, p. 13 (hereinafter "*Libya v. Malta*, Judgment"), para. 68; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, ICJ Reports 1993, p. 38 (hereinafter "*Denmark v. Norway (Jan Mayen)*, Judgment"), para. 61.

¹²¹ *Barbados v. Trinidad and Tobago*, Award, paras. 326-327.

1 the ICJ in *Nicaragua/Colombia*.¹²² As the Court explained in the latter case, where it
2 cited the *Black Sea* judgment:

3
4 [I]t is normally only where the disparities in the lengths of the relevant coasts
5 are substantial that an adjustment or shifting of the provisional line is called
6 for.¹²³

7
8 In the *Black Sea* case, the ICJ determined that a coastal length disparity of only
9 2.8:1 was *not* substantial enough to warrant adjustment of the provisional
10 equidistance line, and rejected Ukraine's argument that it was a relevant
11 circumstance.¹²⁴ This ratio is comparable to the coastal length disparity between
12 Ghana and Côte d'Ivoire.

13
14 The case law thus provides no justification for treating the comparatively modest
15 disparity between Ghana and Côte d'Ivoire as a relevant circumstance, or for
16 adjusting the provisional equidistance line. Instead, the question of coastal length
17 disparity should be addressed in the third stage of the delimitation process, where
18 the ratio of coastal length is compared to the ratio of maritime area allocated by the
19 equidistance line to determine whether the result is grossly disproportionate.
20 Ms Singh will address this in the afternoon session.

21
22 I turn now to Côte d'Ivoire's next alleged relevant circumstance, the impact on third
23 States. With respect, Côte d'Ivoire has made an entirely implausible argument.
24 However the Special Chamber delimits the boundary between Ghana and Côte
25 d'Ivoire, this will be *res inter alios acta* in regard to neighbouring States, including
26 Togo, Benin and Liberia.¹²⁵ This well-established rule of international law is
27 reflected in ITLOS's own Statute in article 33(2). This is virtually identical to
28 article 59 of the ICJ's Statute.¹²⁶ The ICJ was called upon to apply that rule in
29 *Nicaragua v. Colombia*, when it rejected the application of Costa Rica to intervene
30 because the judgment in that case could have no impact on Costa Rica's maritime
31 claims. According to the Court, Costa Rica

32
33 ha[d] not demonstrated that it ha[d] an interest of a legal nature which may
34 [have been] affected by the decision¹²⁷

¹²² *Nicaragua v. Colombia*, Judgment, para. 211.

¹²³ *Ibid.*, para. 210 (emphasis added) (citing *Canada v. United States (Gulf of Maine)*, Judgment, para. 185; *Romania v. Ukraine (Black Sea)*, Judgment, para. 164).

¹²⁴ *Romania v. Ukraine (Black Sea)*, Judgment, paras. 104, 162, 168.

¹²⁵ See *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by 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....").

¹²⁶ See Statute of the International Court of Justice, Art. 59.

¹²⁷ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for Permission to Intervene, Judgment, ICJ Reports 2011, p. 384, para. 90.

1
2 because

3
4 [t]he Court, following its jurisprudence, when drawing a line delimiting the
5 maritime areas between the Parties to the main proceedings, will, if necessary,
6 end the line in question before it reaches an area in which the interests of a
7 legal nature of third States may be involved.¹²⁸

8
9 Costa Rica at least had reason to be concerned because the southward extension
10 of the Nicaragua/Colombia boundary could have penetrated, or at least reached,
11 the maritime area it claimed for itself.¹²⁹ The Court's solution, in addition to
12 reaffirming that Costa Rica's legal rights would not be affected by its judgment, was
13 to stop the delimitation line short of the area claimed by Costa Rica.¹³⁰ Costa Rica's
14 interests were thus protected.

15
16 No such measures are required here. As shown on your screen and at tab 9, the
17 customary equidistance boundary – or any new provisional equidistance line
18 between Ghana and Côte d'Ivoire – does not cut across, or even reach, any
19 maritime area claimed by any other State. The boundary adjudicated here could
20 have no conceivable impact on the rights or claims of any other State.

21
22 Côte d'Ivoire argues that an equidistance boundary in this case would establish a
23 precedent. A precedent for what? For a delimitation between two States that have
24 very different geographical circumstances from those of Ghana and Côte d'Ivoire?
25 That simply cannot be true. As ITLOS observed in *Bangladesh v. Myanmar*:

26
27 [T]he issue of which method should be followed in drawing the maritime
28 delimitation line should be considered in light of the circumstances of each
29 case. ... [It] should be one that, under the prevailing geographic realities and
30 the particular circumstances of each case, can lead to an equitable result.¹³¹

31
32 Is ITLOS, or the ICJ, or an Annex VII arbitral tribunal, in a future case, likely to
33 confuse the geographical situation presented here with one involving Togo or Benin
34 or Liberia, or to automatically adopt an equidistance line as a maritime boundary for
35 them simply because one has been adopted between Ghana and Côte d'Ivoire? Of
36 course not. One case that is decided on its own particular geographical
37 circumstances does not control what happens in another.

38
39 In the Annex VII arbitration between Guyana and Suriname, Guyana sought to
40 bolster its claim for an equidistance boundary by observing that Suriname had
41 attempted to delimit its other maritime boundary, with French Guiana, based on
42 equidistance. Suriname objected, contending that its delimitation with French
43 Guiana to the east was "totally irrelevant" to its delimitation with Guyana to the west,
44 because it

45
46 took place in a different locale and the relevant circumstances are notably
47 different.

¹²⁸ *Ibid.*, para. 89.

¹²⁹ *Ibid.*, para. 69.

¹³⁰ See *Nicaragua v. Colombia*, Judgment, para. 237.

¹³¹ *Bangladesh v. Myanmar*, Judgment, para. 235.

1
2 The tribunal agreed with Suriname that its delimitation with French Guiana was
3 “not relevant to the present case”.¹³²

4
5 Mr President, I can now turn to the last relevant circumstance alleged by Côte
6 d’Ivoire, which is what it calls the “exceptional concentration of hydrocarbons in that
7 area”.¹³³ However, it is approaching one o’clock and if you agree, Mr President, this
8 might be an appropriate time for me to pause and then continue to the completion of
9 my presentation after the break.

10
11 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
12 Thank you, Mr Reichler. It is indeed four minutes to one. We will have a two-hour
13 break and we will continue with Mr Reichler’s statement from three o’clock this
14 afternoon.

15
16 *(Lunch Break)*

¹³² *Guyana v. Suriname*, para. 391.

¹³³ RCI, para 2.62.