

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**



2017

Public sitting

held on Tuesday, 7 February 2017, at 3 p.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

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

---

*Ghana is represented by:*

Ms Gloria Afua Akuffo, Attorney General and Minister for Justice,

*as Agent;*

Mrs Helen Ziwu, Solicitor-General,

*as Co-Agent;*

*and*

Mr Daniel Alexander QC, 8 New Square, London, United Kingdom,  
Ms Marietta Brew Appiah-Opong, former Attorney-General,  
Ms Clara E. Brillembourg, Foley Hoag LLP, Washington DC, United States of  
America,

Professor Pierre Klein, Centre of International Law, Université Libre de  
Bruxelles, Brussels, Belgium,

Ms Alison Macdonald, Matrix Chambers, London, United Kingdom,  
Mr Paul S. Reichler, Foley Hoag LLP, Washington DC, United States of  
America,

Professor Philippe Sands QC, Matrix Chambers, London, United Kingdom,

Ms Anjolie Singh, New Delhi, India,

Mr Fui S. Tsikata, Reindorf Chambers, Accra,

*as Counsel and Advocates;*

Ms Jane Aheto, Ministry of Foreign Affairs and Regional Integration,

Ms Pearl Akiwumi-Siriboe, Attorney-General's Department,

Mr Anthony Akoto-Ampaw, Adviser to the Attorney-General,

Mr Godwin Djokoto, Faculty of Law, University of Ghana, Accra,

Ms Vivienne Gadzekpo, Ministry of Petroleum,

Mr Godfred Dame, Adviser to the Attorney-General,

Professor H. Kwasi Prempeh, Adviser to the Attorney-General,

Mr Nicholas M. Renzler, Foley Hoag LLP, Washington DC, United States of  
America,

Ms Alejandra Torres Camprubí, Foley Hoag LLP, Paris, France,

*as Counsel;*

Mr Kwame Mfodwo, Maritime Boundaries Secretariat,

Ms Azara Prempeh, Ghana Maritime Authority and Ghanaian Representative  
to the International Maritime Organisation, London, United Kingdom,

Ms Adwoa Wiafe, Ghana National Petroleum Corporation, Accra,

*as Legal Advisers;*

Ms Peninnah Asah Danquah, Attorney-General's Department,

Mr Samuel Adotey Anum, Chargé d'affaires, Embassy of Ghana to the Federal Republic of Germany, Berlin, Germany,  
Mr Michael Nyaaba Assibi, Counsellor, Embassy of Ghana to the Federal Republic of Germany, Berlin, Germany,  
Dr. K.K. Sarpong, Ghana National Petroleum Corporation, Accra,

*as Advisers;*

Mr Nii Adzei-Akpor, Petroleum Commission,  
Mr Theo Ahwireng, Petroleum Commission,  
Mr Lawrence Apaalse, Ministry of Petroleum,  
Mr Ayaa Armah, University of Ghana, Accra,  
Mr Michael Aryeetey, GNPC-Explorco, Accra,  
Mr Nana Boakye Asafu-Adjaye, former Chief Executive, Ghana National Petroleum Corporation, Accra,  
Dr Joseph Asenso, Ministry of Finance,  
Dr Robin Cleverly, Marbdy Consulting Ltd, Taunton, United Kingdom,  
Mr Scott Edmonds, International Mapping, Ellicott City, MD, USA,  
Mr Thomas Frogh, International Mapping, Ellicott City, MD, USA,  
Dr Knut Hartmann, EOMAP GmbH & Co, Munich Germany,  
Mr Daniel Koranteng, Ghana National Petroleum Corporation, Accra,  
Mr Thomas Manu, Ghana National Petroleum Corporation, Accra,  
Mr Kwame Ntow-Amoah, Ghana National Petroleum Corporation, Accra,  
Mr Nana Poku, Ghana National Petroleum Corporation, Accra,  
Mr Sam Topen, Petroleum Commission,

*as Technical Advisers;*

Ms Elizabeth Glusman, Foley Hoag LLP, Washington DC, United States of America,  
Ms Nonyeleze Irukwu, Institut d'études politiques de Paris, Paris, France,  
Ms Nancy Lopez, Foley Hoag LLP, Washington DC, United States of America,  
Ms Lea Main-Klingst, Matrix Chambers, London, United Kingdom,  
Ms Lara Schiffrin-Sands, Institut d'études politiques de Paris, Paris, France,

*as Assistants.*

*Côte d'Ivoire is represented by:*

Mr Adama Toungara, Minister, Head of Delegation,

*as Agent;*

Dr Ibrahima Diaby, Director-General of PETROCI,

*as Co-Agent;*

*and*

Mr Thierry Tanoh, Minister of Petroleum, Energy and the Development of Renewable Energy,

Mr Adama Kamara, Avocat, Côte d'Ivoire Bar, Partner, ADKA, Special Adviser to the Prime Minister,

Mr Michel Pitron, Avocat, Paris Bar, Partner, Gide Loyrette Nouel,

Mr Alain Pellet, Professor of Law (emeritus), former Chairman of the International Law Commission,

Sir Michael Wood, K.C.M.G., Member of the International Law Commission, Member of the English Bar,

Ms Alina Miron, Professor of International Law, Université d'Angers,

*as Counsel and Advocates;*

Ms Isabelle Rouche, Avocate, Paris Bar, Gide Loyrette Nouel, France,

Mr Jean-Sébastien Bazille, Avocat, Paris Bar, Gide Loyrette Nouel, France,

Ms Lucie Bustreau, Avocate, Gide Loyrette Nouel, France,

Mr Jean-Baptiste Merlin, PhD, Université de Paris Ouest, Nanterre La Défense, France,

Ms Tessa Barsac, Master, Université de Paris Ouest, Nanterre La Défense, France,

*as Counsel;*

H.E. Mr Léon Houadja Kacou Adom, Ambassador of Côte d'Ivoire to the Federal Republic of Germany, Berlin, Germany,

Mr Lucien Kouacou, Engineer in the Directorate-General of Hydrocarbons,

Ms Nanssi Félicité Tezai, Assistant to the Agent,

*as Advisers.*

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The  
2 Tribunal will resume its session by continuing to hear the oral pleadings of Ghana. I  
3 will immediately give the floor to Professor Reichler, but first let me say that we are  
4 beginning at 3 p.m., and we will finish at 6 p.m., with a 30-minute break at 4.30 p.m.,  
5 resuming at 5 p.m.

6  
7 You have the floor, Mr Reichler.

8  
9 **MR REICHLER:** Mr President, Members of the Special Chamber, I now turn to the  
10 last relevant circumstance alleged by Côte d'Ivoire, which is the, in English  
11 translation, "exceptional concentration of hydrocarbons in the area".<sup>1</sup> This is a rather  
12 brazen argument, and it makes clear what Côte d'Ivoire's approach is really based  
13 on. Their case boils down to this: there is oil out there, and Côte d'Ivoire wants it, so  
14 you should treat that as a relevant circumstance and draw the boundary in such a  
15 way that Côte d'Ivoire gets some of the oil. In fact, Mr President, that is exactly why  
16 we are here before you: there is oil out there, and Côte d'Ivoire wants access to it.  
17 The rest of their case is just window dressing, and it has led Côte d'Ivoire to adopt  
18 one indefensible position after another, as Professor Sands showed you.

19  
20 Realizing finally that their plea for an angle bisector is hopeless, they resort in the  
21 alternative to what they call an "adjustment" of the equidistance line, but their use of  
22 the word "adjustment" is dramatically understated. This is no mere adjustment; it is a  
23 wholesale transformation, replacing a line that runs in one direction, to the south-  
24 west, with another line that runs in a completely different direction, to the south-east.

25  
26 Côte d'Ivoire asks you to do this on the assertion that the presence of "an  
27 exceptional concentration of hydrocarbons"<sup>2</sup> is a relevant circumstance.<sup>3</sup> That is not  
28 only *not* the law today, but contrary to it.

29  
30 No court or arbitral tribunal – not a single one – has ever ruled that the presence of  
31 hydrocarbons was a relevant circumstance, or has adjusted an equidistance line or  
32 any other provisional delimitation line based on the presence of hydrocarbons in the  
33 disputed area.

34  
35 The ICJ provided the most recent guidance on this point in *Nicaragua v. Colombia*,  
36 where it rejected the presence of hydrocarbons as a relevant circumstance, on the  
37 ground that: "issues of access to natural resources" must be "so exceptional ... to  
38 warrant ... treating them as a relevant circumstance."<sup>4</sup> Côte d'Ivoire argues that  
39 access to oil is "so exceptional" in this case because there appears to be a lot of it.  
40 But, we say, this cannot be what the Court meant by requiring that access to  
41 resources be "so exceptional" in order for it to be considered a relevant  
42 circumstance.

43  
44 In setting this high standard, the Court was invoking its prior rulings on that issue,  
45 and expressly its judgment in the *Black Sea* case, where it quoted approvingly from

---

<sup>1</sup> RCI, para 2.62.

<sup>2</sup> *North Sea Continental Shelf (Federal Republic of Germany/Netherlands)*, Judgment, ICJ Reports 1969, p. 3 (hereinafter "*North Sea Continental Shelf*, Judgment"), para. 101(D)(2).

<sup>3</sup> RCI, paras. 2.66-2.74.

<sup>4</sup> *Nicaragua v. Colombia*, Judgment, para. 223.

1 the *Gulf of Maine* case. In *Gulf of Maine*, the Special Chamber rejected the argument  
2 of the United States that the boundary should be adjusted to ensure access of US  
3 fishermen to their customary fishing areas. It ruled that access to natural resources  
4 should be taken into account only in situations where shifting the boundary would be  
5 required to avoid

6  
7 catastrophic repercussions for the livelihood and economic well-being of the  
8 population of the countries concerned.<sup>5</sup>  
9

10 In *Jan Mayen*, the Court determined that this specific requirement was met, because  
11 failure to adjust the boundary line would have deprived Denmark of access to fish  
12 stocks on which its fishermen were historically dependent.<sup>6</sup> *Jan Mayen* remains the  
13 only case in which a court or tribunal has ever adjusted a provisional boundary line  
14 to avoid depriving a party of resources that it had historically enjoyed in the past.  
15 There is no case in which a line was adjusted in order to allow a State access to  
16 resources that it never previously enjoyed.  
17

18 Côte d'Ivoire struggles to show why access to hydrocarbons should be treated  
19 differently than access to fish, and considered a relevant circumstance in the  
20 absence of catastrophic repercussions, or where there has been no prior access to  
21 these resources and thus no deprivation of them. There is certainly nothing in *Gulf of*  
22 *Maine* or *Jan Mayen* to support Côte d'Ivoire's attempt to distinguish between access  
23 to living and non-living resources. In *Gulf of Maine*, the Special Chamber regarded  
24 access to hydrocarbon resources in the same manner as access to fisheries,  
25 explaining that its division of "the main areas in which the subsoil is being explored  
26 for mineral resources"<sup>7</sup> caused "no reason to fear that any such danger" of  
27 catastrophic repercussions would come to fruition.<sup>8</sup>  
28

29 Côte d'Ivoire cannot show – indeed, it does not even allege – that it would suffer  
30 catastrophic repercussions if the customary equidistance boundary were confirmed.  
31 There would, in fact, be no repercussions, since a State cannot be deprived of  
32 something it never had access to in the first place.  
33

34 Mr President, this completes my discussion of Côte d'Ivoire's alleged relevant  
35 circumstances. None of the five factors invoked by Côte d'Ivoire even remotely  
36 qualifies. They have provided absolutely no basis for making any adjustment of a  
37 provisional line.  
38

39 I turn next, and lastly, to the one circumstance that Ghana considers relevant, and  
40 which does justify an adjustment of the provisional equidistance line. That relevant  
41 circumstance is the practice of the Parties for over 50 years, and the *modus vivendi*  
42 that was achieved, to recognize and respect the customary equidistance boundary  
43 as the international border between the two States. Of course, Ghana regards this to  
44 be much more than a relevant circumstance. In Ghana's view, the half-century of  
45 consistent practice is proof of an agreement between the Parties that a boundary  
46 exists, that it follows an equidistance line, and that that line is the one we have

---

<sup>5</sup> *Canada v. United States (Gulf of Maine)*, Judgment, para. 237.

<sup>6</sup> See *Denmark v. Norway (Jan Mayen)*, Judgment, para. 76.

<sup>7</sup> *Canada v. United States (Gulf of Maine)*, Judgment, para. 239.

<sup>8</sup> *Ibid.*, para. 238.

1 depicted on our maps as the customary equidistance boundary. It is only in the  
2 alternative that we argue that, if a boundary is to be newly delimited by this Special  
3 Chamber, the Parties' 50-year mutual practice should be, at the very least, a relevant  
4 circumstance justifying an adjustment to the provisional equidistance line so that the  
5 boundary delimited by the Special Chamber is the customary equidistance boundary.  
6

7 This map, which is also at tab 10, shows how small an adjustment is required. Here  
8 is a closer look. Here is an even closer look, zooming in on the territorial sea. At  
9 12 nautical miles, the distance between the two lines, that is, Ghana's provisional  
10 equidistance line and the customary equidistance boundary, is only half a nautical  
11 mile. Shortly thereafter, the provisional equidistance line approaches and runs  
12 almost concurrently with the customary boundary, until, at approximately 77 nautical  
13 miles, the provisional equidistance line crosses the customary equidistance  
14 boundary. From that point seaward, it runs slightly to the west of the customary  
15 boundary. At 200 nautical miles, the provisional equidistance line lies a mere  
16 0.39 nautical miles, that is, 0.4 miles, west of the customary boundary. The two lines  
17 distribute almost the same amount of maritime space to each Party. Within  
18 77 nautical miles, the customary equidistance boundary favours Ghana slightly,  
19 giving it approximately 51 square nautical miles more maritime space than the  
20 provisional equidistance line. But beyond 77 nautical miles, the customary  
21 equidistance boundary favours Côte d'Ivoire a bit more, giving it 67.5 square nautical  
22 miles more maritime space than the provisional equidistance line. The customary  
23 equidistance boundary is thus slightly more favourable to Côte d'Ivoire than Ghana's  
24 provisional equidistance line. Nevertheless, it is Ghana's submission that the  
25 provisional equidistance line should be adjusted to conform to the customary  
26 equidistance boundary. A half-century of consistent recognition of the customary  
27 equidistance boundary by both States cannot be ignored. It cannot mean nothing.  
28

29 We say, as well, that the Parties' mutual recognition of the customary equidistance  
30 boundary must be considered a relevant circumstance, because it is evidence of  
31 what they have both considered to be equitable over the 1960s, the 1970s, the  
32 1980s, the 1990s, and the 2000s, until only a few years ago, when Côte d'Ivoire  
33 abruptly abandoned its longstanding position. In *Tunisia v. Libya*, the ICJ observed  
34 that it

35  
36 must take into account whatever indicia are available of the line or lines which  
37 the Parties themselves may have considered equitable or acted upon as  
38 such....<sup>9</sup>  
39

40 In that case, the Court found that a line that was employed "separately" by each  
41 Party "delimiting the eastward and westward boundaries of petroleum concessions"  
42 was a circumstance of "great relevance" and "one of the circumstances proper to be  
43 taken in account" in the delimitation.<sup>10</sup>  
44

45 Here, there can be no question that the Parties did consider the customary  
46 equidistance boundary to be equitable at all times prior to the discovery of oil on the  
47 Ghanaian side, and that that boundary is, to an even greater extent than the line that  
48 was employed separately and for a much shorter period by Tunisia and Libya, a

---

<sup>9</sup> *Tunisia v. Libya*, Judgment, para. 118.

<sup>10</sup> *Ibid.*, paras. 118, 125.



1 circumstance of “great relevance” that should “be taken into account” in the  
2 delimitation.

3  
4 It is Ghana’s position that this longstanding practice resulted in a *de facto* or tacit  
5 agreement on the customary equidistance boundary. If, *quod non*, the Special  
6 Chamber does not consider that the Parties’ mutual acceptance of the customary  
7 equidistance boundary rises to the level of a binding agreement, then it is surely at  
8 least sufficient to establish the existence of a 50-year *modus vivendi* which both  
9 Parties long considered equitable, and thus it constitutes a relevant circumstance to  
10 be taken into account in adjustment of the provisional equidistance line.

11  
12 Mr President, for these reasons, Ghana respectfully submits that the Special  
13 Chamber should confirm that the boundary within 200 nautical miles is the  
14 customary equidistance boundary, as depicted on this map, which is also at tab 11. It  
15 starts on the low water line at the point closest to the agreed land boundary terminus  
16 at BP 55, and follows an average bearing of 192 degrees. The coordinates of the  
17 turning points are shown on the map. Ms Singh will show that this boundary easily  
18 passes the disproportionality test in the third stage of the delimitation process.

19  
20 Mr President, Members of the Special Chamber, I thank you for your patient  
21 attention, and ask that you call Ms Singh to the podium.

22  
23 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
24 Thank you, Mr Reichler, for your presentation. I immediately give the floor to  
25 Ms Anjolie Singh.

26  
27 **MS SINGH:** Mr President, Members of the Special Chamber, Mr President,  
28 Members of the Special Chamber, it is an honour to appear before you and a  
29 privilege to do so for Ghana once again.

30  
31 My task this afternoon is to set out Ghana’s case on the maritime boundary between  
32 the Parties in the continental shelf beyond 200 nautical miles, and to respond to Côte  
33 d’Ivoire’s written pleadings in this regard.

34  
35 Mr President, the graphics you will see during my presentation are at tab 1 of the  
36 Judges’ folders for this afternoon.

37  
38 The agreement between the Parties on the customary equidistance boundary  
39 extending beyond 200 nautical miles is clearly confirmed by – and reflected in – their  
40 respective 2009 Submissions to the Commission on the Limits of the Continental  
41 Shelf (CLCS). The plate you see depicts the continental shelf entitlements of the  
42 Parties beyond 200 nautical miles, separated by the customary boundary that is  
43 based on equidistance. In its original submission to the Commission in May 2009,  
44 Côte d’Ivoire asserted a claim beyond 200 nautical miles only to the west of the  
45 customary equidistance boundary with Ghana.<sup>11</sup> You can see this in purple.  
46 Similarly, and entirely consistently with its own approach, and that of Côte d’Ivoire,  
47 Ghana’s submission asserted a claim only to the east of that boundary.<sup>12</sup> That is the

---

<sup>11</sup> Memorial of Ghana (4 Sept. 2015) (hereinafter “MG”), Vol. VI, Annex 75 (Côte d’Ivoire, *Original Submission to the CLCS* (8 May 2009)).

<sup>12</sup> MG, Vol. VI, Annex 74 (Ghana, *Submission to the CLCS* (28 April 2009)).

1 line in green. In 2009 there was no overlap. This offers a clear confirmation of a fact  
2 that the Special Chamber should take account of, we say: in 2009 the Parties  
3 recognized and agreed on the existence and location of their maritime boundary both  
4 within and beyond 200 nautical miles.

5  
6 Côte d'Ivoire maintained its 2009 submission for almost seven years, until March  
7 2016. Only then did Côte d'Ivoire – and its lawyers – come to the belated realization  
8 that the position it was arguing before this Chamber was manifestly incompatible  
9 with the submission it had made to the Commission in 2009. Côte d'Ivoire explains  
10 its late change of position by saying that there was no “urgency” to complete its  
11 submission earlier.<sup>13</sup> Indeed, the urgency seems to have been prompted by the  
12 imminent filing date for its Counter-Memorial. So, on 24 March 2016, a mere 11 days  
13 before it filed its Counter-Memorial, Côte d'Ivoire replaced its original submission  
14 with a new revised submission, one that greatly extended the scope of its claim.<sup>14</sup>

15  
16 Mr President, Ghana’s position on the boundary in the outer continental shelf is the  
17 same as for the boundary up to 200 nautical miles. Ghana’s primary case is that the  
18 Special Chamber should confirm that the customary equidistance boundary is the  
19 maritime boundary and that it extends beyond 200 nautical miles. Ghana’s  
20 alternative case, in the unlikely event that the Special Chamber reaches the view  
21 that there is no customary equidistance boundary beyond 200 nautical miles, is to  
22 delimit a boundary in accordance with the requirements of the Convention. As  
23 Mr Reichler has indicated, this leads to a boundary in the same location as the  
24 customary boundary.

25  
26 Before I address Côte d'Ivoire’s arguments, I am pleased to say that there are some  
27 significant points of convergence between the Parties. First, the Parties agree that  
28 they have entitlements to a continental shelf beyond 200 nautical miles.<sup>15</sup> This is, of  
29 course, subject to the Commission’s recommendations regarding Côte d'Ivoire’s  
30 entitlement. Côte d'Ivoire accepts that Ghana’s title is, in its words, “particularly  
31 incontestable”, as the Commission has already adopted recommendations regarding  
32 the outer limits of Ghana’s continental shelf in accordance with article 76(8) of the  
33 Convention.<sup>16</sup> Second, the Parties agree that this Chamber has jurisdiction to delimit  
34 the continental shelf beyond 200 nautical miles.<sup>17</sup> This is consistent with the practice  
35 of ITLOS and now the ICJ.<sup>18</sup> Third, in principle, they agree on the respective roles of  
36 the Commission and this Chamber.<sup>19</sup>

37  

---

<sup>13</sup> Rejoinder of Côte d'Ivoire (4 Apr. 2016) (hereinafter “RCI”), para. 3.54.

<sup>14</sup> Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter CMCI), Vol. VI, Annex 179. (Côte d'Ivoire, *Revised Submission to the CLCS*, (Mar. 2016)).

<sup>15</sup> Reply of Ghana (25 July 2016) (hereinafter “RG”), para. 4.7; CMCI, para. 8.5: Entitlement to a continental shelf beyond 200 M, as ITLOS has made clear, is “determined by reference to the outer edge of the continental margin, to be ascertained in accordance with article 76, paragraph 4”: *Bangladesh v. Myanmar*, Judgment, para. 437.

<sup>16</sup> CMCI, para. 8.5 (“*est d'autant moins contestable*”).

<sup>17</sup> MG, paras. 6.14-6.28; CMCI, para. 8.2.

<sup>18</sup> *Nicaragua v Colombia* Judgment (Preliminary Objections), 17 March 2016.

<sup>19</sup> MG, para. 6.21 *et seq*; CMCI, para. 8.3. The CLCS’s role is to: “draft recommendations the delineation of the outer limits of the continental shelf” and the Special Chamber is tasked with the: “delimitation between the two States,” both within and beyond 200 M. Both have different but complementary mandates.

1 Finally, and importantly, there is agreement that the same principles of delimitation  
2 are to be applied both within and beyond 200 nautical miles.<sup>20</sup> Despite these  
3 significant agreements, differences remain on two issues, and these will be the  
4 subject of the rest of my presentation.

5  
6 First, differences remain on the extent of each Party's entitlement, particularly in light  
7 of Côte d'Ivoire's reliance on its revised submission made in 2016 and its  
8 misrepresentation of Ghana's position in this regard. The second area of difference  
9 is the application of the methodology for the delimitation beyond 200 nautical miles.<sup>21</sup>  
10 Whether you take Ghana's primary or alternative argument, Côte d'Ivoire's  
11 application leads to a result that is neither equitable nor legally defensible.<sup>22</sup>  
12

13 I turn now to the Parties' submissions to the Commission and their respective  
14 entitlements beyond 200 nautical miles. Ghana's 2009 submission to the  
15 Commission identified two areas beyond 200 nautical miles along the same margin:  
16 the Eastern and Western Extended Continental Shelf Regions.<sup>23</sup> It is only the  
17 western region that is relevant here, as it is adjacent to the Eastern Extended  
18 Continental Shelf Region of Côte d'Ivoire.<sup>24</sup> The plate that you see now depicts its  
19 outer edges.<sup>25</sup> As you can see, it is defined by four fixed points: OL-GHA-8,  
20 OL-GHA-7, OL-GHA-4, and OL-GHA-9. You can see that it lies to the east of the  
21 customary equidistance boundary with Côte d'Ivoire. It also lies east of the  
22 provisional equidistance line described by Mr Reichler. At its furthest seaward  
23 extension, Ghana's continental shelf extends approximately 45 nautical miles  
24 beyond the 200 nautical miles limit.  
25

26 On 10 March 2014, the subcommission established to examine Ghana's submission  
27 presented its unanimous recommendations to the Commission. It endorsed three of  
28 Ghana's four outer limit points. It only refrained from considering the last, most  
29 westerly outer limit fixed point (OL-GHA-9) "in the absence of an international  
30 continental shelf boundary agreement between Ghana and Côte d'Ivoire".<sup>26</sup> Ghana  
31 accepted the recommendations on the same day. On 5 September 2014, the  
32 Commission adopted the subcommission's recommendations. It "agree[d] with the  
33 determination of the fixed points [Sed-GHA-7-Rev, OL-GHA-7 and OL-GHA-4]  
34 establishing the outer edge of the continental margin of Ghana in the Western  
35 Region." The Commission found that Ghana had fulfilled the conditions set out in  
36 article 76.<sup>27</sup>

---

<sup>20</sup> See MG, paras. 6.29-6.34; CMCI, paras. 8.22-8.23, 8.25.

<sup>21</sup> CMCI, para. 8.6, 8.21 *et seq.*

<sup>22</sup> See e.g. RCI, paras 13; see generally RCI, Chapter 3.

<sup>23</sup> MG, Vol. VI, Annex 74 (Ghana, *Submission to the CLCS*, p. 10.)

<sup>24</sup> Côte d'Ivoire agrees. See CMCI, paras. 8.7, and n. 534.

<sup>25</sup> MG, paras. 6.8-6.9 and MG, Vol. VI, Annex 78, (Ghana's Revised Executive Summary (21 August 2013, Accra), p. 7, which sets out the location of the outer limit fixed points of Ghana's Western Extended Continental Shelf Region (Fig. 2): The points are:

- point OL-GHA-8 is located where the sediment thickness formula line intersects with the 200 nautical miles line measured from Ghana's territorial sea baseline
- points OL-GHA-7 and OL-GHA-4 are defined by the sediment thickness formula, and
- point OL-GHA-9 is adjacent to the point where the customary equidistance boundary line meets the outer limit of the continental shelf.

<sup>26</sup> MG, para 6.10

<sup>27</sup> MG, paras 6.10-6.11 and Vol. VI, Annex 79 (CLCS, *Summary of Recommendations* (5 Sept. 2004)); RG, paras 4.20-4.21.

1 It follows from the operation of article 76(8) of the Convention that the outer limits of  
2 Ghana's continental shelf beyond 200 nautical miles are now firmly established. This  
3 is one respect in which this case is unique. It is the first maritime boundary case in  
4 which a party before an international court or tribunal has already received  
5 recommendations on its outer limits from the Commission, prior to the case being  
6 decided. In our respectful submission, this Special Chamber, and indeed any  
7 international court, is bound to respect the decision of the Commission on the  
8 delineation of the outer limits of national jurisdiction.

9  
10 Turning to Côte d'Ivoire's entitlement, this was set out in its original submission to  
11 the Commission in May 2009,<sup>28</sup> shortly after Ghana made its submission. It  
12 encompassed an area beyond 200 nautical miles, referred to as the "Eastern  
13 Extended Continental Shelf Region."<sup>29</sup> Its outer limits were defined by six fixed  
14 points.<sup>30</sup> Taken together, you can see that in 2009 the western limit of Ghana's outer  
15 continental shelf and the eastern limit of Côte d'Ivoire's outer continental shelf  
16 respected the customary equidistance boundary.

17  
18 Côte d'Ivoire's original submission also noted the "absence of disputes" at that  
19 time.<sup>31</sup> This was correct, and it is significant. Côte d'Ivoire does not dispute that the  
20 Parties acted in concert when they made their 2009 submissions. They engaged the  
21 same expert to advise them;<sup>32</sup> they used the same vessel to acquire data for their  
22 submissions, a vessel that was offered to Côte d'Ivoire by Ghana to meet the  
23 deadline for its submission. The Ivorian team boarded the vessel from a Ghanaian  
24 port shortly after the Ghanaian team disembarked.<sup>33</sup> Mr President, these are facts  
25 that reflect a clear and unambiguous agreement, the existence of an agreed  
26 boundary, the absence of a dispute, and the fact that representations made by each  
27 side were then relied on by the other.

28  
29 The lack of a dispute before the Commission in respect of the outer continental shelf  
30 continued from 2009 until 2016. When this case was filed in 2014, as matters stood,  
31 there was no dispute between the Parties as regards any decision the Commission  
32 had to take. When the Commission took its decision in relation to Ghana, there was  
33 no dispute. Ghana was able to rely on Côte d'Ivoire's 2009 submission during the  
34 provisional measures phase of these proceedings in March 2015.<sup>34</sup> Côte d'Ivoire did  
35 not indicate to the Special Chamber or to Ghana that its 2009 submission was – as it  
36 now claims – "a brief initial presentation",<sup>35</sup> that it was incomplete or wrong, or that it  
37 was going to be revised in any way. Once again, Côte d'Ivoire offered a surprise with  
38 its revised submission.

---

<sup>28</sup> CMCI, para. 8.14.

<sup>29</sup> MG, Vol. VI, Annex 75 (Côte d'Ivoire, *Original Submission*, (8 May 2009,) p. 6.)

<sup>30</sup> MG, para 6.12; RG, para. 4.22.

<sup>31</sup> MG, Vol. VI, Annex 75 (Republic of Côte d'Ivoire, *Original Submission to the CLCS*, p. 5); RG, para 4.22,

<sup>32</sup> CMCI, para. 4.115.

<sup>33</sup> See RG, para. 4.14 and RG, Vol. IV, Annex 141 (Email exchanges between GNPC and PETROCI (16 Oct. 2008 – 19 Jan. 2009); Annex 142 (Email from Aquatec Diving Services Ltd. To Aquatec Marine Services Ltd. (24 Nov. 2008)); Annex 143 (Email from Graham Moates, GEM Survey Limited, to Aquatec Marine Services Ltd. (10 Dec. 2008)); Annex 158 (Crew List, R.V. Akademik A Karpinskiy (12 Dec. 2008)).

<sup>34</sup> See ITLOS/PV.15/C23/2/Corr.1 (29 Mar. 2015), pp. 8:45-9:6.

<sup>35</sup> CMCI, paras. 8.14 ("*une brève présentation initiale*").

1 But perhaps Côte d'Ivoire's sudden change should not have come as a surprise.  
2 After all, you have seen several examples of changes of position coming out of the  
3 blue: new methodologies (Meridians 1 and 2, then Bisectors 1 and 2, then adjusted  
4 equidistance), new charts, new lines, new claims. On the approach of Côte d'Ivoire,  
5 prior practice and agreement may be discarded without consequence.  
6

7 As a result of its revised submission, since March 2016 the outer continental shelf  
8 entitlements of the Parties are now said by Côte d'Ivoire to overlap. On the screen  
9 you can see a comparison of Côte d'Ivoire's 2009 and 2016 submissions. The next  
10 image shows the overlap with Ghana's outer limit points. Four of the six new outer  
11 limit points identified by Côte d'Ivoire are almost at the same places as Ghana's  
12 outer limit points.<sup>36</sup> As you can see, RCI.1 overlaps with OL-GHA-4, and so on. Côte  
13 d'Ivoire uses its revised submission before you to discard years of common practice  
14 and agreement and to create a dispute where none previously existed.<sup>37</sup> However, it  
15 cannot simply wish away its original 2009 submission, a document that both  
16 strengthens Ghana's case on the existence of an agreed customary boundary and  
17 underscores Côte d'Ivoire's longstanding recognition of the existence and location of  
18 the boundary up to 2009.  
19

20 Ghana submits that Côte d'Ivoire's pre-litigation position on the boundary beyond  
21 200 nautical miles, which it maintained consistently for seven years, including a year  
22 and a half after these proceedings began, remains on the record and is to be given  
23 great weight. Equally, a submission made in 2016, two years into these proceedings,  
24 should be treated for what it is: a self-serving and unilateral effort that underscores  
25 the significance of what was done in 2009. It cannot add any support to the new  
26 claim. This is consistent with international jurisprudence on the weight to be given to  
27 pre- and post- litigation statements by the Parties.<sup>38</sup>  
28

29 Mr President, Members of the Special Chamber, this brings me to the second part of  
30 my presentation: the precise location of the boundary in the area beyond  
31 200 nautical miles. Ghana's position beyond 200 nautical miles is the same as it is  
32 within 200 nautical miles. There is an agreed boundary in both areas that is based  
33 on equidistance, which both Parties have recognized and respected as the  
34 international boundary in their practice until at least 2009. This is the customary  
35 equidistance boundary from BP 55 (the land boundary terminus) to the outer limit of  
36 national jurisdiction, which lies beyond 200 nautical miles.<sup>39</sup>  
37

38 In the event that the Chamber considers a fresh delimitation to be necessary,  
39 Ghana's alternative position is that the proper application of the equidistance  
40 methodology yields the same result. The provisional equidistance line should be  
41 adjusted, as Mr Reichler has explained, based on relevant circumstances, to

---

<sup>36</sup> See RG, para. 4.26.

<sup>37</sup> As the Revised Submissions was silent regarding the current dispute, Ghana has alerted the CLCS to the existence of this dispute and the new overlap in the OCS entitlements of the Parties. See RG, Vol. IV, Annex 145 (*Note Verbale* from the Permanent Mission of Ghana to the UN to the Secretary General of the UN, No. UN-15 (13 July 2016)).

<sup>38</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua (intervening))*, Judgment, ICJ Reports 1992, p. 351, paras. 362, 364 (finding that, where the dispute was submitted to the Court in 1986, Honduras's 1991 letter of protest to El Salvador's long-standing demonstration of sovereignty over the disputed islands lacked evidentiary value).

<sup>39</sup> RG, para. 4.34

1 conform to the customary equidistance boundary. The same line should be extended  
2 along the same azimuth beyond 200 nautical miles. In this regard, I offer two  
3 preliminary remarks: first, this Chamber's exercise of jurisdiction in the outer  
4 continental shelf will not prejudice the rights of any third States, as there are no third  
5 States that have any entitlements in this area; second, in the light of Professor  
6 Sands' and Mr Reichler's presentations on the methodology for the delimitation  
7 I shall not address Côte d'Ivoire's arguments on its contrived angle bisector  
8 proposal.<sup>40</sup> If there is no justification for its application in the area up to 200 nautical  
9 miles, there can be no justification in its application beyond 200 nautical miles.

10  
11 Ghana's position is straightforward and based firmly on jurisprudence. There is in  
12 law only a single continental shelf, and article 83 of the Convention applies equally to  
13 the delimitation of the continental shelf both within and beyond 200 nautical miles.<sup>41</sup>  
14 Côte d'Ivoire agrees.<sup>42</sup> It follows then that the appropriate method for delimiting the  
15 entire continental shelf remains the same. Once again, Côte d'Ivoire agrees, at least  
16 in principle.<sup>43</sup>

17  
18 This is in line with both of the *Bay of Bengal* cases.<sup>44</sup> In both cases, ITLOS and the  
19 Annex VII tribunal found that the approach adopted within 200 nautical miles then  
20 extended to the area beyond. The tribunals followed the equidistance/relevant  
21 circumstances method for the delimitation of the continental shelf within 200 nautical  
22 miles and then proceeded with the same method beyond 200 nautical miles. In both  
23 cases, the continental shelf beyond 200 nautical miles was delimited by extending  
24 the continental shelf boundary that had been established up to 200 nautical miles,  
25 generally along the same azimuth.<sup>45</sup>

26  
27 We say that that approach is to be applied in this case. Côte d'Ivoire has offered no  
28 principled position for disagreeing with it. It argues that the same geographical  
29 circumstances that play a role in the delimitation of the boundary within 200 nautical  
30 miles are applicable beyond that.<sup>46</sup> Mr Reichler has already shown you that none of  
31 these supposed "geographical circumstances" is helpful to Côte d'Ivoire up to  
32 200 nautical miles, and we say that they do not help them any more beyond  
33 200 nautical miles.

40 RCI, para. 3.59-3.62

41 *Bangladesh v. Myanmar*, Judgment, paras. 361, 362; *Bangladesh v. India*, Award, paras. 77, 465.

42 CMCI, paras. 8.22-8.23.

43 CMCI, para. 8.23 ("*adhère sans réserve (...) de principe*").

44 In *Bangladesh v. Myanmar*, Judgment, para. 455, ITLOS held that: "the delimitation method to be employed ... for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm. Accordingly, the equidistance/relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200 nm." In *Bangladesh v. India*, Award, para. 465, the Tribunal followed the same approach: "Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 nm, the Tribunal [proceeded with] the same method to delimit the continental shelf beyond 200 nm."

45 In *Bangladesh v. Myanmar*, Judgment, para 462, ITLOS determined that: "the adjusted equidistance line delimiting both the [EEZ] and the continental shelf within 200 nm between the Parties [...] as continues in the same direction beyond the 200 nm limit of Bangladesh until it reaches the area where the rights of third States may be affected." In *Bangladesh v. India* Award, para. 478, the Tribunal continued the delimitation line established within 200 nautical miles until it reached the boundary between Bangladesh and Myanmar beyond 200 M.

46 CMCI, para. 8.38; RCI, para 3.50.

1 Ghana's position is that there is an existing boundary which continues beyond  
2 200 nautical miles. This is confirmed and fully supported by the Parties' 2009  
3 submissions to the Commission, which show that there was no overlap, that there  
4 was agreement. In the event that the Chamber was to disagree with this position,  
5 Mr Reichler has set out the alternative – the equidistance/relevant circumstances  
6 method. The equidistance line that he has identified for the continental shelf within  
7 200 nautical miles, as adjusted very slightly to conform to the customary  
8 equidistance boundary as a relevant circumstance, should be extended beyond  
9 200 nautical miles to the limit of the Parties' national jurisdiction. This is consistent  
10 with the law and there is no need to depart from it.

11  
12 There is one caveat to this approach. Ghana notes that any delimitation effected by  
13 the Special Chamber beyond 200 nautical miles would have to be contingent on the  
14 Commission finding that Côte d'Ivoire does, in fact, have an outer continental shelf  
15 entitlement that extends to the established outer continental shelf entitlement of  
16 Ghana.<sup>47</sup> If the Commission were to reject Côte d'Ivoire's outer continental shelf  
17 entitlement, then the boundary between Ghana and Côte d'Ivoire would naturally  
18 terminate at the 200 nautical miles limit, since there would be no possibility of  
19 overlapping entitlements beyond this point.

20  
21 Finally, I come to the question of the equitableness of the boundary proposed by  
22 Ghana. As Mr Reichler has said, under the jurisdiction, this is assessed at the third  
23 and final stage of the delimitation process by means of the test for  
24 disproportionality.<sup>48</sup> The method to be followed is this: First, the ratio between the  
25 lengths of the Parties' relevant coasts is determined. As you can see, Côte d'Ivoire's  
26 relevant coast is 308 km long and Ghana's is 121 km. This yields a ratio of 2.55:1.  
27 Second, the portions of the relevant maritime area allocated to each Party by the  
28 provisional or adjusted equidistance line are measured and a ratio is determined.  
29 Here, the provisional equidistance line, adjusted as proposed by Ghana to conform  
30 to the customary equidistance boundary, allocates 126,790 square kilometers to  
31 Côte d'Ivoire and 62,757 square kilometers to Ghana. The ratio is 2.02:1.<sup>49</sup> Third, the  
32 two ratios are compared to determine if there is a sufficiently gross disproportion to  
33 justify a further adjustment to the boundary line. A ratio of 2.02:1 does not reflect a  
34 significantly disproportionate division of the relevant area.

35  
36 As the International Court said in the *Black Sea* case, no further adjustment of the  
37 line is required to achieve an equitable solution unless it

---

<sup>47</sup> In its Reply Ghana had noted certain technical limitations in Côte d'Ivoire's Revised Submissions. For example, there are technical limitations concerning the extent to which Côte d'Ivoire can demonstrate natural prolongation from its land territory to the outer edge of the margin, given its very narrow physical margin. See RG, paras. 4.29 and 4.43.

<sup>48</sup> See e.g. *Romania v Ukraine*, Judgment, para. 122:

"Finally, and at the third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line. [...] A final check for an equitable outcome entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths."

<sup>49</sup> RG, para. 3.99

1 lead[s] to any significant disproportionality by reference to the respective  
2 coastal lengths and the apportionment of areas that ensue.<sup>50</sup>  
3

4 The purpose of this exercise is not to ensure a perfectly proportionate result. Instead,  
5 it is intended to guard against a disproportionate result that would render the  
6 proposed delimitation inequitable.<sup>51</sup> In fact, neither the International Court, nor ITLOS  
7 nor any Annex VII tribunal has ever found an adjustment to be required at this stage  
8 of the process. That was true in both the *Bay of Bengal* cases, where the tribunals  
9 found no “significant disproportion” that would require the shifting of the adjusted  
10 equidistance line to ensure an equitable solution.<sup>52</sup> Accordingly, there is no  
11 disproportion in this case that would justify a further adjustment of the boundary line  
12 at the third stage of the delimitation process.  
13

14 The boundary that Ghana asks you to confirm from the LBT to the outer limit of  
15 national jurisdiction is an equitable one. The boundary beyond 200 nautical miles  
16 extends from point CEB 7, where it crosses the 200 nautical miles limit to the point  
17 where national jurisdiction ends, at approximately 245 nautical miles along an  
18 average bearing of 192 degrees. *This image sets out the entire boundary.*  
19

20 Mr President, Members of the Special Chamber, that concludes my presentation.  
21 I thank you for your attention and request that you call on Professor Klein, as  
22 Ghana’s next speaker.  
23

24 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I  
25 thank Ms Singh for her presentation and I give the floor to Mr Pierre Klein. You have  
26 the floor, Professor Klein.  
27

28 **PROFESSOR KLEIN** (*Interpretation from French*): Thank you very much,  
29 Mr President, distinguished Members of the Special Chamber. I think one hardly  
30 needs to recall at this stage of the proceedings that one of the core arguments of  
31 Côte d’Ivoire within the framework of this current dispute consists in asserting that  
32 the practice followed over the decades by the two Parties lacks all relevance as far  
33 as the determination of their joint maritime boundary is concerned. Our opponents  
34 propose in this regard a wholly particular reading of the facts of the case that hardly  
35 corresponds to the realities. My colleague Fui Tsikata has amply demonstrated that  
36 to you yesterday and today, and I will not revisit that particular point.  
37

38 Our opponents also assert that, in any event, the factual situation which has been  
39 observed on the ground for decades is not likely to produce any legal effect. First,  
40 this would be the case as concerns the fact that this situation is inadequate to meet  
41 the required conditions in international case law for the conclusion that a tacit  
42 agreement in terms of delimitation exists to be reached. I dealt with this question at  
43 length this morning and I showed you that there is no element in the relevant case  
44 law that could call into question Ghana’s position in this respect. However, the  
45 criticisms voiced by our opponents do not stop there; they also claim that the

---

<sup>50</sup> *Romania v. Ukraine*, Judgment, para. 210 (emphasis added). *Nicaragua v. Colombia*, 2012, Judgment, paras. 240-242; *Barbados v. Trinidad and Tobago*, UNCLOS Annex VII Tribunal, Award (11 Apr. 2006), para. 238.

<sup>51</sup> MG, 5.94.

<sup>52</sup> *Bangladesh v. Myanmar*, Judgment, para. 499, *Bangladesh v. India*, Award, para. 497.



1 practice of the Parties cannot be taken into account as a circumstance preventing  
2 Côte d'Ivoire from calling into question a legal situation which its own behaviour  
3 caused to arise between the Parties. It is this last argument - and more broadly how  
4 the principle of estoppel comes into play in this case - on which my oral argument  
5 this afternoon will be focused.

6  
7 In *Bangladesh v. Myanmar* the Tribunal recalled:

8  
9 in international law, a situation of estoppel exists when a State, by its conduct,  
10 has created the appearance of a particular situation and another State, relying  
11 on such conduct in good faith, has acted or abstained from an action to its  
12 detriment.

13  
14 There is no doubt whatsoever for Ghana that it is a situation of this nature with which  
15 it was confronted from the moment when Côte d'Ivoire started to call into question  
16 the customary limit based on an equidistance line, that Côte d'Ivoire had accepted as  
17 a maritime boundary for over 50 years. As from the provisional measures stage,  
18 Ghana set out to what extent this change of position was likely to entail considerable  
19 prejudice for it. Ghana set out in the written pleadings the extent of the damages  
20 resulting from the Ivorian *volte face*. It was by basing itself on the pre-existing  
21 situation, characterized by a stable maritime boundary, respected by both Parties  
22 over decades, that Ghana granted concessions in the maritime spaces situated to  
23 the east of that line. It was in reliance on this same situation that billions of dollars  
24 have been invested, above all since the mid-2000s, for exploration and then  
25 subsequently for the exploitation of the oil resources present in this area. I hardly  
26 need to recall as well that the Request for Provisional Measures presented by Côte  
27 d'Ivoire led to a partial freezing of activities in the area, and that has already resulted  
28 today in numerous job losses and very substantial financial prejudice. The attempt  
29 by Côte d'Ivoire to invoke Ghana's international responsibility (to which my colleague  
30 Alison Macdonald will return shortly) shows that this debate is anything but  
31 theoretical. If Côte d'Ivoire were able to get home on this point, it would be a loss of  
32 millions of dollars that Ghana would suffer on account of Côte d'Ivoire's impromptu  
33 about-turn. It is precisely this type of result, wholly inequitable, that the principle of  
34 estoppel is meant to counter.

35  
36 However, if you listen to the other side, estoppel has no place in the present case.  
37 "[C]learly", our opponents say with aplomb in their Rejoinder, "Côte d'Ivoire has ...  
38 never made representations or given Ghana any assurances in which it could have  
39 placed its trust or adopted behaviour which would have been detrimental to it." The  
40 other side tries, by introducing, *inter alia*, particular circumstances, principally the  
41 crises that the country has undergone between 1993 and 2009, as justifications for  
42 the silence of Ivorian authorities over many years in face of oil exploration and  
43 exploitation activities carried out in the border area. On the one hand, there is an  
44 absence of representation and on the other a silence, from which no legal  
45 consequence can be inferred. What is the reality of all of this?

46  
47 With respect to the absence of representation, let me invite you, Mr President,  
48 distinguished Members of the Special Chamber, to place yourselves in the shoes of  
49 the Ghanaian authorities throughout these last decades to better appreciate whether

1 the representations of which Ghana affirms the existence were indeed nothing but a  
2 figment of its imagination.

3  
4 Imagine you have a neighbour who, as of 1970, adopts official decrees signed by the  
5 President of the Republic, who tells the whole world – and that includes you – that  
6 the region delimited by this text is defined seaward of its coast “by the border line  
7 separating the Ivory Coast from Ghana”. Not, Mr President, “by a line which has  
8 effect solely with regard to the course of oil concessions”. No – “by the boundary line  
9 separating Côte d’Ivoire from Ghana”, a boundary which, according to the self-same  
10 text, follows the equidistance line.

11  
12 You have a neighbour whose national oil company reports directly to several  
13 ministerial departments, regularly publishes charts that show to the whole world –  
14 and to you too – that the maritime boundary between your two States follows an  
15 equidistance line. Not, Mr President, a limit that only applies to oil concessions but is  
16 indeed the seaward extension of the land boundary, including beyond the areas of  
17 the concessions.

18  
19 You have a neighbour who, when they have to carry out seismic surveys in the  
20 maritime boundary area, asks your permission to turn around in “Ghanaian waters”,  
21 adding to its request a chart that places these waters beyond the line -the same line  
22 - the equidistance line, identifying it by the word “Ghana”. Not, Mr President, “in  
23 waters which we know fall to Ghana for the granting of oil concessions”. No - “in  
24 Ghanaian waters”.

25  
26 You have got a neighbour who, when it presents its submissions to the CLCS,  
27 makes for the whole world to see – you included – the extreme limit of the extended  
28 continental shelf claimed coincide with the equidistance line referred to so often. Not,  
29 Mr President, with some angle bisector line or some meridian – no, with the  
30 equidistance line. We are in 2009, 39 years after the adoption by your neighbour of  
31 an official text that refers to “the boundary line separating Côte d’Ivoire from Ghana”,  
32 and which gives it substance as an equidistance line.

33  
34 But, no, if you listen to Côte d’Ivoire, all of that does not have the least significance  
35 whatsoever. You would be totally unreasonable, even dishonest, if you were for one  
36 moment to think that that line does indeed represent the boundary separating your  
37 maritime territory from that of your neighbour – but a question all the same. If really  
38 in all these elements that I have just reviewed there was no representation likely to  
39 lead to conviction in the mind of a third party, then why did the Ivorian authorities  
40 decide to change - only as of 2011 - the representation of the maritime areas falling  
41 under the sovereignty of Côte d’Ivoire in the different documents that they produced?  
42 Why did they decide - only in 2016 - to amend the submission that they presented to  
43 the CLCS in such a fashion that this submission should be consistent with the new  
44 Ivorian claim of a maritime boundary following an angle bisector line? Would it by  
45 any chance at all be because the other side realized - rather too late in the day - that  
46 these were so many representations likely to create legal effects?

47  
48 Once again, our opponents clearly have a lot of problems reconciling themselves  
49 with the facts. Everything in the case files shows that Côte d’Ivoire has, by its  
50 constant and repeated actions, created over time a representation which clearly led

1 Ghana to adapt its own actions accordingly. This representation, you will have  
2 understood, is clearly that of a maritime boundary that follows an equidistance line  
3 and which has constantly served as a reference to the two States for the  
4 development of their activities in the area in issue. It is this representation that  
5 Ghana asserts created an obligation for Côte d'Ivoire to not brusquely depart from  
6 the position that it had maintained over the decades, at the risk of causing extremely  
7 significant prejudice to Ghana.

8  
9 Is it necessary in these circumstances to speak not only of the acts but also of the  
10 silence of Côte d'Ivoire, which Côte d'Ivoire now attempts to either repudiate or  
11 minimize? Hardly – and I will only touch upon it briefly. Côte d'Ivoire's argument  
12 whereby the absence of all protests on its part over a very long period is justified by  
13 successive crises that the country underwent fails once again to be bolstered by the  
14 case file. What does the case file show? Far from being distracted by any questions  
15 linked to the exploitation of its natural offshore resources, the Ivorian authorities,  
16 quite to the contrary, throughout this whole period pursued these activities and,  
17 furthermore, often did so in perfect coordination – nay, even cooperation - with their  
18 opposite numbers in Ghana. If the Ivorian authorities abstained from any protest with  
19 respect to these activities being carried out in the maritime areas in question by  
20 Ghana during all these years, it is not because they were unaware, nor because the  
21 political crises in the country prevented them from so doing. No, it is much simpler:  
22 because they never felt there was any reason to protest. Each State was continuing  
23 to carry out its activities on its own side of the equidistance line in accordance with  
24 the practice that it had always followed. This silence, then, is eminently revelatory,  
25 and reassured the Ghanaian authorities in their conviction that there did indeed exist  
26 an agreement between the Parties with respect to the course of their maritime  
27 boundary.

28  
29 Over and beyond these factual questions, Côte d'Ivoire's challenge to estoppel is  
30 also argued on legal grounds. Our opponents try to rely on two cases in which the  
31 invocation of estoppel was dismissed by the courts seized of them. The other side  
32 refers first of all to the *Gulf of Maine* case, asserting that

33  
34 [t]he ICJ refused to characterize as estoppel a situation in which Canada  
35 clearly notified the United States of its boundary claims by official diplomatic  
36 channel and had started to grant oil concessions in the disputed area.

37  
38 This is perfectly correct but the facts in that case were very different from  
39 those that characterize the instant case. The Chamber of the Court, first of  
40 all, was of the opinion that the terms of the letter adduced by Canada as an  
41 element of acquiescence by the US could not be so taken into account  
42 because they could not be "opposed to the government of the United States"  
43 and could not be considered as "an official declaration of the United States  
44 Government on that country's international maritime boundaries."

45  
46 This type of obstacle is absent in the present case, where the President of Côte  
47 d'Ivoire himself adopted an official position on the question of the course of the  
48 maritime boundary, which was then followed in constant fashion by the country's  
49 authorities. Secondly, the Chamber of the Court also felt that it seemed  
50 "disproportionate" to wish to attribute to the silence maintained over but a few years

1 by the American authorities in the face of Canada's actions "legal consequences  
2 taking the concrete form of an estoppel". On this point, equally, the contrast with our  
3 case is striking. Here, it is not only a question of silence but also of explicit positions,  
4 with the Ivorian authorities recognizing the line of equidistance as the joint maritime  
5 boundary. And it is certainly not a question of a short term, because Côte d'Ivoire's  
6 behaviour continued over decades. The line of argument of the other side is in no  
7 way buttressed by this precedent.

8  
9 Finally, our opponents once again try to rely on the *Barbados v. Trinidad and Tobago*  
10 case, where estoppel was also dismissed. They argue in this regard that the Arbitral  
11 Tribunal refused to accept that sporadic authorizations to conduct seismic surveys,  
12 the award of oil concessions and patrols carried out in the area in question  
13 constituted sufficient proof to establish estoppel. But, once again, two major  
14 differences between that precedent and our case must be observed. Firstly, in  
15 *Barbados v. Trinidad and Tobago*, it was solely a question of the absence of protest,  
16 whereas the estoppel invoked by Ghana is based primarily on official positions,  
17 positive acts, by the Ivorian authorities. It was these representations, repeated over  
18 time, which led Ghana to the conviction that it could rely on the existence of a  
19 common maritime boundary following an equidistance line in developing the  
20 exploration and exploitation of its offshore natural resources, and which simply  
21 illustrated the absence of challenge. That was clearly not the case in *Barbados v.*  
22 *Trinidad and Tobago*, where Barbados merely invoked the lack of protest by Trinidad  
23 and Tobago against certain actions that it had carried out in the disputed maritime  
24 areas. Secondly, in this latter case, the practice of the States concerned showed  
25 precisely that challenges had arisen with respect to the limits of their respective  
26 maritime areas. This was clearly confirmed by the arrests of Barbadian fishermen off  
27 Tobago by the authorities of Trinidad and Tobago on several occasions. These are  
28 evidently circumstances such as to diminish considerably the weight of an argument  
29 based on estoppel. It is difficult, to say the least, to infer acquiescence from certain  
30 silences maintained by a State when, at the same time, that State is carrying out  
31 actions which reflect its rejection of its neighbours' claims. But, once again, this  
32 situation has nothing in common with the instant case. There has been no  
33 procrastination on the part of Côte d'Ivoire, no silence on one side and no hostile  
34 reaction on the other. At no time before 2009 did the other Party protest against what  
35 it considered to be an encroachment by Ghana on the disputed maritime areas. At  
36 no time did it attempt to assert its authority over those areas in any way whatsoever.

37  
38 Once again, it is on account of the specific circumstances of that case that the  
39 Arbitral Tribunal rejected the reliance on estoppel in the *Barbados v. Trinidad and*  
40 *Tobago* case and, once again, our opponents are attempting to infer from that  
41 specific decision a general rule that the absence of protest in the face of activities  
42 such as seismic surveys or the award of oil concessions cannot form the basis for a  
43 situation of estoppel. But, of course, there is nothing to allow that step to be taken  
44 and nothing to justify the argument that estoppel be rejected in this case.

45  
46 Quite the contrary. I have shown you that, by the conduct it adopted and repeated  
47 over many years, Côte d'Ivoire demonstrated to Ghana, without the slightest  
48 ambiguity, that it accepted the customary equidistance line as the common maritime  
49 boundary. In the award concerning the *Chagos Islands*, the Arbitral Tribunal set out

1 the four conditions which, in its view, should be met in order to accept the existence  
2 of a situation of estoppel.

3  
4 Firstly, a State must have made clear and consistent representations, by word,  
5 conduct or silence. That is indeed the case here, with explicit positions being  
6 adopted by the Ivorian authorities, including in a number of official documents, and a  
7 complete absence of protest with respect to the activities carried out by Ghana in the  
8 area which is now disputed by Côte d'Ivoire, over several decades, without the  
9 slightest departure from this practice.

10  
11 Secondly, such representations must be made through an agent authorized to speak  
12 for the State with respect to the matter in question. How could this condition be  
13 better met than by decrees issued by the President of the Republic or documents  
14 such as the submission made by Côte d'Ivoire to the Commission on the Limits of  
15 the Continental Shelf?

16  
17 Thirdly, the State invoking estoppel must have been induced by the conduct in  
18 question to act to its detriment or to suffer a prejudice. I highlighted to you a few  
19 moments ago the scale of the prejudice which has already been caused to Ghana by  
20 the partial interruption of oil activities in the area in dispute and the considerable  
21 scale of the damages it would suffer if Côte d'Ivoire's change of position were to be  
22 accepted.

23  
24 Finally, the representation must be such as to give rise to a legitimate expectation for  
25 the State which relied on it. Here again, how could the Ghanaian authorities have  
26 doubted for a single moment that the constant messages they were receiving from  
27 their Ivorian neighbour, year after year, over decades, could have reflected anything  
28 other than a shared perception of the common maritime boundary? The factual and  
29 legal conditions for the application of the principle of estoppel in the present case are  
30 therefore manifestly met.

31  
32 Ghana requests the Chamber to take note of this and to find that the opposing Party  
33 may not therefore suddenly change position in this regard, as it has done since  
34 2009, without seriously infringing Ghana's rights.

35  
36 Thank you very much, Mr President, Members of the Special Chamber. Thank you  
37 for your kind attention and I request, Mr President, that you kindly give the floor to  
38 my colleague Daniel Alexander.

39  
40 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I  
41 thank Professor Klein for his presentation and I give the floor to Mr Daniel Alexander,  
42 who will be the final speaker before the coffee break at 4.30 p.m.

43  
44 **MR ALEXANDER:** Mr President, Members of the Special Chamber, it is an honour  
45 to appear before you on behalf of Ghana.

46  
47 May I now turn to a different topic and address you on the allegation that there has  
48 been a breach of the Order prescribing provisional measures. Côte d'Ivoire has

1 claimed that Ghana has violated the Order of 25 April 2015.<sup>53</sup> It even goes so far as  
2 to suggest that Ghana has “disregarded” it.<sup>54</sup> With respect, Côte d’Ivoire’s allegations  
3 are wholly unjustified. Ghana has complied in full with each aspect of the Order.  
4

5 Ghana notified all concerned of the Order of the Special Chamber and requested  
6 compliance with it by its letter dated 4 May 2015.<sup>55</sup> The letter invited operators to  
7 take appropriate steps to ensure that they complied with it and to keep adequate  
8 records of steps taken, and they have done so.<sup>56</sup> I will deal with the issues referred  
9 to by Côte d’Ivoire in order: new drilling, maritime safety, preservation of information,  
10 monitoring of activities, environmental protection and cooperation.  
11

12 May I address the issue of new drilling first, since Côte d’Ivoire has focused on it in  
13 its Counter-Memorial and Rejoinder. Put simply, there has been no new drilling, not  
14 just in the TEN fields area but throughout the whole region designated unilaterally by  
15 Côte d’Ivoire as the “disputed area”. The only activity that has been undertaken has  
16 been ongoing activities conducted by Ghana in respect of which drilling had already  
17 taken place.  
18

19 I will deal first with interpretation of the Order and then highlight the relevant facts.  
20

21 The Order provides that Ghana shall take all necessary measures to ensure that no  
22 new drilling, either by Ghana or under its control, takes place in the “disputed area”.  
23 The Order must be read as a whole. In particular, paragraphs 99 and 100 make it  
24 clear what the Special Chamber was contemplating when it used the term “no new  
25 drilling” and what was regarded as “new”. It said:  
26

27 the suspension of ongoing activities conducted by Ghana in respect of which  
28 drilling has already taken place would entail the risk of considerable financial  
29 loss to Ghana and its concessionaires and could also pose a serious danger  
30 to the marine environment resulting, in particular, from the deterioration of  
31 equipment.<sup>57</sup>  
32

33 Similarly, in paragraph 100 the Special Chamber states that:  
34

35 an order suspending all exploration or exploitation activities conducted on  
36 behalf of Ghana in the disputed area, including activities in respect of which  
37 drilling has already taken place, would therefore cause prejudice to the right  
38 claimed by Ghana and create an undue burden on it.<sup>58</sup>  
39

40 These paragraphs of the Order make it clear that Ghana was not required to  
41 suspend all ongoing activities in respect of which drilling had already taken place,

---

<sup>53</sup> See Rejoinder of Côte d’Ivoire (14 Nov. 2016) (hereinafter “RCI”), paras. 6.41-6.65.

<sup>54</sup> RCI, para. 6.41.

<sup>55</sup> Second Statement of Paul McDade on behalf of Tullow Oil plc (11 July 2016) (hereinafter, “Second Statement of Tullow”), Appendix C. RG, Vol. IV, Annex 166; *Report of the Republic of Ghana to the Special Chamber of the International Tribunal for the Law of the Sea* (25 May 2015), Annex B (Letter to Petroleum Operators). CMCI, Vol. IV, Annex 53.

<sup>56</sup> See RG, paras. 5.47-5.49.

<sup>57</sup> Order of the Special Chamber on Provisional Measures (25 Apr. 2015) (hereinafter “Order on Provisional Measures”), para. 99.

<sup>58</sup> *Ibid.*, para. 100.

1 including, specifically, exploration or exploitation activities. Other parts of the Order  
2 reinforce this. The Order acknowledges Ghana's position that stopping all activity in  
3 the TEN field

4  
5 would be "financially ruinous" and the enormous investment in the Deepwater  
6 Tano Concession Block, including the TEN ... fields, which has taken place  
7 over the last nine years (since 2006), would be threatened with irreparable  
8 harm.<sup>59</sup>  
9

10 The Order is designed to prevent irreparable harm in this respect as well.

11  
12 Côte d'Ivoire chooses to play down these provisions of the Order and does not refer  
13 to them in its Counter-Memorial.<sup>60</sup> Instead, it invites the Special Chamber to construe  
14 its Order in an illogical way, taking no account of its express terms and its purpose.  
15 Côte d'Ivoire's approach is contrary to sensible principles of interpretation of a  
16 provisional measures order in international law. Its interpretation expressed in its  
17 Counter-Memorial and Rejoinder would mean that the Special Chamber had  
18 prescribed measures preventing the activities which the Order expressly permitted  
19 and which aggravated the harm that the Order was designed to avoid. That  
20 approach is, quite simply, not supportable.

21  
22 As to the facts, I will deal mainly with the TEN fields and the specific point on well  
23 NT07, upon which Côte d'Ivoire has now focused attention. May I begin, however, by  
24 reminding you of some key facts about the TEN fields and the impact of your Order  
25 generally.

26  
27 The TEN fields are among the most important discoveries of hydrocarbons in this  
28 part of the Gulf of Guinea. The region in which the TEN fields lie had been under  
29 exploration and appraisal for many years. They have been developed principally by  
30 Tullow, pursuant to agreements made over 10 years ago, which you have already  
31 seen.<sup>61</sup> The TEN project represents over 28 million man hours of work, none of  
32 which, of course, has been done or paid for by Côte d'Ivoire or any of its partners.

33  
34 After these enormous investments, incurred both by Ghana and its contractors and  
35 partners over a lengthy period, the TEN fields finally started to produce oil, according  
36 to longstanding plans, in August 2016.<sup>62</sup> That schedule was contemplated in the  
37 TEN Plan of Development referred to in the statements of Mr McDade, the Chief  
38 Operating Officer of Tullow, which was approved by the Government of Ghana

---

<sup>59</sup> *Ibid.*, para. 84 (quoting Written Statement of Ghana (23 March 2015) (hereinafter "WSG"), paras. 49, 51).

<sup>60</sup> See RCI, paras. 6.42-6.50.

<sup>61</sup> See WSG, para. 45.

<sup>62</sup> See RG, paras. 2.122, 5.53; Statement of Paul McDade on behalf of Tullow Oil plc. (18 Mar. 2015) (hereinafter "Statement of Tullow") (previously submitted in Ghana PM, Vol. III, Annex S-TOL). MG, Vol. VI, Annex 73.

1 nearly four years ago.<sup>63</sup> That Plan of Development contemplated up to 24  
2 development wells.<sup>64</sup> Of those, 10 were planned to be ready for first oil in 2016.<sup>65</sup>

3  
4 It may assist the Special Chamber to have an *aide mémoire* of the TEN field's wells  
5 planned and drilled at the date of its Order, with the dates on which they were drilled.  
6 This is displayed on your screen and at tab 2 of your Judges' folder. It can be seen  
7 that all of the wells were planned and approved by Ghana well before this claim was  
8 commenced. There had been, until the Order, a steady and orderly implementation  
9 of the plan. This is shown in the annex to Mr McDade's statement, which gives the  
10 dates on which these particular wells were drilled: there were two in 2009 (one post-  
11 first oil well, TG01-GP, and one not used), two in 2010 (one first oil well, NT02-GI,  
12 and one not used), five in 2011 (of which three are used for first oil), two in 2012  
13 (one post-first oil well and one not used), three in 2013 (all of which are used for first  
14 oil), three in 2014 (all of which are used for first oil) and one in 2015 (used as a water  
15 injector for post-first oil).<sup>66</sup>

16  
17 This shows a steady programme of drilling of these wells over a period of some six  
18 years. As can be seen, some of the post-first oil wells were drilled before first oil. The  
19 idea suggested by Côte d'Ivoire that there has been an artificial acceleration of  
20 drilling of a new well in 2015 to try to defeat the Special Chamber is wholly  
21 unjustified. It is unsupported by any evidence and is contrary to the evidence before  
22 you.

23  
24 It is important also to remember the wide-ranging effect of the Order. It brought all  
25 new drilling in the TEN area to a halt, albeit permitting activities with respect to wells  
26 already drilled. However, the Order of the Special Chamber was far more extensive  
27 geographically and it has been complied with by Ghana far more extensively. There  
28 has been no new drilling, not just in the TEN fields area but throughout the whole of  
29 the region unilaterally designated by Côte d'Ivoire as the "disputed area".<sup>67</sup>

30  
31 Mr McDade's statement gives Tullow's perspective on the adverse impact of this in a  
32 number of respects, looking at the TEN fields alone: a cutback on drilling, the  
33 potential to have a material and negative impact on the economics and financial  
34 performance of the TEN project, excess costs, job losses and so forth.<sup>68</sup> Ghana  
35 raised the issue of the failure of Côte d'Ivoire to undertake to compensate Ghana  
36 and others for this in the provisional measures phase<sup>69</sup> and in the Reply.<sup>70</sup> Where,  
37 we ask, is the undertaking from Côte d'Ivoire to compensate those affected in this  
38 way if its case is not accepted, including in respect of other parts of the disputed

---

<sup>63</sup> See Second Statement of Tullow, para. 3. RG, Vol. IV, Annex 166; Statement of Tullow, para. 29. MG, Vol. VI, Annex 73.

<sup>64</sup> Second Statement of Tullow, para. 3. RG, Vol. IV, Annex 166.

<sup>65</sup> Statement of Tullow, paras. 34, 96. Annex 73, MG, Vol. VI; Second Statement of Tullow, paras. 3, 5. RG, Vol. IV, Annex 166.

<sup>66</sup> Second Statement of Tullow, Appendix A. RG, Vol. IV, Annex 166.

<sup>67</sup> Witness Statement of Thomas Manu, Ghana National Petroleum Corporation (GNPC) (19 July 2016), Appendix II. RG, Vol. IV, Annex 168.

<sup>68</sup> Second Statement of Tullow, para. 7. RG, Vol. IV, Annex 166.

<sup>69</sup> See WSG, para. 125; Public Sitting at the International Tribunal for the Law of the Sea, Verbatim Record (30 Mar. 2015), No. ITLOS/PV.15/C23/4, pp. 6:32-34, 7:49-8:4 (Statements of Mr Philippe Sands QC and Ms. Brew Appiah-Opong).

<sup>70</sup> See Reply, para. 5.30. See also *ibid.*, paras 1.30, 5.4.



1 area where work has also been held up? We say no more about it now, but Ghana's  
2 position is reserved.

3  
4 May I now deal with the facts relating to well NT07, upon which Côte d'Ivoire has  
5 now focused.<sup>71</sup>

6  
7 NT07 – shown in this slide to remind you of its location – is a water injector well. It  
8 was not required for first oil but has been required shortly thereafter.<sup>72</sup> A water  
9 injector assists one or more production wells in the following way. An oilfield  
10 reservoir, as you will probably know, is like a hard “sponge”. It contains  
11 hydrocarbons in porous rock. Usually it contains three layers of fluids: water at the  
12 bottom, oil in the middle and gas at the top. The pressure in such a reservoir is very  
13 high. As a result, oil will flow out of the reservoir into a production well. In some  
14 reservoirs, however, the pressure is too low or becomes too low for optimal  
15 hydrocarbon flow. That can be addressed by injecting water into the reservoir under  
16 high pressure, forcing the hydrocarbons out. Water injectors are important to ensure  
17 that there is adequate production and that the reservoir is properly maintained.

18  
19 In the TEN fields, producing wells have associated water injectors.<sup>73</sup> NT07 is the  
20 water injector for production well NT01. At the date of the provisional measures  
21 hearing, production well NT01 had been completely drilled.<sup>74</sup> The well was not a “first  
22 oil” well but started production shortly after, in September 2016. Drilling of the water  
23 injector for NT01 began in March 2015. By the date of the Order, it had been drilled  
24 to a depth of 2,700 metres.<sup>75</sup> Consistent with the requirements of the Order, which  
25 provided that it should not affect activities in respect of wells drilled prior to the  
26 Order, the well was then drilled to its final depth of 4,136 metres<sup>76</sup> and completed.  
27 “Completion” of a well is a complex, multi-step, activity. It involves, among other  
28 things, the installation of production tubing, perforation of the reservoir interval,  
29 cleaning and testing the well. These activities are carried out to prepare the well for  
30 its purpose<sup>77</sup>.

31  
32 Côte d'Ivoire does not have anything to contradict the evidence of the Chief  
33 Operating Officer of Tullow that completing the drilling of the well to its intended  
34 depth rather than leaving it half-drilled is consistent with good oilfield practice.<sup>78</sup> A  
35 well left half drilled, just like a building left half built, can lead to problems. It can  
36 result in an unstable well-bore, a risk of corrosion and damage its usability,  
37 necessitating additional monitoring.

38  
39 These facts were set out in Ghana's Reply of July 2016.<sup>79</sup> They are confirmed and  
40 recorded in detail in the documents that Côte d'Ivoire requested and which were  
41 provided in October last year. So far from showing that there has been a violation of

---

<sup>71</sup> See RCI, paras. 6.56-6.61.

<sup>72</sup> RG, para. 5.52; Second Statement of Tullow, paras. 3-10. RG, Vol. IV, Annex 166.

<sup>73</sup> *Ibid.*, para. 4.

<sup>74</sup> *Ibid.*, Appendix A.

<sup>75</sup> *Ibid.*, para. 9, Appendix A.

<sup>76</sup> See Study of the operations of the West Leo and Stena DrillMax drilling rigs since 25 April 2015, Appendix 1, G0096, Drilling Report (5 Apr. 2015). RCI, Vol. III, Annex 207.

<sup>77</sup> See G0306-G0453.

<sup>78</sup> Second Statement of Tullow, para. 9. RG, Vol. IV, Annex 166.

<sup>79</sup> See RG, paras. 5.51-5.52.

1 the Order, the documents confirm that there has not been. They show that there has  
2 only been work undertaken on wells already drilled in accordance with the terms of  
3 the Order.<sup>80</sup>

4  
5 In summary, contrary to Côte d'Ivoire's position, since the Order, Tullow has only  
6 conducted activities permitted by it. If Côte d'Ivoire truly believed that Ghana was in  
7 violation of this part of the Order, it could have come back to this Chamber.<sup>81</sup> It has  
8 not done so, and that speaks loudly.

9  
10 On this issue, may I also deal briefly with the records provided by Ghana in October  
11 2016? As the Special Chamber will know, a large number of different activities are  
12 conducted by equipment generally known as drilling rigs. Oil production is not a  
13 question of simply drilling a hole and waiting for the oil to come out. A well has to be  
14 cased with a steel and concrete liner to ensure that it is stable and then it has to be  
15 completed in the way that I have described.<sup>82</sup> The necessary pipework and  
16 connectors have to be installed and many other complex operations conducted.  
17 These operations are conducted from a moveable platform, described as a drilling  
18 rig, which performs a large range of functions that are recorded in documents often  
19 generically described as drilling records. Often they are records of activities with  
20 respect to a well that are specifically not drilling, and you can see that in the records  
21 provided here. I will not go through them this afternoon because the Special  
22 Chamber can easily read the useful summaries of activity in each of the records to  
23 confirm this, should it be interested to do so.

24  
25 Côte d'Ivoire tries to present a misleading picture of what the records show by not  
26 referring the Special Chamber to the actual contents of them. The records<sup>83</sup>  
27 themselves show that there has not been any drilling of the formation, with the  
28 exception of the extension of the NT07-WI water injector, which was already in hand  
29 at the time of the Order in the way that I have described to you.<sup>84</sup> Côte d'Ivoire  
30 compounds its error by trying to characterize as "drilling" a range of rig activities that  
31 do not involve drilling of any kind. It goes so far as to suggest that activities such as  
32 well completion and de-completion in which a rig was used violate the prohibition  
33 against new drilling. This is a further indication of the unreal approach that it takes to  
34 this issue. It is the kind of exploitation activity with respect to already drilled wells that  
35 the Order permitted and was not to be regarded as new drilling. There is, with all  
36 respect to Côte d'Ivoire, no substance whatever in its arguments on this issue.

37  
38 Finally, I turn to deal briefly with the other issues. Côte d'Ivoire's position seems  
39 somewhat confused in that it refers to some of them but actually does not appear to  
40 allege breach of the Order.

41  

---

<sup>80</sup> See G0001-G2536.

<sup>81</sup> See *Letter* from Agent of Ghana to Registrar, ITLOS (16 Sept. 2016), p. 3.

<sup>82</sup> See Second Statement of Tullow, para. 8. RG, Vol. IV, Annex 166.

<sup>83</sup> See G001 to G0096, G0161 to G0168, G0297, G0456, G0460, G0550, G0709, G1036, G1116 to G1143, G1411, G1440, G1518 to G1528, G1645, G1690 to G1705, G2079, G2118, G2286 to G2289, G2297, G2304 to G2313, G2321 to G2490.

<sup>84</sup> See G0001 to G0096.

1 First, as to maritime safety, Côte d'Ivoire does not appear to allege breach.<sup>85</sup> Ghana  
2 issued maritime warnings and imposed restrictions on maritime traffic around the  
3 TEN fields.<sup>86</sup> Those were appropriate safety measures to protect other maritime  
4 users, as well as the marine environment and the relevant equipment, from damage  
5 caused by a collision or unduly close approach of vessels to a rig.<sup>87</sup>

6  
7 Next, on preservation of information, Ghana has complied with the aspect of the  
8 Order requiring preservation of information.<sup>88</sup> Again, it does not appear to be  
9 suggested otherwise.

10  
11 As to monitoring of activities in the disputed area, again Côte d'Ivoire does not  
12 appear to suggest breach,<sup>89</sup> so may I just bring you up to date on this and remind  
13 you of the relevant provisions of Ghanaian law. In summary, Ghana has exercised  
14 full control over the activities of those undertakings active in the area. It retains in  
15 place and applies the stringent environmental and regulatory framework for oil  
16 activities. This was described in detail in the submissions for the provisional  
17 measures hearing.<sup>90</sup>

---

<sup>85</sup> See CMCI, paras 9.65-9.66.

<sup>86</sup> See "Seafarers warned as TEN Project picks steam", *B&FT Online* (5 Feb. 2016). CMCI, Vol. V, Annex 148; International Maritime Organization, Subcommittee on Navigation, Communications, and Search and Rescue, *Routing Measures and Mandatory Ship Reporting Systems: Amendment to the existing Area to Be Avoided Off the coast of Ghana in the Atlantic Ocean, Submitted by Ghana*, IMO Doc. No. NCSR 3/3/6 (24 Nov. 2015). CMCI, Vol. VI, Annex 169.

<sup>87</sup> See RG, paras. 5.55.

<sup>88</sup> Order on Provisional Measures, para. 108(1)(b). The Order provides that Ghana should take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire.

<sup>89</sup> *Ibid.*, paras. 108(1)(b)-(c). The Order provides that Ghana should carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment and that the parties should take all necessary steps to prevent serious harm to the marine environment.

<sup>90</sup> See WSG, para. 66 (citing The Ghana National Petroleum Corporation Law (PNDC 64) (1983), which established the Ghana National Petroleum Corporation (GNPC), mandated it to undertake the exploration, development, production and disposal of petroleum (*available at* <http://laws.ghanalegal.com/acts/id/516/ghana-nationalpetroleum-corporation-act#> (accessed 27 Jan. 2017)); The Petroleum Exploration and Production Law (PNDC 84) (1984), which repealed the provisions of the Minerals Act (Act 126) (1962) that applied to petroleum and governs exploration and production activities (*available at* <http://laws.ghanalegal.com/acts/id/543/petroleum-exploration-and-production-law#> (accessed 27 Jan. 2017)); The Ghana National Petroleum Corporation, Petroleum Income Tax Law (PNDC 188) (1987) establishes a system of taxation on petroleum production (*available at* <http://laws.ghanalegal.com/acts/id/544#> (accessed 27 Jan. 2017)); The Petroleum Revenue Management Act (Act 815) (2011), which provides a framework for the collection, allocation and management of petroleum revenue in a responsible, transparent accountable and sustainable manner for the benefit of Ghanaians (*available at* [http://www.mofep.gov.gh/sites/default/files/reports/Petroleum\\_Revenue\\_Management\\_Act\\_%202011.PDF](http://www.mofep.gov.gh/sites/default/files/reports/Petroleum_Revenue_Management_Act_%202011.PDF) (accessed 27 Jan. 2017)); The Petroleum Commission Act (Act 821) (15 July 2011), which established the Petroleum Commission, charged with regulating and managing the utilisation of Ghana's petroleum resources as required by Ghana's Constitution (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Commission-Act-2011-Act-821.pdf> (accessed 27 Jan. 2017)); The Petroleum (Local Content and Local Participation) Regulations (2013) aimed at securing Ghanaian participation in all aspects of the petroleum industry, and thereby build local capacity in the oil and gas sector (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/PETROLEUMLOCAL-CONTENT-AND-LOCAL-PARTICIPATION-REGULATIONS2013.pdf> (accessed 27 Jan. 2017))).

1 As regards environmental monitoring, the Special Chamber can see from the  
2 minutes of the joint meetings that there was a full discussion of the issues  
3 concerning environmental protection. Points in dispute were referred to the Agents  
4 for decision,<sup>91</sup> although in the event they did not meet and Côte d'Ivoire did not  
5 pursue the matter further. Ghana was to provide environmental reports in advance of  
6 meetings to be fixed to discuss any issues. In January 2016, Ghana provided Côte  
7 d'Ivoire with a report that provides an account of the environmental issues to the end  
8 of 2015.<sup>92</sup> It shows that there were no adverse environmental issues. No meeting  
9 was arranged then or since, and therefore no further report has been provided. Côte  
10 d'Ivoire has not followed this up. However, Ghana has, of course, continued to  
11 engage in environmental monitoring. No one has suggested that there have been  
12 any adverse environmental events or issues which require further discussion.  
13

14 Finally, as regards cooperation and provision of information,<sup>93</sup> Ghana has again  
15 been entirely cooperative. Where reasonable requests were made, it has agreed to  
16 them, as the record of communications and meetings shows. The questions raised in  
17 Côte d'Ivoire's letter of July 2015<sup>94</sup> were addressed at meetings attended by the  
18 Agents of both Parties and numerous specialist representatives in September and  
19 October 2015<sup>95</sup> and in the work undertaken subsequent to those meetings. As can  
20 be seen from the records, issues reasonably raised by Côte d'Ivoire were properly  
21 addressed or were not followed up once responded to by Ghana.  
22

23 However, Côte d'Ivoire requested far more information than is reasonable or  
24 necessary. Ghana was right not to agree to Côte d'Ivoire's more extreme requests,  
25 which included requests for daily reports of activities in the "disputed area" and to  
26 have their own representatives present during all of Ghana's well operations.<sup>96</sup> None  
27 of this was even sought in the provisional measures request. It was not ordered by  
28 the Special Chamber, and it is manifestly disproportionate and unnecessary.  
29

30 In conclusion, with respect, I say that it is regrettable that Côte d'Ivoire has sought to  
31 question Ghana's good faith compliance with the Order. Ghana has complied in full,  
32 and we therefore respectfully invite the Special Chamber to reject Côte d'Ivoire's  
33 submissions on this issue.  
34

35 Mr President, Members of the Special Chamber, I thank you for your attention and  
36 ask whether you would like to take a break or give the floor to Ms Macdonald for the  
37 concluding presentation of the day.  
38

---

<sup>91</sup> Government of Ghana and Government of Côte d'Ivoire, *Minutes of the First Meeting of the Côte d'Ivoire-Ghana Joint Committee of Experts on the Protection of the Marine Environment Concerning the Maritime Border Dispute between Côte d'Ivoire and Ghana* (6 Oct. 2015). CMCI, Vol. IV, Annex 56.

<sup>92</sup> See Witness Statement of Thomas Manu, Ghana National Petroleum Corporation (GNPC) (19 July 2016), Appendix I, Attachment 2. RG, Vol. IV, Annex 168.

<sup>93</sup> See RCI, paras. 6.63-6.65.

<sup>94</sup> *Letter from Agent of Côte d'Ivoire to Agent of the Republic of Ghana*, No. 068 MPE/CAB (27 July 2015). CMCI, Vol. IV, Annex 54.

<sup>95</sup> Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Meeting of the Two Agents of Côte d'Ivoire and Ghana* (10 Sept. 2015). CMCI, Vol. IV, Annex 55.

<sup>96</sup> See *Letter from Adama Toungana, Minister of Petroleum & Energy of Côte d'Ivoire, to Marietta Brew Appiah-Opong, Attorney-General of Ghana* (4 July 2016), p. 2. RCI, Vol. III, Annex 202.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
2 Thank you, Mr Alexander. It is 4.30 and we will now take a break of 30 minutes and  
3 resume at 5 p.m. to continue to hear the final speaker of Ghana for today.

4  
5 (Break)  
6

7 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The  
8 hearing will now resume. I will now give the floor to Ms Macdonald. Ms Macdonald,  
9 you have the floor.

10  
11 **MS MACDONALD:** Mr President, Members of the Special Chamber, it is a privilege  
12 for me to appear before you today on behalf of Ghana, last but I hope not least.  
13 Mr Alexander has just addressed Ghana's compliance with the Order for Provisional  
14 Measures, and my task is to deal with the other respects in which Côte d'Ivoire says  
15 that Ghana has violated international law.<sup>97</sup> Côte d'Ivoire argues that Ghana's  
16 activities have violated Côte d'Ivoire's sovereign rights and, further, that Ghana has  
17 breached article 83 of the Convention.

18  
19 Before I turn to the legal principles which apply here, it is important to remind  
20 ourselves of the factual background. At the heart of Côte d'Ivoire's allegations is their  
21 repeated attempt to characterize Ghana's activities as "unilateral".<sup>98</sup> This is crucial to  
22 their legal argument, for the simple reason that it is very difficult for a State to say  
23 that its rights have been violated by things which another State has done with its  
24 consent.

25  
26 However, as you have heard in Ghana's presentations on the facts, it is impossible  
27 to apply the term "unilateral" to Ghana's activities in this area. As my colleagues  
28 have demonstrated, Ghana's activities have been conducted openly and with Côte  
29 d'Ivoire's cooperation, on the basis of, until recently, a common understanding of the  
30 location of the customary equidistance boundary.

31  
32 Ghana did not undertake these activities in order to *claim* this territory; rather, it  
33 undertook them because of the two States' shared understanding that the territory  
34 *belonged to Ghana*.

35  
36 This factual background is essential when one turns to consider the legal obligations  
37 which Côte d'Ivoire says that Ghana has breached. I will deal first with the issue of  
38 sovereign rights, before turning to article 83 of the Convention.

39  
40 On the question of sovereign rights, Côte d'Ivoire claims that there is a rule against  
41 activities in a disputed area pending final delimitation.<sup>99</sup>

42  
43 It is rather unclear whether Côte d'Ivoire is relying on an alleged rule against  
44 activities in a disputed area *per se* – in other words, regardless of which State is  
45 ultimately held to possess that area – or whether this argument relates only to any  
46 part of the area which is eventually held to form part of the territory of Côte d'Ivoire.

---

<sup>97</sup> Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), paras. 9.1-9.57; Rejoinder of Côte d'Ivoire (14 Nov. 2016) (hereinafter "RCI"), paras. 6.1-6.40.

<sup>98</sup> See for example, CMCI, paras. 5.27; 9.3; 9.40; 9.42; 9.65.

<sup>99</sup> *Ibid.*, para. 9.15.

1 The first argument or possibility overlaps entirely with Côte d'Ivoire's case on  
2 article 83. Therefore, I will deal with it in that context and for now will concentrate on  
3 the second option, namely the proposition that, if Ghana has undertaken so-called  
4 unilateral activities in *any* area, however small, which is ultimately awarded to Côte  
5 d'Ivoire, then the Special Chamber should not be content with declaring the location  
6 of the maritime boundary, but should go on to hold that Ghana has violated  
7 international law by the activities that it conducted in that area before the Tribunal's  
8 eventual award.

9  
10 There is a simple answer to this argument, namely that, given the agreement of the  
11 Parties on the location of the maritime boundary, established through half a century  
12 of consistent mutual practice, Ghana has only ever been operating on its own  
13 territory. If you accept that the boundary lies where Ghana says it does, for the  
14 compelling reasons that my colleagues have outlined, then this part of Côte d'Ivoire's  
15 argument simply does not arise and there can be no question of any violation of Côte  
16 d'Ivoire's sovereign rights.

17  
18 Even assuming, for the sake of argument, that Côte d'Ivoire's rights were engaged,  
19 there is another fundamental answer to their points, namely that none of Ghana's  
20 activities in the relevant area have, in fact, been unilateral, for the reasons which  
21 others before me have outlined. So even if there were, as Côte d'Ivoire alleges, a  
22 rule against unilateral activity in a disputed area, that is not the sort of activity that we  
23 are dealing with here.

24  
25 This is a very important point when we look at the sovereign rights argument,  
26 because it can hardly be said that State A violates State B's sovereign rights by  
27 undertaking activities in a maritime area which both States treated as belonging to  
28 State A, even if some of the area is later awarded to State B. To put it in more  
29 domestic terms, Mr President, if I accompany someone into a house which we both  
30 treat for many years as theirs and by some strange turn of events the house later  
31 turns out to belong to me, I cannot suddenly accuse my companion of trespass.

32  
33 However, this is how Côte d'Ivoire asks you to interpret the law. It asks you to make  
34 serious findings against Ghana in respect of peaceful economic activities that Ghana  
35 has carried out with Côte d'Ivoire's full knowledge in a process stretching back for  
36 decades. Côte d'Ivoire asks you to find that articles 77, 81 and 193 of UNCLOS are  
37 automatically violated by this sort of activity in any area that eventually turns out to  
38 belong to another State.<sup>100</sup> If we step back for a moment, if this were correct, then  
39 one would expect to see international courts finding violations in every boundary  
40 case in which any activities have been undertaken in the disputed area; and yet no  
41 court or tribunal has ever done so.

42  
43 One has to think about the practical implications of Côte d'Ivoire's argument. If it is  
44 right, it means that the mere advancement of a claim by one State against its  
45 neighbour, however unjustified or even unarguable, would oblige the neighbour to  
46 cease all activities in the supposedly disputed territory until the claim had been  
47 resolved.

---

<sup>100</sup> CMCI, paras. 9.3-9.25.

1 This would have radical consequences. A State could acquiesce in its neighbour's  
2 economic activity and then, later on when that activity looked rather profitable,  
3 effectively hold its neighbour hostage, causing grave economic damage by suddenly  
4 throwing the area of production into dispute by a claim, however spurious, to some of  
5 its neighbour's maritime territory. In this case, it would have been incredibly difficult  
6 for Ghana to work out where, in Côte d'Ivoire's opinion, it was not allowed to work,  
7 as the no-go area which Côte d'Ivoire claims has shifted around so much over the  
8 years. *Here* on the screen we can see the customary equidistance boundary and, to  
9 the east, the various boundaries which Côte d'Ivoire proposed between 2009 and  
10 2014. Was Ghana really expected to shift its oil production around every time Côte  
11 d'Ivoire shifted its line? So in 2009 it would have had to down tools in *this* area; in  
12 2010 in *this* area; in 2011 in *this* area; and, from 2014 onwards, in *this* area. We say  
13 that a nation's oil industry cannot be expected to shift around in this arbitrary fashion.  
14

15 When one thinks through the consequences of Côte d'Ivoire's argument, it is not  
16 surprising, we say, that this is a path which no previous Tribunal has wished to tread.  
17 Côte d'Ivoire's argument, if it were correct, would allow States to act utterly  
18 inconsistently with their claimed sovereign rights and then belatedly assert them,  
19 with severe financial consequences. It would encourage them to overreach in their  
20 claims, exactly as Côte d'Ivoire has done. Perversely, it would penalize States that  
21 act reasonably and with restraint. It would actively encourage unjustified claims.  
22

23 Côte d'Ivoire, in support of this ambitious argument, relies heavily on the case of  
24 *Guyana v. Suriname*.<sup>101</sup> However, this decision does not help them, either on their  
25 sovereign rights argument or on article 83. On the sovereign rights argument, the  
26 Special Chamber will bear in mind that Suriname was advancing the extreme  
27 proposition that no claim for reparation can be advanced in respect of the use or  
28 threat of force in territory which is the subject of a boundary dispute.<sup>102</sup> Not  
29 surprisingly, the Tribunal declined to, in its words, "create a large and dangerous  
30 hole in a fundamental rule of international law."<sup>103</sup> There the Tribunal was purely  
31 concerned to ensure that the rules on the use of force were not somehow disapplied  
32 to a territory simply because it is the subject of a boundary dispute. Such a situation  
33 is, of course, very different from the long-standing and peaceful economic activity  
34 that we have in Ghana's case.  
35

36 When one goes on to think about the result in *Guyana v. Suriname*, the case actually  
37 offers powerful support for Ghana's position. Although the Tribunal declared  
38 Guyana's claims relating to the use of force admissible, it went on to decide that  
39 there was no need to rule on whether Suriname's responsibility was actually  
40 engaged, or to award Guyana any compensation.<sup>104</sup>  
41

---

<sup>101</sup> CMCI, paras. 9.12-9.14.

<sup>102</sup> *Delimitation of the Maritime Boundary between Guyana and Suriname (Guyana v. Suriname)*, Award of 17 September 2007, 30 UNRIAA 1 (2007) (hereinafter "*Guyana v. Suriname, Award*"), para. 423.

<sup>103</sup> *Ibid.*, (citing *Federal Democratic Republic of Ethiopia and the State of Eritrea, Eritrea-Ethiopia Claims Commission, Partial Award, Jus Ad Bellum: Ethiopia's Claims 1-8* (19 Dec. 2005), para. 10).

<sup>104</sup> *Guyana v Suriname, Award*, paras. 423-4, 450.

1 In reaching this decision, the Tribunal relied<sup>105</sup> on, we say, a highly relevant passage  
2 from the ICJ's decision in *Cameroon v. Nigeria*. There, the Court held that:

3  
4 By the very fact of the present Judgment and of the evacuation of the  
5 Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon  
6 by reason of the occupation of its territory will in all events have been  
7 sufficiently addressed. The Court will not therefore seek to ascertain whether  
8 and to what extent Nigeria's responsibility to Cameroon has been engaged as  
9 a result of that occupation.<sup>106</sup>

10  
11 The Court reached that conclusion despite the fact that, in light of the land boundary  
12 fixed by the Court, Nigerian armed forces were stationed on territory belonging to  
13 Cameroon. If Côte d'Ivoire's approach is correct, then it is hard to fathom why the  
14 Court did not go on to rule that there had been a serious violation of Cameroon's  
15 sovereign rights. But, as we have set out in our written pleadings,<sup>107</sup> the case law on  
16 this point is quite consistent – the fixing of a boundary, land or maritime, is a  
17 sufficient remedy. There is no need to, it is not fair, to punish a State for conduct  
18 which it undertook when it genuinely believed that it had sovereign rights over  
19 particular territory. The ICJ, and Annex VII tribunals, have not treated maritime  
20 boundary awards as rendering the Parties liable for activities in the area when it was  
21 disputed, and the Special Chamber should not, we say, be the first to take this  
22 serious step, one that would have grave and far-reaching consequences.

23  
24 Côte d'Ivoire goes on to claim various remedies for the alleged breach of its  
25 sovereign rights. For the reasons I have just explained, there is no basis for the  
26 Special Chamber to hold Ghana to be in violation of international law, so the  
27 question of remedies does not arise. But for the sake of completeness, Ghana has  
28 addressed Côte d'Ivoire's claimed remedies in its written submissions,<sup>108</sup> and I will  
29 also do so briefly at this point in my submissions.

30  
31 Côte d'Ivoire makes two claims: firstly, a claim for *restitutio in integrum* by way of an  
32 order requiring Ghana to hand over information relating to economic activity in the  
33 relevant area<sup>109</sup> and, secondly, a claim for financial compensation.<sup>110</sup>

34  
35 Looking first at the claim to information, Ghana has drawn attention, both at the  
36 provisional measures stage and in the Reply, to Côte d'Ivoire's failure to cite any  
37 legal authority for its claimed right to information – let alone a right to the sort of  
38 commercially sensitive information which we are dealing with here.<sup>111</sup> The cases  
39 which it cites are not on point, and there is, we say, simply no legal basis for the  
40 Special Chamber to order Ghana to provide the very extensive list of information  
41 which Côte d'Ivoire now seeks.

---

<sup>105</sup> *Ibid.*, para. 450.

<sup>106</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)*, Judgment, ICJ Reports 2002, p.303, para. 319.

<sup>107</sup> Reply of Ghana (25 July 2016) (hereinafter "RG), paras. 5.10-5.18.

<sup>108</sup> *Ibid.*, paras. 5.22-5.30.

<sup>109</sup> CMCI, paras. 9.27-9.32.

<sup>110</sup> *Ibid.*, paras. 9.33-9.39.

<sup>111</sup> RG, paras. 5.23-5.24.



1 The lack of any legal basis for this request is reason enough for the Special  
2 Chamber to refuse it; but even if Côte d'Ivoire could establish the existence of this  
3 novel right, there are further barriers, we say, to making the order it seeks.

4  
5 For one thing, it is remarkable that Côte d'Ivoire only asked for this information for  
6 the first time in its application for provisional measures. The activities in question are  
7 longstanding, and one would expect that if Côte d'Ivoire genuinely needed, and  
8 thought it was entitled to, such information it might have asked for it sooner.

9  
10 Here, of course, I should make clear that, as Ghana assured the Special Chamber at  
11 the provisional measures hearing,<sup>112</sup> it is carefully recording a range of information  
12 about activities in the relevant area – as it would have done in any event as a  
13 responsible State. But this does not mean that Ghana should be ordered to hand this  
14 material over – far from it. This is commercially sensitive material which Ghana and  
15 its operators have spent considerable time, effort and money on gathering – from  
16 territory legitimately believed to belong to Ghana, with the knowledge and consent of  
17 Côte d'Ivoire. This information is protected by international and domestic laws,  
18 including intellectual property laws, in the hands of those responsible technically and  
19 commercially for generating it. It is not simply a matter of ordering Ghana to hand it  
20 over, and the Special Chamber, we submit, should simply refuse this over-broad and  
21 legally unfounded request. It would provide Côte d'Ivoire with an unmerited windfall  
22 for which it would not have paid.

23  
24 Moving from there to the question of compensation, it is not entirely clear whether  
25 Côte d'Ivoire claims compensation purely for the loss of oil revenues from any part of  
26 the disputed area which the Special Chamber's judgment may award to it, or  
27 whether it also claims compensation above and beyond that.<sup>113</sup> Ghana submits that  
28 there is no basis for the second option. It would be absurd to compensate Côte  
29 d'Ivoire, for example, for physical changes to the seabed brought about by oil  
30 production works which Côte d'Ivoire itself wants to pursue in the very same way, in  
31 the very same area, and which it has done on its side of the customary boundary.  
32 The only financial loss which could realistically be said to have occurred if the  
33 Special Chamber departed from the customary equidistance boundary, and  
34 depending on what the Chamber were to order in its place, is the loss of oil revenue  
35 from any area awarded to Côte d'Ivoire; and in respect of those revenues Ghana  
36 would, of course, honour the commitments which it made to the Special Chamber at  
37 the provisional measures hearing. The basis and terms of compensation, if any were  
38 appropriate, would themselves be complex issues and, as Mr Alexander has  
39 mentioned, would also require consideration of losses caused to Ghana by its  
40 compliance with the Special Chamber's Order for Provisional Measures. The parties  
41 agree that these issues would have to be dealt with later on, if they arise at all,  
42 following the Special Chamber's award.

43  
44 I turn now, finally, to the question of article 83 of the Convention. Côte d'Ivoire claims  
45 that this article means that

46  
47 unilateral economic activities are prohibited in a zone under litigation.<sup>114</sup>

---

<sup>112</sup> As recorded in the Order of the Special Chamber, 25 April 2015, para. 92.

<sup>113</sup> CMCI, paras. 9.33-9.39.

<sup>114</sup> *Ibid.*, para. 9.45.

1 There is a fundamental difference between the Parties on this point. As before, the  
2 first answer to this is that Ghana's activities cannot meaningfully be described as  
3 unilateral, but leaving aside that basic answer with Côte d'Ivoire's argument, and as  
4 Ghana has set out in detail in the Reply,<sup>115</sup> there is no basis at all for the claim that  
5 article 83 requires a complete moratorium on economic activity in an area in dispute.  
6 Such a moratorium was proposed during the negotiation of the Convention, received  
7 very little support, and the proposals were abandoned. The *travaux* show that the  
8 framers of the Convention were concerned to ensure that it did not interfere with  
9 economic development in areas under dispute,<sup>116</sup> and understandably so: otherwise  
10 a State could, for example, shut down its neighbour's activity by abruptly stating that  
11 it no longer agreed with a long-observed maritime boundary – just as Côte d'Ivoire  
12 seeks to do in this case.

13  
14 So the *travaux* do not support Côte d'Ivoire's case on article 83, and nor does the  
15 leading decision on that article in *Guyana v. Suriname*. The Tribunal in that case  
16 considered that article 83

17  
18 constitutes an implicit acknowledgment of the importance of avoiding the  
19 suspension of economic development in a disputed maritime area, as long as  
20 such activities do not affect the reaching of a final agreement.<sup>117</sup>

21  
22 The touchstone is whether any particular activity jeopardizes or hampers the  
23 reaching of a final agreement. The Tribunal drew a rough-and-ready distinction  
24 between acts which cause a physical change to the marine environment and those  
25 which do not, considering that acts which cause a physical change

26  
27 may jeopardize or hamper the reaching of a final delimitation agreement as a  
28 result of the perceived change to the *status quo* that they would engender.<sup>118</sup>

29  
30 Ghana draws particular attention to the reference to the *status quo*. This is a highly  
31 fact-specific test: the Tribunal wisely refrained from doing anything so mechanical as  
32 to draw up a checklist of prohibited and permitted activities in a disputed area. It  
33 could not have done so, of course, because article 83 clearly and deliberately  
34 refrains from doing so – the question is always what disturbs the *status quo* and  
35 hampers the reaching of agreement. The list of State practice cited by Côte  
36 d'Ivoire<sup>119</sup> is therefore of no assistance at all – what different States choose to do in  
37 different circumstances cannot help us here, and in any event there is nothing to say  
38 that any restraint demonstrated by those States in their particular circumstances was  
39 based on what they considered to be their obligations under article 83. In this case,  
40 rather than changing the *status quo*, Ghana's activities in the relevant area *are* the  
41 *status quo*. We say that in those circumstances it is impossible to see how they  
42 jeopardize or hamper the reaching of a final agreement.

43  
44 Côte d'Ivoire also seems to argue that Ghana has failed, as article 83 also requires,  
45 to

---

<sup>115</sup> RG, para. 5.37.

<sup>116</sup> See the analysis at RG, para. 5.37.

<sup>117</sup> *Guyana v. Suriname*, Award, para. 4.60.

<sup>118</sup> *Ibid*, para. 4.80.

<sup>119</sup> CMCI, paras. 9.46-9.48; RCI, para. 5.22.

1 make every effort to enter into provisional arrangements of a practical nature.

2  
3 This is, essentially, an allegation of failure to cooperate and to comply with Côte  
4 d'Ivoire's requests for information, and the only example given in the Counter-  
5 Memorial<sup>120</sup> dates back to a meeting on 2 November 2011, the fifth meeting between  
6 the Parties on the maritime boundary. Mr President, Members of the Special  
7 Chamber, we simply invite you to read the minutes of that meeting in full.<sup>121</sup> This was  
8 the meeting at which Côte d'Ivoire announced its switch from a meridian to a bisector  
9 approach. This was the first time that Côte d'Ivoire had ever even mentioned the  
10 bisector. It was coupled with a blanket demand for Ghana to suspend all economic  
11 activity in the area newly thrown into dispute, and it came a month after Côte d'Ivoire  
12 had written to Ghana's operators, out of the blue, demanding that they halt all  
13 operations in activities in an area that Côte d'Ivoire marked out on a map, covering  
14 waters hitherto recognized by all as belonging to Ghana. If either State has  
15 jeopardized or hampered the reaching of a final agreement, it is Côte d'Ivoire, we  
16 sadly suggest, by behaving in this fashion.

17  
18 In the circumstances, Ghana's careful response at the meeting, and the thoughtful  
19 and considered proposals produced later on by the Boundary Commission,<sup>122</sup> reflect  
20 extremely well on a State which was, essentially, being held to ransom by the abrupt  
21 decision of its neighbour to depart from the long-established maritime boundary. The  
22 record shows, we submit, that Ghana has acted throughout in a constructive spirit, in  
23 good faith and as a good neighbour.

24  
25 In the Rejoinder, Côte d'Ivoire also complains that Ghana did not respond to a very  
26 extensive request for technical information relating to the drilling schedule in the TEN  
27 area.<sup>123</sup> Ghana did, of course, comply promptly when the Special Chamber asked it  
28 to provide this voluminous material – and, as the Special Chamber will have seen,  
29 the material takes matters no further forward. Precisely all that Côte d'Ivoire has  
30 been able to find is confirmation of the fact that well Nt-07 was, as Mr Alexander has  
31 explained, drilled out to its final depth following the Provisional Measures Order – a  
32 matter which Ghana was entirely clear about in its Reply<sup>124</sup> and which, as  
33 Mr Alexander has explained, is fully compliant with the Special Chamber's Order.  
34 The Chamber will judge for itself whether any of these matters could possibly  
35 constitute non-cooperation.

36  
37 Mr President, Members of the Special Chamber, by way of very brief conclusion,  
38 there is, we suggest, no basis for any finding that Ghana has violated either general  
39 international law, the Convention, or your Provisional Measures Order. At all times,  
40 Ghana has acted responsibly, with restraint, and with respect for both the letter and  
41 the spirit of the law. And, really, the allegations which Mr Alexander and I have dealt  
42 with in our speeches are a distraction from your task. That task, as others before me  
43 have explained, is to indicate the precise coordinates of the customary equidistance  
44 boundary which has long been observed by the two States, or alternatively to apply

---

<sup>120</sup> CMCI, para. 9.55.

<sup>121</sup> Memorial of Ghana (4 Sept. 2015) (hereinafter "MG"), Vol. V, Annex 53.

<sup>122</sup> *Ibid.*, Annex 54.

<sup>123</sup> RCI, paras. 6.63-6.65.

<sup>124</sup> RG, para. 5.52.

1 equidistance methodology, which in this case reaches the same equitable result in  
2 the same long-established location.

3

4 Mr President, Members of the Special Chamber, with that, it is my privilege to  
5 conclude Ghana's first round of submissions. Thank you for your attention and I ask  
6 you to draw today's proceedings to a close.

7

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

9 Thank you, Ms Macdonald. Your presentation brings to an end the first round of  
10 Ghana's submissions. Tomorrow, on Wednesday 8<sup>th</sup>, the Special Chamber is not  
11 scheduled to sit. We will meet for the beginning of the first round of Côte d'Ivoire's  
12 submissions on Thursday from 10 a.m. to 1 p.m. Have a pleasant evening.

13

14

*(The sitting closed at 5.30 p.m.)*