INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2017

Public sitting
held on Thursday, 9 February 2017, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d’Ivoire)

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

Present:  President  Boualem Bouguetaia
          Judges  Rüdiger Wolfrum
            Jin-Hyun Paik
        Judges ad hoc  Thomas A. Mensah
            Ronny Abraham
      Registrar  Philippe Gautier
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THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French): Good morning, ladies and gentlemen. After a well-deserved rest yesterday, we will now resume proceedings this morning with Côte d’Ivoire. Côte d’Ivoire will present the first round of its oral pleadings.

This hearing, as usual, will last until one o’clock, and there will be a thirty-minute break between 11.30 and midday.

Without further ado, I will give the floor to the Agent for Côte d’Ivoire, Minister Adama Toungara. Minister, you have the floor.

MR TOUNGARA (Interpretation from French): Mr President, Members of the Special Chamber, it is an honour and a privilege for me to take the floor before you this morning, as Agent of the Republic of Côte d’Ivoire, at the beginning of this first round of oral pleadings for my country.

I would like to express my thanks and gratitude to the Members of the Special Chamber and to the staff of the Tribunal for the exemplary nature of these proceedings, for their attentiveness and professionalism shown to both Parties over the last two years.

I would also like to express my immense pride in seeing this dispute being settled by your eminent Court, Côte d’Ivoire and Ghana having agreed to bring the case before you in order to delimit our maritime boundary, which has never been delimited. On behalf of the Ivorian people, I would like to reiterate all the confidence that my country has in your knowledge and great experience in order to rule on this dispute.

We have had the opportunity to assess your exceptional qualities during the incidental proceedings brought by Côte d’Ivoire two years ago. Whilst the sovereign rights of Côte d’Ivoire were under threat, you understood the urgency of the situation and opted to make use of your exceptional power to order provisional measures.

The dispute relating to the delimitation of the maritime boundary between Côte d’Ivoire and Ghana in the Atlantic Ocean is an exceptional case in several respects:

First, this is a dispute involving key issues that have divided our two countries for several decades;

Second, a fair settlement of this dispute will set a precedent for the sub-region and will contribute to consolidating peace, fraternity and good neighbourliness. In this regard, allow me to greet, most warmly, the delegations from Benin and from Togo, whose presence here today in this room testifies to the influence that your decision will have on the delimitation of maritime boundaries in the Gulf of Guinea;

Third, settling this case will help to develop international law, as did the Order prescribing provisional measures that you delivered on 25 April 2015.

Mr President, Members of the Special Chamber, Ghana has given you a version of history that is not in line with the actual facts. Even if Côte d’Ivoire and Ghana have concluded an agreement on their land boundary, Côte d’Ivoire and Ghana have
never concluded an agreement on their common maritime boundary, despite ten or
so meetings of the Ivorian-Ghanaian Commission on delimitation of the maritime
boundary, despite secret meetings between ministers entrusted with these matters,
and despite summit meetings between heads of State. The State I represent has
constantly repeated over the years, since 1988 - the date of the consensual
demarcation of the land boundary - that Côte d’Ivoire and Ghana have never arrived
at an agreement on the delimitation of their maritime boundary.

What else could Côte d’Ivoire have done without running the risk of jeopardizing
peace and good neighbourliness?

Côte d’Ivoire has made peace its second religion and has always preferred
negotiation and dialogue to conflict.

The maritime boundary between Côte d’Ivoire and Ghana remains to be delimited.
The purported imaginary customary boundary invoked by Ghana does not alter the
fact that there is an urgent need to address this issue.

Despite circumstantial, economic and even occasional disagreements, Côte d’Ivoire
and Ghana remain two fraternal countries whose history is based on fraternity,
friendship and cooperation. This common history is enshrined in the bilateral Treaty
for Friendship and Cooperation dated 8 May 1970, through which the two States
agreed to maintain in all circumstances the bonds of friendship and fraternity that
unite them. I believe that Côte d’Ivoire and Ghana have respected this text on
boundary issues by setting up a joint commission for the re-demarcation of their land
boundary between 1963 and 1988. There was a second joint commission on related
negotiations, namely delimitation of their common maritime boundary. Unfortunately,
this commission met without success, which further proves that the maritime
boundary between our two countries remains to be delimited.

Mr President, Members of the Special Chamber, I have trust in the strength of
relations between Côte d’Ivoire and Ghana, and have trust in your wisdom to help us
overcome the problem in this particular dispute.

Mr President, Members of the Special Chamber, I would like to thank you for your
courteous attention. I now request that you give the floor to Maître Pitron, who will
present the main outline of the case and the structure of our pleadings, which, today
and tomorrow, will form the first round of Côte d’Ivoire’s pleadings.

THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French):
Thank you, Minister Toungara, Agent for Côte d’Ivoire. I now give the floor to Maître
Michel Pitron.

Maître Pitron, you have the floor.

MR PITRON (Interpretation from French): Mr President, gentlemen, it is an honour
for me and for our entire team to represent the interests of Côte d’Ivoire and to speak
on its behalf before your eminent Chamber in the dispute between Côte d’Ivoire and
Ghana on the delimitation of their common maritime boundary.
For the next 20 minutes I will give an overview of Côte d’Ivoire’s arguments in this case, which, Mr President, Members of the Special Chamber, is of particular importance, as Mr Toungara has explained, as is the decision that you will be required to take. Two sovereign States have entrusted you with the task of delimiting their respective maritime areas. They have conflicting positions and a very different approach to the matter in hand. One is claiming, against all the odds, a unilaterally proclaimed *de facto* situation, which it is seeking to turn into a *de jure* situation. The other, by contrast, has undertaken genuine maritime delimitation work and has immersed itself in the study of decisive circumstances and appropriate methods to assist you in finding an equitable solution.

This case came into its own from the beginning of its judicial phase. Almost two years ago we met for the oral pleadings in incidental proceedings brought by Côte d’Ivoire to guarantee the preservation of its rights until the end of the dispute.

On 25 April 2015, in an innovative and much discussed order, the Special Chamber ordered Ghana to comply with various measures in order to preserve the rights of Côte d’Ivoire up until the end of the dispute in the area claimed by the two States. You held inter alia that the unilateral oil exploration and exploitation activities undertaken by Ghana in the disputed area were likely to result in a significant and permanent modification of the physical characteristics of that area and likely to cause irreparable prejudice to the sovereign rights of Côte d’Ivoire.

When that decision became public, it attracted the attention of a number of States in the sub-region. Today, Togo and Benin, fully aware of the detrimental effects that the application of the equidistance method would have on their own boundaries with Ghana, as is also claimed by Ghana in respect of its immediate neighbour Togo, gained access, with your agreement, Mr President, to the documents in the proceedings. Their concern persists. Their representatives are present in this Chamber today.

The case before you is that of two States which have never succeeded in agreeing on a common maritime boundary, their respective positions being irreconcilable. Ghana adheres to the claim of an equidistance line, described in 2011 for the first time as a tacit agreement between the two States. Today, it also uses the more general and imprecise term “customary equidistance line”,¹ repeated as a mantra with the apparent objective of enchanting its audience. Côte d’Ivoire, for its part, which has never agreed to the establishment of such a line, under any of the forms of agreement recognized by international law, strives to achieve an equitable solution in accordance with international law.

Therein lies a major difference, because an agreement in international law is not to be presumed. The same holds, *a fortiori*, where the purpose of the agreement is to draw a line determining where the respective maritime areas of two neighbouring States begin and end, areas over which they will exercise exclusive sovereign rights.

To presume it or consider it to exist in the absence of conclusive evidence would be

¹ See, inter alia, RG, paras 1.5, 1.14, 2.94; see also, inter alia, ITLOS/PV.17/C23/1, p. 16, line 23.
a sign of great legal uncertainty. With regard to the tacit agreement in particular, your Tribunal agreed on this when the first delimitation dispute was referred to it in the case between Bangladesh and Myanmar. You shared the view of the ICJ, holding that “evidence of a tacit legal agreement must be compelling”.2

In the present case, you will be able to note that the arguments put forward by Ghana seeking to establish the existence of a tacit agreement on a common maritime boundary for the two States cannot be compelling. In truth, however often they are rehearsed, these arguments only ever concern one area, the oil practice of the Parties. Their number does not result in their quality, and they cannot under any circumstances have probative value for the establishment of a maritime boundary between two sovereign States.

The argument of tacit agreement is not viable, especially since Ghana conveniently omits two key elements of the history of this dispute. You will have noted that I spoke of “omission”, and not of “manipulation” or “invention”,3 terms which are, to say the least, inappropriate to characterize relations between States in this Chamber.

Two elements, I said. First, official recognition – often reiterated by the two States, including by their respective leaders – of the absence of delimitation of a common maritime boundary.

Second, the systematic refusal of Côte d’Ivoire, as from 1970-1975, to recognize the western limit of the Ghanaian oil concessions as a boundary. This clear position is completely incompatible with the existence of such an agreement. Ghana’s reliance on the tacit agreement is merely an attempt to ascribe a semblance of legal support to its unilateral and hegemonic oil practice. Your Chamber will be convinced of this from the factual and legal arguments which will be presented to it this morning, following this statement, by Mr Kamara, Sir Michael Wood and Professor Miron respectively. Mr Kamara will give you an overview of the relations between the Parties over the last 50 years, which is essential to an objective understanding of the historical reality. Sir Michael Wood, for his part, will demonstrate how nothing in those relations suggests the existence of a tacit agreement on the maritime boundary between the two States. Lastly, Professor Miron will rebut recourse to the estoppel theory.

Mr President, Members of the Special Chamber, do not be content with taking the role of a scribe, as Ghana proposes to you, being called to confirm on parchment the existence of an agreement (is that, moreover, what is asked of Judges such as yourselves with an imperium?); but you will perform the role for which the Parties, or rather Ghana, initially submitted the matter to you, that is to say to delimit an equidistance maritime boundary between the two States.

To this effect, Côte d’Ivoire will begin by setting out the evidence which is of crucial importance in the approach you adopt.

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3 ITLOS/PV.17/C23/1, p. 17, lines 23-24.
There are geographical circumstances. I myself will present these to you tomorrow morning. There are five of them:

- the straightness of this segment of the coast, which governs the construction of the provisional equidistance line and which explains the concentration of base points on a tiny portion of coastline;

- the opposite direction of that segment to the general direction of the two States;

- the existence of the Jomoro Peninsula, a Ghanaian protuberance that blocks the seaward projection of a substantial part of the Ivorian land mass;

- the instability of the coasts, automatically giving rise to the instability of the base points situated thereon, which has a direct and significant effect on the reliability of the boundary line drawn using them;

- finally, the fifth and last of these circumstances, the exceptional concentration of hydrocarbon resources in the disputed area and to the east of it.

As we will demonstrate, these circumstances have a two-fold effect, not only on the choice of delimitation method to be favoured in order to arrive at an equitable solution, but also on the course of the delimitation line.

In the light of these elements, Côte d’Ivoire has tried to find the method which allows an equitable solution to be achieved in this particular case. The equitable solution is the primordial objective, the fundamental principle, as is stated in the *Tunisia v. Libya* judgment, of any maritime delimitation operation. The Tribunal constituted to hear the dispute between Bangladesh and India stated that it was “the paramount objective” of any delimitation. This objective of equity cannot be achieved without taking into account all the circumstances of each case, which can lead to a choice of different methods of delimitation. That is the applicable law in this case, and Professor Pellet will recall it briefly. It is your task and your honour, I believe, to pursue this approach, and I have to admit that I do not understand Ghana, which, through its Counsel, threatens you – yes, I really did hear and read this – with losing your powers because you will have exercised them.

In this case, Members of the Special Chamber, a number of the circumstances which I have just mentioned call for the application of the angle bisector method, as I will demonstrate.

First, the tiny segment on which the base points selected by the Parties are located. The straightness of the segment located close to boundary post 55 gives rise to the selection of base points on a tiny portion of the coastline, representing less than 1% of the total coast of the two States. Constructing a maritime boundary on such a

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4 *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 18, at p. 47, para. 62.

5 *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 339.
small segment would not reflect the general configuration of the coasts of the States in a maritime delimitation operation.

There is also coastal instability. A line constructed from points situated on an unstable segment would become “arbitrary and unreasonable in the near future”, as the International Court of Justice ruled in *Nicaragua v. Honduras*.

Finally, consideration must be given to the effects of your decision on the rights of third States in the sub-region.

Given these circumstances, the solution that combines the two advantages of reliability and equity is to draw the bisector of the angle formed by the general direction of the coasts of the two States. In this particular case, this leads to an azimuth line of 168.7 degrees. As I will have the honour to explain, this angle bisector method is not only fully established in case law but is also used by States in similar geographical situations to that of Côte d’Ivoire and Ghana.

In the alternative, but in no contradiction with the angle bisector method – because, after all, it is no contradiction to envisage an alternative, should a first argument fail, without denying that argument or acquiescing in principle to the second, as Ghana has done, moreover, by successively relying on the tacit agreement on the maritime boundary and then its delimitation by the three-stage method – Professors Miron and Pellet will explain, in succession, how your Tribunal could, should it so wish, also come to an equitable solution – the same, in fact – by applying the equidistance and relevant circumstances method, adjusting the line in light of the geographic circumstances of the specific case.

The adjustment is made in light of the straight segment and the opposite direction to the general direction of the coast, which governs the course of the provisional equidistance line. The adjustment of the equidistance line would remedy the cut-off effect caused by the line constructed from that segment.

It also follows from consideration of the Jomoro Peninsula and the blocking of the Ivorian land mass to which it gives rise.

Lastly, the adjustment of the line should be appropriate in the light of one last geographical circumstance, namely the exceptional presence of hydrocarbons in the disputed area and to the east of it.

These are the main circumstances which have to be taken into account in making an adjustment of the line if the equidistance/relevant circumstances method is applied, to the exclusion of the *modus vivendi* claimed by Ghana, which, as we will demonstrate tomorrow, does not in fact exist.

The decisive geographical circumstances which, for delimitation of the maritime boundary within 200 nautical miles, militate in favour of the application of the angle bisector method in this case or the adjustment of the provisional equidistance line.

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have the same effect as for delimitation of the boundary beyond the 200-nautical-mile limit. There is nothing in the conduct of the Parties, including their respective submissions for extension to the Commission on the Limits of the Continental Shelf, that attests to any kind of agreement on the line beyond 200 nautical miles. Sir Michael Wood will demonstrate this tomorrow.

I will also show you, lastly, that the single azimuth line of 168.7 degrees thus drawn divides the maritime areas between the two States equitably, whatever method is chosen. This line takes into account the overall coastal geography of the two States, corrects the cut-off effect generated by the equidistance line and is equitable in the regional context of the Gulf of Guinea.

Finally, Côte d'Ivoire, represented by Professor Miron and Mr Kamara, will show, to conclude the first round of oral pleadings, the infringements of its obligations by Ghana which justify the engagement of its international responsibility and the award of appropriate reparation to Côte d'Ivoire. We will demonstrate, as we have done in our written pleadings, that Ghana has infringed the sovereign rights of Côte d'Ivoire by undertaking unilateral activities in the maritime area disputed between the two States, despite Côte d'Ivoire's firm and repeated opposition to those activities. These activities also constitute a serious failure by Ghana to comply with its obligations of restraint and cooperation under article 83, paragraph 3, of the United Nations Convention on the Law of the Sea.

Members of the Tribunal, it also falls to you to sanction the infringements by Ghana of the obligations which you imposed on it in your Order for the prescription of provisional measures of 25 April 2015. Ghana has breached its obligation to carry out no new drilling in the disputed area prescribed by paragraph 108(1)(a) of the Order and its obligation of cooperation under paragraph 108(1)(e). The terms of the decision of the Chamber deserve to resonate with the strength you wished to give them.

I would like to thank you for your kind attention and would request that you be so kind as to give the floor to Mr Kamara, who will present to you the historical background to the dispute.

THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French):
Thank you, Maître Pitron, for your submission. I would now like to give the floor to Maître Adama Kamara.

MR KAMARA (Interpretation from French): Mr President, Members of the Special Chamber, it is an honour for me to come before your eminent court today to represent my country. This morning I shall be focusing on giving you a general presentation of the historical context of this dispute with Ghana relating to the delimitation of the common maritime boundary.

A State generally starts negotiations on delimitation of its maritime boundary with a neighbour when there is an economic interest to do so, when the domestic political context so permits, and when bilateral relations with that neighbour are favourable.
When it comes to this delimitation, various factors come into play: the history of bilateral relations between the Parties, their internal political and institutional history, or their macroeconomic history, of which the oil industry is but one part. Each of these histories can only be understood in the light of the others, so that none of them can be properly understood in isolation, contrary to what Ghana is trying to encourage you to do.

Ghana in fact has restricted itself almost obsessively to addressing just one aspect of the history of the Parties, namely, their oil history. Indeed, it focuses even more on the granting and the outline of the concessions in the border area. That is what it uses as a basis for banging on about the existence of a *customary equidistance boundary*. This is a very partial and biased presentation of the facts because we have to look at the picture as a whole. It is minimising, even ignoring, certain fundamental aspects of our bilateral relations and of the internal history of the Parties. This needs to be rectified because it distorts that oil history by taking it out of context.

My pleadings will be focusing on these aspects, so as to give you an overall presentation. It will not be exhaustive in view of the time afforded to me, but it will at least be objective and show the dispute in a factual context.

The Parties, Ghana and Côte d'Ivoire, are two countries in West Africa which gained their independence in 1958 and 1960, respectively. In the following 33 years, Côte d'Ivoire was presided over by President Félix Houphouët-Boigny, until his death in 1993.

This political stability allowed Côte d'Ivoire to focus on its economic development, which was so dear to the "father of the nation", and focused in particular on agriculture, the cultivation of coffee and cocoa, and forestry. Even though offshore oil exploration began towards the end of the Fifties, the Ivorian oil industry until just recently only played a minor role in the economic development of the country.

The political stability under the presidency of Houphouët-Boigny allowed Côte d'Ivoire to develop peaceful bilateral relations with its Ghanaian neighbour, nurturing relations of friendship and fraternity between the two countries.

It is within this context that the Parties established in 1963 a bilateral commission entrusted with looking at the delimitation of the land boundary between the two States, respecting the principle of the inviolability of borders. This operation was intended to facilitate forestry in that area, because it had been agreed that forestry operations would be suspended until redemarcation was completed.2

In the Seventies, during the work of that bilateral commission, Côte d'Ivoire became aware of the need to have a policy for managing and developing its maritime areas as well, in light of the constant developments in the international law of the sea. This policy began in 1977 with the adoption of a law laying down the limits of the Ivorian territorial sea to 12 nautical miles, proclaiming an exclusive economic zone

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1 CMCI, Vol. I, paras 2.3-2.7.
extending up to 200 nautical miles off the Ivorian coast. This law laid the foundations for the delimitation of Côte d'Ivoire's maritime boundaries, establishing the principle according to which this should be achieved through agreement with neighbouring countries.\textsuperscript{3}

The second stage of this assertive action took place 11 years later, in 1988, when the issue of delimitation of the maritime boundary between Côte d'Ivoire and Ghana was put on the agenda of the bilateral discussions between the Parties during the work of the commission for redemarcation of the land boundary, which was coming to an end.

During that meeting, Côte d'Ivoire, which was thus the applicant party in the delimitation of a non-existent maritime boundary, suggested that the straight line between BPs 54 and 55 be extended seaward, which led to a line being drawn in a south-south-east direction.\textsuperscript{4} Ghana refused to follow up on the Ivorian proposal on the grounds that its delegation did not have an appropriate mandate.\textsuperscript{5}

This meeting, Mr President, Judges, is a significant event, because this was the first official bilateral contact on delimitation of the maritime boundary. The tenor of this meeting attests to the fact that at that time there was no maritime boundary, and that Côte d'Ivoire was even then proposing a maritime boundary which was not based on equidistance. This was in 1988, almost 20 years before the first significant oil find in the maritime border area. We are far away from the "ocean grab" that Ghana was going on about on Tuesday.\textsuperscript{6}

Ghana adopted a similar approach four years later, when it came back to Côte d'Ivoire in February 1992, requesting that a bilateral meeting be held in order to discuss, in its words, "the question of boundary delimitation".\textsuperscript{7}

Ghana's request, according to information from the Côte d'Ivoire Ambassador in Accra, was motivated by the "many ongoing drilling projects [being carried out by Ghana] in the maritime boundary zone".\textsuperscript{8}

At this time, when its offshore oil industry was in its infancy, Ghana refused to envisage a major drilling campaign in the maritime boundary zone, part of which, moreover, had also been claimed by Côte d'Ivoire four years earlier, without having

\textsuperscript{3} Loi n°77-926 portant délimitation des zones maritimes placées sous la juridiction nationale de la République de Côte d’Ivoire (Law delimiting the maritime zones placed under the national jurisdiction of the Republic of the Ivory Coast), CMCI, Vol. III, Annex 2; see also CMCI, Vol. I, paras 4.30-4.32.
\textsuperscript{6} ITLOS/PV.17/C23/2, 07/02/2017, p. 20, lines 13-16 (Prof. Sands).
\textsuperscript{8} CMCI, Vol. III, Annex 17.
previously delimited its maritime boundary with its Ivorian neighbour through any written agreement.

In the hope that the boundary issue could be settled, Côte d'Ivoire welcomed this proposal from Ghana to meet and welcomed the fact that

the Ghanaian Government, which chose not to react to its proposed maritime boundary delimitation first presented in 1988 at the 15th session of the Joint Ivoiro-Ghanaian Commission, no doubt now believes it an opportune time to carry out the delimitation of that boundary.9

Like the moratorium on forestry issues agreed at the time, Côte d'Ivoire expressly urged Ghana to refrain, pending the organization of the meeting, from any drilling activity in the area to be delimited.10 For Côte d'Ivoire it was a question of making sure that no irreparable physical damage would be caused to part of the continental shelf which might be deemed to be Ivorian once the boundaries had been delimited. This was at a time, I repeat, when there had been no significant oil finds in the boundary area.

However, this invitation to negotiate from Côte d'Ivoire was not replied to by Ghana,11 and in fact Ghana abandoned its drilling projects in the disputed area.12

As from 1993, the question of delimitation of the maritime boundary was hampered by successive military, social and political crises in Côte d'Ivoire, which considerably weakened its state apparatus. During this period Côte d'Ivoire had a number of compelling priorities: reunifying the country, restoring peace, organizing free elections as exhorted by the international community, stabilizing institutions; in short, trying to make sure that the crisis was overcome, and indeed, this was a process in which Ghana was closely involved.13

This period of torment began in 1993, when there was a historical turning point in the form of the death of President Houphouët-Boigny. That became a full-blown crisis after the military coup in December 1999, which plunged Côte d'Ivoire into a long period of political, military and institutional instability, with frequent riots and several hundreds of deaths.14

In 2002 there was again an attempted coup d'état in the country, which was so severe that the United Nations deployed a military contingent in the zone separating the two warring parties.15

These events plunged Côte d'Ivoire into a profound and unprecedented crisis, from which it only emerged as of 2007, after several years of negotiations between the parties to this domestic conflict, under the aegis of the United Nations, the African Union, ECOWAS, and other friendly countries, primary amongst them Ghana.

Between 2002 and 2004, Ghana organized a number of meetings and negotiating sessions, which were difficult, but led to three peace agreements being concluded,\textsuperscript{16} Accra 1, 2 and 3. Ghana was therefore particularly \textit{au fait} with the domestic situation in Côte d'Ivoire because it played a very active part in the resolution of the crisis.

Despite these efforts, the crisis lasted for several more years because of the tense political climate, which made it impossible to hold elections. It was only in 2007, after the Ouagadougou Agreements were signed, that the domestic situation gradually improved.\textsuperscript{17}

During these 14 years of instability, interrupted by a number of serious crises, between 1993 and 2007, whereas our neighbours were enjoying political stability conducive to their economic development, the Ivorian State apparatus was seriously impaired, when it was not simply non-existent, during the most serious stages of the crisis. Even if the continued existence of purely administrative bodies, such as the directorate general of hydrocarbons, meant that there could be day-to-day management of Ivorian oil activities, this internal situation nevertheless explains the fact that, during these years, Côte d'Ivoire's attention was distracted from the problems of maritime delimitation and from Ghana's conduct in the boundary areas, which really did require action at the highest levels of the State.

Negotiations pertaining to the delimitation of the maritime boundary were only able to resume as of 2008, once the domestic Ivorian situation became stabilized.

During the six subsequent years, the Parties met on ten occasions\textsuperscript{18} within a joint commission whose aim was to "deliberate on the delimitation of [their] international maritime boundaries". I quote here the wording employed by Ghana in its note verbale dated 20 August 2007, inviting Côte d'Ivoire to the negotiating table.\textsuperscript{19} The purpose of these bilateral talks thus set out by Ghana was clear: on the day talks opened, to seek to agree on the non-existent maritime boundary.

This objective was furthermore clearly recalled in November 2009, during a bilateral meeting between the Ivorian and Ghanaian heads of State in Ghana, according to which they publicly called for a swift conclusion to the negotiations with a view to "the delimitation of the maritime border".\textsuperscript{20} During the ten meetings of this Commission, Ghana in fact did not really negotiate. According to the International Court of Justice, "negotiate" implies that the Parties "conduct themselves [such] that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it."\textsuperscript{21}

Specifically, instead of negotiating, Ghana obstinately sought to impose on Côte d'Ivoire a boundary following the western limit of oil blocks that it had unilaterally

\textsuperscript{16} CMCI, Vol. I., paras 2.15-2.19.
\textsuperscript{17} CMCI, Vol. I, para. 2.20.
\textsuperscript{18} CMCI, Vol. I, paras 2.48-2.82; see also RCI, Vol. I, paras 4.23-4.32.
\textsuperscript{19} Note verbale No LE/IL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Ivory Coast, 20 August 2007, CMCI, Vol. III, Annex 25.
\textsuperscript{20} Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, Vol. III, Annex 34.
granted to its operators and from which it never considered departing. To that end,
during the negotiations, Ghana called upon various legal and geographic arguments.
It first of all maintained, in 2008, that the boundary should follow a strict equidistance
line, then, as of 2011, realising that that line did not reflect its oil line, claimed an
adjusted equidistance line. Ghana in fact only once took up the idea of tacit
agreement, in August 2011, which it subsequently abandoned, before it appeared
once again suddenly in its arbitration notification, and then during the course of the
present case. In any event, never did the boundary it proposed change.

Côte d'Ivoire, for its part, formally rejected the Ghanaian proposal of a boundary that
followed the lines of its concessions, however it was presented, and, on several
occasions, asked Ghana to desist from oil activity in the disputed area. This
position adopted by Côte d'Ivoire at the outset of the negotiations was fully
consistent with what it had adopted back in 1988 and 1992. During negotiations,
Côte d'Ivoire furthermore proposed in good faith to Ghana several lines resulting
from the application of different delimitation methods, as it refined the knowledge it
acquired and tools available to it, with a view to better ascertaining the coastal
geography and thereby achieve an equitable solution. It first of all proposed, in
February 2009, that the boundary be delimited according to the method of the
geographic meridian. In May 2010, Côte d'Ivoire proposed another line, also based
on the meridian method, starting this time from BP 55. In November 2011, the
Ivorian side once again formulated an alternative delimitation proposal based on the
angle bisector method, to which it still lays claims today. Ghana made snide
remarks about these various proposals from Côte d'Ivoire. It was wrong to do so
because that reflects the spirit of compromise that only the latter displayed.

These proposals were invariably rejected by Ghana. It is under these conditions that
it abruptly put an end to negotiations by delivering without prior notice to Côte
d'Ivoire an arbitration request barely ten days before the 11th meeting of the Joint
Commission, having simultaneously withdrawn its declaration under article 298 of
UNCLOS that it had made in 2009.

Discussions during these six years of negotiations thus focused on the delimitation
method, the relevant circumstances of the case, and the location of BP 55 and base
points. In spite of Ghana's convolutions, the content of these negotiations clearly
shows, Mr President, Judges - were that still required - that their purpose was the

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22 Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation,
23 Ghana's Response towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting,
25 Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint
Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February
2009, CMCI, Vol. III, Annex 30; Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation
26 CMCI, Vol. I, paras 2.56, 2.65 and 2.70.
27 CMCI, Vol. I, para. 2.56.
29 CMCI, Vol. I, para. 2.69.
delimitation of a non-existent maritime border and not to “confirm” or “affirm” an existing boundary.\textsuperscript{31}

That is, Mr President, Judges, the historical context of the maritime boundary delimitation dispute between the Parties. In summary, it is the history of a discussion that was broken off in 1988, then in 1992; of negotiations that were prevented between 1993 and 2007; and negotiations that at last took place between 2008 and 2014, but to no avail, because of Ghana’s behaviour that sought to impose a boundary exclusively favouring its economic interests, without taking into account applicable legal rules.

Ghana today seeks to present a totally different story – its history. That of oil activities allegedly undertaken hand-in-hand, since their independence, by two friendly, neighbouring States. That of a tacit agreement on the course of a maritime boundary of which this oil activity is said to be both the basis and the proof. In addition to the fact that this oil history is only one component of the historical context of the dispute, the reality is very different and must be set out again. To that end, it is important to distinguish between the creation of oil concessions and activities, essentially the drilling that was carried out there. Professor Miron will return in detail to these various aspects.

The first oil blocks off the Ghanaian and Ivorian coasts were created at the end of the colonial period, in 1956 and 1957, respectively. Ghana believes this is indicative of a tacit agreement on delimitation that was established before the Parties gained independence, without ever giving a single indication as to the conditions under which it was established.

Two years after Ghana, in 1970, Côte d’Ivoire in turn established its first offshore oil block, granted to Esso. Ghana referred on several occasions during its oral pleadings to the decree that established this block,\textsuperscript{32} presenting it as the cornerstone of its demonstration, claiming that its eastern limit is characterized as “the boundary line with Ghana”. Ghana, however, deliberately omits to state that, from this first act of its offshore oil exploration policy, the Ivorian State in full responsibility took care to introduce an express and unequivocal reservation, stating that its western and eastern limits were “given by way of indication” and could in no way prejudice maritime delimitation.\textsuperscript{33}

Furthermore, Côte d’Ivoire restated its position in 1975 by setting out unambiguously and explicitly, in an oil contract in January and a decree in October, that “[t]he coordinates [of the eastern limit of the oil block] are given by way of indication and cannot in any case be regarded as being the national jurisdiction boundaries.”\textsuperscript{34} Thus, how can Ghana present these decrees as the basis of the agreement of the Parties on the delimitation of their maritime boundary?!

\textsuperscript{31} ITLOS/PV.17/C23/1, 06/02/2017, p. 10, line 2 (Prof. Sands); \textit{ibid.}, p. 38, line 26 (Mr Reichler); \textit{ibid.}, p. 8, line 7 (Agent of Ghana).

\textsuperscript{32} Examples include: ITLOS/PV.17/A23/2, 06/02/2017, p. 24, lines 24-27 (Prof. Sands); ITLOS/PV.17/C23/1, 06/02/2017, p. 12, line 38; \textit{ibid.}, p. 18, lines 2-6; ITLOS/PV.17/C23/2, 07/02/2017, p. 9, line 49.

\textsuperscript{33} CMCI, Vol. I, paras 2.96-2.113 and 4.53-4.59.

\textsuperscript{34} CMCI, Vol. IV, Annexes 60 and 61.
Furthermore, oil activities undertaken in these oil blocks located in the disputed area in no way constitute a historical fact that is significant for the dispute. Ghana only carried out three drilling operations before resumption of negotiations in 2008, without the prior authorization of Côte d’Ivoire or informing it beforehand: the first in 1989, to the west of the line claimed as the maritime boundary in the previous year by Côte d’Ivoire within the Joint Redemarcation Commission; the second in 1999, barely ten days prior to the military coup that struck Côte d’Ivoire; and the third in 2002, barely a few weeks before the first crisis resolution meeting held in Accra. Three drilling operations too many, because Côte d’Ivoire had expressly requested Ghana to refrain back in 1999. But only three drilling operations in over 40 years of offshore activity in a very troubled Ivorian context that easily accounts for the absence of a diplomatic reaction on its part.

As of 2008, having noticed that from the beginning of negotiations Côte d’Ivoire was not going to comply with its wishes as regards delimitation, Ghana stepped up exponentially its drilling activities in the disputed area, thereby breaking with the status quo that prevailed there. Whereas only three drilling operations had been carried out during the previous 50 years, Ghana performed no fewer than 31 in the six years between 2008 and 2014. In order to fulfil its strategy to impose a fait accompli on Côte d’Ivoire, Ghana protected itself against all remedies that could disrupt these operations by invidiously filing in 2009 a declaration of exclusion pursuant to article 298 of the Convention. This declaration was withdrawn only on 22 September 2014, once the drilling operations necessary to the production of the TEN field had been carried out, in order to implement the present procedure that it introduced by serving Côte d’Ivoire, on 19 September 2014, with an arbitration notification.

You will observe, Mr President and Judges, that, contrary to what Ghana has endlessly repeated, the oil history is not one of intense and continuous activity over 50 years conducted with the assent of both Parties. Two periods are to be distinguished. The first, which goes from independence up until 2007, during which the disputed area was the subject only of scattered activities, including only three drilling operations, and a second period of intense activity during 2008 that Ghana stepped up as of 2009 when it realized that it would not be able to impose its oil line on Côte d’Ivoire amicably, whilst taking care to preserve this unilateralism from all judicial interference by filing a declaration under article 298 of the Convention.

Mr President, Judges, contrary to what Ghana maintains, we are not in the presence of a smooth and uniform historical context in which the Parties agreed on a maritime boundary that they had respected for over 50 years before Côte d’Ivoire did an about-turn. Rather, the historical background is more complex, one during which Côte d’Ivoire, when it had to, when it could, affirmed its sovereign rights in maritime matters and sought to resist, with the weapon of the strong, that is, peaceful dialogue, Ghana’s endeavour to impose upon it as boundary the oil line which it had drawn unilaterally.

37 Second statement of Paul Macdade, 11 July 2016, RG, Vol. IV, Annex 166, Appendix A.
Mr President, that is the historical context of the dispute submitted to you by the Parties.

Mr President, I would ask you to kindly give the floor to Sir Michael Wood. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French):
Thank you, Mr Kamara, for your presentation. (Continued in English) I give the floor to Sir Michael Wood.

MR WOOD: Mr President, Members of the Special Chamber, it is a great honour to appear before you and to do so once again on behalf of Côte d’Ivoire.

I shall begin with some general comments on Ghana’s tacit agreement/customary equidistance boundary argument. I shall then address points made by our friends opposite earlier this week. I shall not, of course, repeat all that we said on the subject in our Counter-Memorial and Rejoinder, which we maintain in their entirety.

Mr President, we heard again and again in Ghana’s oral pleadings earlier this week references to a customary equidistance boundary or a customary boundary based on equidistance (which may or may not be the same thing). Such repetition brings to mind the words of the Bellman in Lewis Carroll’s poem The Hunting of the Snark: “What I tell you three times is true.” In our case it seems more like 300 times.

We have been told time and again that this argument is central to Ghana’s case. The distinguished Attorney General of Ghana, in introducing Ghana’s pleadings on Monday, went so far as to assert that “the central task that the Special Chamber faces is … quite simple. Ghana respectfully asks you to affirm the customary equidistance boundary as our maritime boundary.”

Yet Ghana seems uncertain of succeeding with its central argument that there is a tacit agreement. Its lines of argument are constantly shifting. Sometimes it seems to be saying that the so-called customary equidistance boundary arises out of a tacit agreement; sometimes it seems to be referring to its customary boundary as though that were some new category of maritime boundary agreement; and then it invokes estoppel. But even Ghana’s estoppel argument seems to be based on acceptance of a tacit agreement. Professor Miron will address the estoppel argument following this statement.

Mr President, Members of the Special Chamber, I would like first to say a word about Ghana’s notion of a customary equidistance boundary. The expression “customary equidistance boundary” is not a term of art in international law. It has no particular meaning. Ghana has not sought to explain it, even after we questioned it in the Counter-Memorial. It seems to be an invention of Ghana’s ever inventive lawyers, conceived for the purposes of the present dispute.

1 ITLOS/PV.17/C23/1, p. 8, lines 7-8 (Akuffo).
2 CMCI, para. 3.23.
I shall make three points about the use of the term “customary equidistance boundary”:

First, by referring to an equidistance boundary, Ghana’s newly minted expression assumes the result that Ghana wishes to achieve. Even where the three-stage methodology is chosen as the way to achieve an equitable solution, the construction of a provisional equidistance line – line, not boundary – is but the first stage. An adjusted equidistance line may result from the second stage when relevant circumstances are taken into account. An equidistance boundary may or may not be the final outcome where the three-stage or indeed any other appropriate methodology is chosen.

Second, using the word “customary” to qualify a supposed equidistance boundary simply muddies the waters, if I can put it that way. The word seems to have been included simply to dignify Ghana’s chosen expression, perhaps to give it the appearance of some spurious legal worth. It may bring to mind customary international law, but clearly Ghana’s notion has nothing to do with that: “Ghana has never argued that this “customary equidistance line” reflects a bilateral custom.”

We have heard nothing about two elements, about general practice (State practice), about *opinio juris*, or the notion of particular custom. Presumably, Ghana here attempts to escape the law: the law on international custom, which would require it to produce evidence of both a general practice and of acceptance as law, and the law relating to tacit agreement, which imposes upon Ghana the burden of producing compelling evidence.

My third point is that Ghana’s use of the term adds nothing to its arguments except confusion. It adds nothing to its argument that there has somehow come into existence a tacit agreement between the two States or that Côte d’Ivoire is somehow estopped from denying the existence of an all-purpose maritime boundary out to 200 nautical miles and beyond.

In short, Mr President and Members of the Special Chamber, the term “customary equidistance boundary” is no more than a name dreamt up by Ghana’s lawyers for the line that they urge you to adopt. It has no legal meaning or effect. Perhaps Ghana hopes that it will be reassuring to the Members of the Chamber, but we are confident that it will not affect your application of the law of maritime delimitation in order to achieve an equitable solution in the present case.

Mr President, Members of the Special Chamber, it is important at the outset to stress that the onus is on Ghana to establish the existence of a tacit agreement between the Parties on a maritime boundary. Ghana argues as though the burden is on Côte d’Ivoire to show that there is no tacit agreement. That is simply not the case. The burden – and, as the case law indicates, it is a heavy burden – lies on Ghana.

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3 RG, para. 2.5.
Ghana’s attempt to reverse the burden of proof has another dimension. On Monday Ghana suggested that Côte d’Ivoire claimed to have demonstrated a “constant opposition” [“opposition continue”] to Ghana’s claimed line.⁶ This, of course, is not what we are saying. A constant opposition is not required to defeat a claim to the existence of a tacit agreement. On the contrary, it is for the Party invoking a tacit agreement to show that the other Party has consistently accepted such an agreement. In fact, Ghana’s preferred line only emerged as a boundary proposal in 2008, and Côte d’Ivoire, as we have already heard this morning, immediately rejected it.

You will also have noted that Ghana is quite unspecific about the subject matter of its so-called tacit agreement. Sometimes its lawyers talk about an agreement on what they call the equidistance method; sometimes they claim there is an agreement on a specific line, most often a petroleum line, though the actual line they have in mind seems to shift as and when that suits their purpose. We dealt with this at some length in our Counter-Memorial.⁷ Also, they extrapolate such lines far beyond any alleged practice. Indeed, on Monday you were shown a line from 1957 extending eight kilometres from the coast, but on Ghana’s own sketch it was prolonged out to 200 nautical miles.⁸

Ghana’s explanation of the origin of the so-called tacit agreement in a 1957 Decree issued in Paris by the then French colonial power⁹ is hardly convincing.¹⁰ That Decree did not mention the eastern limit of the concession. The subsequent map of 1959¹¹ was prepared by a private company. The 1957 Decree did mention a total surface area for the concession. Our friends opposite claim that “[o]nly a maritime boundary following an equidistance line produces that surface area.”¹² With respect, that assertion is self-serving and speculative. The calculation could be done quite differently. It cannot seriously be argued that the 1957 Decree establishes that the eastern limit of the concession followed an equidistance line.

Mr President, Members of the Special Chamber, as Côte d’Ivoire has shown at length in its written pleadings, the claim that there is a tacit agreement is simply untenable. In fact, it was only in August 2011, a mere three years before it commenced the present proceedings, that Ghana first came up with the notion that the Parties had somehow entered into a tacit agreement. It did so, curiously, in the middle of ongoing negotiations aimed at reaching agreement on the delimitation of a maritime boundary, which Maître Kamara described earlier this morning. Up until then, and thereafter, the conduct of both Parties clearly indicated the absence of any

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⁶ ITLOS/PV.17/C23/1, p. 14, line 41; p. 15, line 1 (Sands).
⁷ CMCI, paras 3.11-3.17.
⁸ Sketch Map: Côte d’Ivoire Exploration Concession 1957, Judges’ Folder (Ghana), tab 1(f), Sands 1-3a (6 February 2017).
⁹ Portions of Ivory Coast and Ghana (Fig. 7) in H.D. Hedberg et al., “Petroleum Developments in Africa in 1958”, Bulletin of the American Association of Petroleum Geologists, Vol. 43, No. 7 (July 1959).
¹⁰ ITLOS/PV.17/C23/1, p. 12, lines 12-13 (Sands).
¹¹ Portions of Ivory Coast and Ghana (Fig. 7) in H.D. Hedberg et al., “Petroleum Developments in Africa in 1958”, Bulletin of the American Association of Petroleum Geologists, Vol. 43, No. 7 (July 1959), MG, Annex M53.
¹² ITLOS/PV.17/C23/1, p. 12, lines 12-13 (Sands).
such tacit agreement. It is of particular note that in 2009 and again in 2015 the Presidents of Côte d’Ivoire and Ghana agreed that maritime boundary negotiations were needed. It was Ghana that commenced arbitration under Annex VII of UNCLOS in September 2014 seeking the delimitation of a maritime boundary between the Parties. Ghana’s Notification and Statement of Claim read: “Ghana requests that the Tribunal delimit, in accordance with the principles and rules set forth in UNCLOS and international law, the complete course of the single maritime boundary.”13 That was in their application instituting proceedings.

My friend and colleague Maître Kamara has just described the main aspects of the relations between the two Parties relevant to this case. In particular he has described the efforts to negotiate in 1988, in 1992 and finally between 2008 and 2014. As he has demonstrated, these show clearly that both Parties understood that there was no existing delimitation in place.

Mr President, Members of the Special Chamber, I shall now turn to some particular matters which show that Ghana’s assertion that there is a tacit agreement on delimitation of the maritime boundary (or as Ghana also puts it, a customary equidistance boundary) is wholly unfounded.

First, I shall say a very brief word about the law on tacit agreements. You are very familiar with this, but, as Ghana has signally failed to deal with it, so I shall recall it briefly. The case-law of ITLOS and the ICJ has consistently stated that the existence of a tacit agreement relating to maritime delimitation needs to be demonstrated by clear and convincing evidence. This morning Maître Kamara took you to the relevant passage. As the International Court stated in *Nicaragua v. Honduras*, “[e]vidence of a tacit legal agreement must be compelling. The establishment of a permanent maritime boundary is a matter of grave importance and agreement is not easily to be presumed.”14

This essential principle has been endorsed in subsequent cases, by the International Court in the *Black Sea* case,15 and by ITLOS in the case of *Bangladesh/Myanmar*.16

Mr President, Members of the Special Chamber, this may be a convenient moment to respond to the question that the Chamber put to the Parties on Monday. As you will recall, the question read as follows: “Could the Parties provide information on any arrangements which could exist between them on fisheries matters or with respect to other uses of the maritime area concerned?”

Mr President, our answer to this question is as follows: The Parties signed an agreement on fishing and oceanographic research on 23 July 1988.17 We have

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13 Notification under article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the claim and grounds on which it is based, 19 September 2014, para. 35.
16 Delimitation of the maritime boundary in the Bay of Bengal (*Bangladesh/Myanmar*), Judgment, *ITLOS Reports* 2012, p. 4, at p. 36, para. 95.
included a copy in your folders at tab 6. We do also have a copy of the Decree published in the Official Journal of Côte d’Ivoire ratifying the agreement, and we will provide copies of that to the Special Chamber and to our colleagues opposite. Under the treaty, the Parties authorize fishing boats and oceanographic vessels to operate in each other’s territorial sea and exclusive economic zones. Article 12, which is now on the screen, provides – and this is our translation – that “[t]his Agreement shall not affect the rights, claims or views of either Contracting Party with regard to the limits of its territorial waters or its fisheries jurisdiction.”

It is clear from this provision that in 1988 the negotiating States contemplated that there could be differing rights, claims and views on limits and jurisdiction over fisheries. Incidentally, this agreement was signed just five days after the 1988 meeting of the Joint Commission at which Côte d’Ivoire proposed negotiations on the maritime boundary.

Mr President, Members of the Special Chamber, on Tuesday Mr Tsikata replied to your question saying that, within the time available, Ghana’s summary response was that “[t]here are no arrangements between Ghana and Côte d’Ivoire with respect to fisheries.” 18 However, he also referred to possible arrangements with a private company while informing you about what he had been told about a map, but he did not produce any documents. Obviously that matter cannot be of assistance to the Special Chamber.

Mr Tsikata also took the opportunity to refer at some length to Côte d’Ivoire’s Fisheries Partnership Agreement with the European Union. He mentioned in particular a map which is to be found in a report funded by the European Commission but written by private experts. What Mr Tsikata did not draw to your attention, however, was that the experts’ report says that the map merely indicates the limits used by Community ship-owners “in the absence of official limits”. We would say that this has no probative value. 19

As for the map from a website of the Food and Agriculture Organization, also invoked by Mr Tsikata, this was prepared by private experts and contains the usual disclaimer. 20 It too is of no probative value.

Mr President, Members of the Special Chamber, mention of these fishery and oceanographic arrangements reminds us that Ghana is seeking to construct a tacit international maritime boundary agreement, out to 200 nautical miles and beyond, on the shaky foundation of limited petroleum conduct. This attempt is defective in many respects. It is based on petroleum activities the most distant of which is a mere 87 nautical miles from the coast. The conduct itself is by no means as clear as Ghana would have you believe, and has been contested by Côte d’Ivoire; and, above all, the conduct upon which Ghana relies is exclusively related to petroleum.

Ghana seeks to extrapolate from this limited petroleum conduct an all-purpose maritime boundary dividing the seabed and the water column of the exclusive economic zones and the continental shelf. Such a delimitation would cover the whole range of rights, jurisdiction and duties of the coastal State in the EEZ, set forth in article 56 of UNCLOS, and over the continental shelf as set out in Part VI of UNCLOS.

Mr President, that may be a convenient time at which to take the usual break, if that is acceptable to the Special Chamber.

THE PRESIDENT OF THE SPECIAL CHAMBER: (Interpretation from French):
Thank you, Sir Michael Wood. You have saved me the painful duty of having to interrupt you. We will take a coffee break, slightly ahead of time, and we will resume at 11.55 a.m. Thank you.

(Break)

THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French): We will now resume our proceedings until 1.00 p.m. and I give the floor to Sir Michael Wood.

MR WOOD: Mr President, Members of the Special Chamber, before the break I had offered some comments in light of the Tribunal’s question, for which we were very grateful.

I shall now turn to the impression of continuity and agreement between the two States in relation to their maritime boundary that Ghana seeks to create. As Maître Kamara demonstrated this morning, this impression is false. There has been joint conduct of the Parties that directly contradicts the existence of any agreement. There have been acts by Côte d’Ivoire protesting Ghana’s unilateral acts in the disputed zone or that are otherwise incompatible with any idea of agreement on maritime delimitation; and there have been acts by Ghana itself amounting to an admission of the absence of any agreement.

Mr President, Members of the Special Chamber, among Ghana’s many omissions is a failure to acknowledge that, on two recent occasions, in 2009 and again in 2015, the Presidents of Côte d’Ivoire and Ghana issued joint statements reaffirming their determination to find a negotiated delimitation of the maritime boundary.21 The joint statement dated 4 November 2009 is at tab 7. It affirmed, and this is our translation, that

…the land boundary has been delimited whereas discussions aiming at the delimitation of the maritime boundary had been initiated by the two countries.

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21 Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d’Ivoire, 3-4 November 2009, CMCI, Annex 34, at para. 8; Joint communiqué issued following the meeting between the President of the Republic of Côte d’Ivoire, the President of the Republic of Ghana and His Excellency Mr Kofi Annan, Geneva, 11 May 2015, RCI, Annex 201 (also in Rapport de la Côte d’Ivoire sur le suivi de l’application des mesures conservatoires (Report from Côte d’Ivoire on the follow-up to the implementation of provisional measures), 25 May 2015, CMCI, Annex 52).
The two leaders called upon the competent authorities of the two countries to proceed further with the discussions in order to reach a quick outcome.

A further joint statement was issued on 11 May 2015. It is at tab 8. In its paragraph 3, it recalls (and again this is our translation) that “[t]he delimitation of the maritime boundary remains an objective of the Parties.” Such statements, made at the highest State level, are compelling evidence of the absence of an agreement on delimitation.

I now turn briefly to the bilateral negotiations within the framework of the Mixed Commission between 2008 and 2014,\(^22\) which Maître Kamara has described already this morning. As we have already set out in our written pleadings, the various steps in the negotiations confirm the absence of any agreement on delimitation.\(^23\) Ghana’s July 2008 contention that its claimed line had been used by the Parties for a long time was rejected by Côte d’Ivoire in February 2009.\(^24\) Côte d’Ivoire then recalled that delimitation was yet to be agreed upon. It was only in August 2011 that Ghana, for the first time, asserted that there was a tacit agreement between the Parties delimiting their maritime boundary.\(^25\) The expression “customary equidistance boundary” seems first to have been used by Ghana during a meeting in November 2011 and that was only a few weeks after Côte d’Ivoire warned the businesses operating under Ghanaian licenses in the disputed zones. The expression then featured prominently, of course, in Ghana’s written and oral pleadings.\(^26\) Ghana’s last move was to abruptly interrupt the negotiations; withdraw its UNCLOS article 298 declaration, which precluded access to courts and tribunals under Part XV, in September 2014; and then immediately initiated arbitration proceedings seeking a delimitation of the boundary.\(^28\)

In the Gulf of Maine case, the Chamber declined to recognize the existence of a tacit agreement or a situation of estoppel in circumstances where the granting of concessions by Canada had met with no reaction by the United States for several years.\(^29\) In our case, by contrast, Ghana’s conduct in the undelimited area has indeed regularly met with protests from Côte d’Ivoire. In Guinea/Guinea-Bissau, the Arbitral Tribunal stated that “the conflicting nature of the Parties’ claims and of their measures of application is enough to exclude any notion of implicit agreement on

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\(^22\) CMCI, at paras 2.48-2.82 and related annexes.

\(^23\) CMCI, at paras 2.48-2.82; RCI, at paras 4.23-4.32.

\(^24\) CMCI, at para. 4.23; Communication from the Ivorian Party, Second meeting of the Joint Ivoro-Ghanaian Commission on the Demarcation of the Maritime Border between Côte d’Ivoire and Ghana, 23 February 2009, CMCI, Annex 30; RCI, para. 4.71.


\(^27\) This expression, or variants of it, was used 304 times in Ghana’s Memorial: CMCI, para. 3.23, footnote 167.

\(^28\) Letter from the Ambassador of Ghana to Côte d’Ivoire to the Ministry of Foreign Affairs of Côte d’Ivoire, no. ABJ/HMFA/COR.VOL.I8, 19 September 2014, CMCI, Annex 50; Notification under article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the claim and grounds on which it is based, 19 September 2014.

any lateral delimitation of the maritime zones.\textsuperscript{30} In our case, the conflicting nature of  
the Parties’ claims has been evident throughout.

As you heard this morning, during the 15th meeting of the Mixed Commission in  
July 1988, Côte d’Ivoire proposed to Ghana to extend the discussions to the  
question of maritime delimitation. That proposal confirms that there was then no  
agreement between the Parties as to the delimitation of the maritime boundary.  
Ghana seems now to be trying to question the very existence of the Ivorian proposal  
on the ground that it is difficult to ascertain its content. But what matters is not the  
content but the very fact that Côte d’Ivoire proposed to include the issue of  
delimitation talks on the agenda, and Ghana’s reaction. The record of the meeting,  
which was signed by each Party, expressly confirms that the proposal was made by  
Côte d’Ivoire, and discussed by the Parties. The relevant passage is now on the  
screen. It reads: “Following the presentation made by the Ivorian Party on the issue  
of the delimitation of the maritime boundary, the Ghanaian delegation took note of  
the inclusion of this item on the agenda.”\textsuperscript{31}

Ghana’s subsequent refusal to pursue discussions on the matter was based on the  
inadequacy of the mandate of the delegation to the Commission,\textsuperscript{32} not on an  
assertion that there was already an existing tacit agreement or so-called “customary  
equidistance boundary” that would render delimitation talks pointless.

Mr President, Members of the Special Chamber, I now turn to some of Ghana’s  
conduct that indicates its acceptance that the maritime border has yet to be  
delimited. As we have just seen, Ghana took note of Côte d’Ivoire’s 1988 proposal to  
hold negotiations on maritime delimitation. It was only because of the Ghanaian  
delegation’s limited mandate that Ghana ultimately declined to proceed further with  
the question within the framework of the Mixed Commission. From this episode it is  
not possible to deduce a general refusal by Ghana to examine the issue of  
negotiations based on the principled position that the maritime border had already  
been delimited.

Early in 1992, Ghana itself proposed that the Parties engage in negotiations on  
maritime delimitation.\textsuperscript{33} Côte d’Ivoire’s reaction to this proposal in April 1992 is now  
on the screen. It is also in your folders at tab 10. The relevant part of the note  
begins – and I shall try to read it in the original French: (\textit{Interpretation from French})  
“The Ghanaian Government proposed the holding, on 12 February 1992 at Abidjan,  

\textsuperscript{30} \textit{Delimitation of the maritime boundary between Guinea and Guinea-Bissau, Arbitral Award of  
para. 66.}

\textsuperscript{31} Minutes of the 15th regular session of the Joint Commission on Redemarcation of the Boundary  
between Côte d’Ivoire and Ghana, 18-20 July 1988, CMCI, Annex 12 (at p. 5).

\textsuperscript{32} CMCI, para. 2.37; Minutes of the 15th regular session of the Joint Commission on Redemarcation  

\textsuperscript{33} Minutes of the meetings of the Technical Committee responsible for gathering and updating data on  
delimitation of the maritime boundary between Ghana and Côte d’Ivoire, 16 and 18 March 1992,  
CMCI, Annex 14; Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the  
Ambassador of Côte d’Ivoire in Accra, 1 April 1992, CMCI, Annex 16.
(Continued in English) The following paragraph of the note recalls Côte d'Ivoire’s 1988 proposal. It confirms Ghana’s favourable position as to engaging in delimitation negotiations. Thus, within a reasonably short period of time (three and a half years between 1988 and 1992), each of the Parties proposed negotiations with the clear objective of delimiting their common maritime border. Côte d’Ivoire’s reaction to Ghana’s 1992 request is telling. Côte d’Ivoire welcomed Ghana’s proposal and requested that the two States abstain from any invasive activities (drillings) in the disputed area pending a final settlement. Ghana did not react to such explicit language, yet it is now trying to use Côte d’Ivoire’s failure to follow up with a negotiation proposal in its attempt to show that the boundary was in fact delimited in Côte d’Ivoire’s view.

In 2009, Côte d’Ivoire rejected Ghana’s claim to an equidistance line allegedly defined by the Parties’ long-term conduct. This Communication was made on 23 February 2009 ahead of the second meeting of the Mixed Commission. It clearly states that – and this is our translation:

[this proposed line of the Ghanaian Party does not constitute an official agreement between our two countries, following from bilateral negotiations for the delimitation of the maritime boundary between Côte d’Ivoire and Ghana, as recommended by articles 15, 74 and 83 of the Montego Bay Convention.]

This communication reminded Ghana that, in 2009, a delimitation had yet to be agreed between the Parties. The communication also recalled Côte d’Ivoire’s 1988 and 1992 requests for the suspension by Ghana of any unilateral steps in the disputed area. Ghana did not react to this statement, let alone challenge it. Instead

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35 Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d’Ivoire in Accra, 1 April 1992, CMCI, Annex 16; MG, Annex 66.

36 RG, para. 2.53.


39 Communication from the Ivorian Party, second meeting of the Côte d’Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d’Ivoire and Ghana, 23 February 2009, CMCI, Annex 30 (at para. 7). The English translation of the original French text is not accurate.

40 CMCI, at para. 2.57.
it simply proceeded with its inflexible position culminating in its first claim to tacit agreement, in August 2011.\textsuperscript{41}

In September 2011, as Professor Miron will explain, Côte d’Ivoire issued a warning letter to the businesses operating under Ghanaian licence in the disputed area,\textsuperscript{42} and Côte d’Ivoire repeated this warning in 2014. After the warning, in a letter dated 19 October 2011 Ghana’s Minister of Energy responded to a request for clarification from Tullow (copying the letter to Ghana’s Attorney General and Foreign Minister). This letter is at tab 12. In the letter, Ghana’s Minister confirmed the absence of agreement on the maritime boundary in the clearest terms. The third paragraph reads:

> As regards the maritime boundary, as you are aware, it has always been publicly known that the Republic of Ghana and the Republic of Côte d’Ivoire have not yet delimited their maritime boundary. It is also publicly known that in the recent years the two Governments have met in an effort to negotiate their maritime boundary in accordance with international law. Those negotiations remain ongoing.\textsuperscript{43}

Mr President, this could not be clearer. It is another explicit acknowledgement by Ghana of the Parties’ diverging views on the maritime boundary and the absence of any agreement, tacit or otherwise.

The 2008-2014 bilateral negotiations within the Mixed Commission were also initiated by Ghana. On 20 August 2007 Ghana sent a note to Côte d’Ivoire calling for delimitation negotiations.\textsuperscript{44} This note may be found at tab 13. In the second paragraph, you will see that there is a reference to articles 74 and 83 of UNCLOS. In the third paragraph that is now on the screen the note states: “The Ministry is proposing a joint Ghana Ivory Coast team to deliberate on the delimitation of our international maritime boundaries to enable Ghana to make its claim to the UN Commission on the Limits of the Continental Shelf.”

The very fact that Ghana made this new proposal for negotiations (the second one by Ghana and the third one between the Parties within two decades) confirms Ghana’s awareness that there was no agreement, tacit or otherwise, on the delimitation of the maritime boundary.

In its opening statement at the first meeting of the Mixed Commission in 2008, Ghana stated that “any agreement reached here would have to be approved by the Legislature and/or the Executive of both countries.”\textsuperscript{45} The aim was clearly not the mere formalization of an existing agreement.

\textsuperscript{41} CMCI, at para. 2.67; Ghana Boundary Commission, Response to Côte d’Ivoire’s proposals towards the 5th Côte d’Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, Annex 39.

\textsuperscript{42} CMCI, Annex 71.

\textsuperscript{43} Letter from the Ministry of Energy of Ghana to Tullow, 19 October 2011, CMCI, Annex 78.

\textsuperscript{44} CMCI, at para. 16; Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d’Ivoire in Accra, 20 August 2007, CMCI, Annex 25.

In short, Mr President, the 2008-2014 negotiations reflect Ghana’s commitment to negotiating the delimitation and thus confirms the absence of an agreement.\footnote{Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d’Ivoire in Accra, 20 August 2007, CMCI, at para. 16; Annex 25.}

Mr President, taken individually, and taken together, this conduct shows clearly that Côte d’Ivoire openly and consistently rejected any suggestion that the Parties’ common maritime boundary had been delimited by tacit agreement, or that there existed a so-called “customary boundary”. Côte d’Ivoire’s position has been clear and consistent throughout. This conduct also points unmistakably to Ghana’s awareness and acceptance of the absence of agreement and of the undelimited character of the disputed area.

Mr President, I now turn to certain matters invoked by Ghana in its efforts to construct a case for a tacit agreement. These are matters particularly relating to petroleum.

I begin by saying that the case-law has consistently confirmed the irrelevance of petroleum conduct for the purpose of maritime delimitation unless such conduct clearly reflects a tacit agreement between the Parties. A leading case is\footnote{Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, p. 303, at p. 447-448, para. 304.} Cameroon v. Nigeria,\footnote{Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 246, at p. 310-311, paras 149-152; Delimitation of maritime areas between Canada and France, Arbitral Award of 10 June 1992, R.I.A.A. Vol. XXI, p. 265, at p. 295-296, paras 89-91; Arbitration between Barbados and the Republic of Trinidad and Tobago relating to the delimitation of the exclusive economic zone and the continental shelf between them, Decision of 11 April 2006, R.I.A.A. Vol. XXVII, p. 147, at p. 241-242, paras 363-366; Arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname, Arbitral Award of 17 September 2007, R.I.A.A. Vol. XXX, p. 1, at p. 108, para. 390.} which Professor Pellet will come to when he touches on Ghana’s modus vivendi argument. The Court in that case based itself on previous consistent case law.\footnote{MG, paras 3.71-3.76, 5.13-5.17; RG, paras 2.104-2.105.} In accordance with the case law, the petroleum conduct of the Parties in our case is irrelevant for the purpose of maritime delimitation unless such conduct clearly and unambiguously reflects a tacit agreement. That cannot be the case here: as I have just recalled, Côte d’Ivoire has regularly repeated its objection to Ghana conducting invasive activities in the undelimited area, and Ghana’s own behaviour, for instance proposing negotiations and indeed engaging in negotiations, clearly indicates that the maritime boundary has not yet been delimited.

The petroleum conduct invoked by Ghana in the present case cannot be expressive of a tacit agreement between the Parties on delimitation of their maritime boundary. Ghana appears to attach great importance to the seismic requests and authorizations that passed between the Parties in the disputed area.\footnote{See inter alia Letter from N.B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to The President, UMIC Côte d’Ivoire (31 October 1997), MG, Annex 67; Letter}
authorizations refer to approximate geographic zones where the seismic missions were operating. They reflect caution in a context of uncertainty relating to an undelimited area rather than a formal request or authorization to cross a delimited boundary.

Ghana also seeks to rely on the Parties’ bilateral cooperation and joint projects in an attempt to suggest the existence of a tacit agreement. As Côte d’Ivoire has shown in its written pleadings, the examples invoked by Ghana do not evidence a tacit agreement on delimitation. None of these examples relates to delimitation. Some of the projects, such as a linguistic programme and an agreement on the use of the Takoradi base, do not even refer to the disputed area.

Ghana then seeks to rely on the Parties’ petroleum-related legislation and contracts in relation to the undelimited area; but again, in our submission, this is to no avail. The activities that actually took place in the disputed area under such legislation were neither invasive nor even called for a reaction. These activities, as we have heard today, remained sparse at the time and were not such as to call for the other Party’s reaction. Moreover, in the case of the Ivorian decrees, it must be questioned how far mere legislative action, not accompanied by actual implementation of the national law, may be held against the State. In any event, as is shown in our written pleadings, the Parties’ conduct demonstrates the absence, rather than the existence, of a tacit agreement.

Professor Miron will deal with Côte d’Ivoire’s decrees from the 1970s. I will just say a word about article 8 of Côte d’Ivoire’s Law of 17 November 1977. I hope you can now see article 8 of the Law on the screen. The Law itself is at tab 14. The 1977 Law settles the principles to be used by Côte d’Ivoire in delimiting its maritime boundaries with its neighbours. In English translation it reads: “With respect to adjoining coastal States, the territorial sea and zone referred to in article 2 of this Law” is the exclusive economic zone “shall be delimited by agreement in


51 RG, para. 2.108.
52 RG, para. 2.108; RCI, paras 4.43, 6.29-6.30.
53 RG, para. 2.108; RCI, paras 6.29-6.30.
54 Loi n°77-926 portant délimitation des zones marines placées sous la juridiction nationale de la République de Côte d’Ivoire (Law no. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast), 17 November 1977, CMCI, Annex 2.
conformity with equitable principles and using, if necessary (le cas échéant) the median line or the equidistance line, taking all pertinent factors into account.”\textsuperscript{55} The Law indicates the methodology endorsed by Côte d’Ivoire in view of future delimitations with its two neighbours. It is clearly consistent with international law. Properly read, including the reference to equitable principles and the words “le cas échéant”, which Ghana slides over, it most certainly does not require the application of any so-called principle of equidistance.

The 1977 Law was adopted several years after the first decrees granting petroleum concessions in the area adjacent to the disputed zone. If the relevant boundaries were delimited already as of 1977, it would be difficult to understand the raison d’être of such legislation. The 1977 Law was of course envisaging future delimitations. This is evident from the text, which expresses the need for an agreement on delimitation of the maritime boundary, thus confirming the absence of such agreement with Côte d’Ivoire’s two neighbours.

The insistence in the 1977 Law on the need for an agreement also excludes any delimitation that would be effected by way of unilateral acts such as Ghana’s activities in the disputed area.\textsuperscript{56} In the absence of delimited maritime boundaries, the rationale of the 1977 Law was to state Côte d’Ivoire’s understanding of relevant principles of the international law of maritime delimitation. They are very clearly expressed in article 8: maritime delimitation is to be effected by means of agreement in conformity with equitable principles. These principles reflected customary international law at the time of the 1977 Law, and they have since been consecrated by articles 74 and 83 of UNCLOS.

It is clear from the wording of article 8 that the use of the equidistance or median line is only relevant “if necessary” – “le cas échéant” – meaning that the use of such line will be dependent on the circumstances of the case. Moreover, it is clear from article 8 that an equidistance line, where it is to be used, is only a provisional equidistance line, to be adjusted “taking into account all relevant factors”. In short, Mr President, Ghana’s heavy reliance upon the Law of 1977 is simply not supported by the text of the law.

Côte d’Ivoire’s petroleum contractual practice confirms the position reflected in its legislation. With the uncertainties surrounding an undelimited boundary, as you will have seen, Côte d’Ivoire developed a practice of including a model clause reserving Côte d’Ivoire’s position as to the limits of its jurisdiction. Such wording would have had no raison d’être if there were already a delimited maritime boundary. The details of such practice have been set out at length in our written submissions.\textsuperscript{57}


\textsuperscript{57} CMCI, at paras 4.67-4.68; RCI, paras 4.35-4.39.
Mr President, Members of the Special Chamber, on Tuesday Professor Klein developed two legal points concerning the alleged tacit agreement. I can be brief in response.

First, he suggested that the fact (which he accepts) that PETROCI is not empowered to commit the Republic of Côte d’Ivoire in matters concerning frontiers was of no importance. Of course, it is important in the present context, when Ghana asserts that PETROCI’s publications, its maps, somehow commit the State to a certain delimitation. Moreover, Professor Klein omitted to draw your attention to the very next paragraph in our Rejoinder, where we make a number of other important points about PETROCI, in particular that it is not an emanation of the State, the very point that Professor Klein seems to accept is crucial.

Second, Professor Klein took us to task for relying on a series of cases that he tried to say were totally different from the present one. I do not have time today to respond in detail to his lengthy and learned efforts to distinguish these cases (in a truly common law manner, which I greatly respect). Of course, the circumstances of each case turn on their own particular facts, and we certainly did not intend to suggest otherwise. What these cases do show is the great caution with which international courts and tribunals approach “evidence” put forward to establish a tacit agreement, and the very high threshold that must be met, especially where a maritime border is concerned.

Ghana refers to certain maps in an attempt to shore up its claim to a customary equidistance boundary. We have dealt with these at length in our written pleadings, and, as we have shown, these maps do not evidence the course of the maritime boundary or the existence of a tacit agreement that would support such course. Almost all the maps relied on by Ghana are those of petroleum concessions, many of them produced by private actors not representing or engaging either State. Moreover, such maps stand alone, without any accompanying text or explanation.

As the Members of the Special Chamber are aware, international courts and tribunals have consistently shown great caution in dealing with maps as evidence of a party’s claims. International case law confirms the general view that maps can provide evidence only in certain circumstances, and in any case can only serve as subsidiary evidence, meaning an element confirming conclusions that have been reached by other means.

In Burkina Faso/Mali, the ICJ made this very clear: maps, it said, can “have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps.” This has been confirmed in other instances, such as in Indonesia/Malaysia and Nicaragua v. Colombia.
The maps put forward by Ghana were prepared and used either by private companies or by public bodies with a limited, technical mandate. These maps did not purport to express a view engaging the State on the position of the maritime border, nor could they have done so. As a result, such maps cannot be a “physical expression of the will of the State”, to quote the formula used by the International Court in Burkina Faso/Mali, and “they cannot in themselves alone be treated as evidence of a frontier [and] they cannot be given the character of a rebuttable or juris tantum presumption such as to effect a reversal of the onus of the proof.”

Mr President, Members of the Chamber, I now turn to the Parties’ 2009 submissions to the Commission on the Limits of the Continental Shelf (CLCS). Ghana seems to rely heavily on these. As Côte d’Ivoire explained in its written pleadings, these submissions do not provide any evidence of a tacit agreement between the Parties on the delimitation of their maritime boundary; quite the contrary.

First, the limits of the areas respectively claimed by each Party were determined only by the technical information available to it, not by agreement. Second, the limits of the Parties’ respective claims in their submissions do not, as Ghana contends, follow a single line. Third, contrary to what Ghana may suggest, the submissions explicitly state that there is a boundary dispute. Section 5 of each submission contains a standard without-prejudice clause that clearly distinguishes between delineation of the outer limits of the continental shelf of a State and delimitation of the maritime boundary between two or more States. It is particularly inappropriate for Ghana to claim otherwise, since it attended, together with other States in the region, an ECOWAS meeting in 2009, where all these States agreed that:

[i]ssues of the limits of adjacent/opposite boundaries shall continue to be discussed in a spirit of cooperation to arrive at a definite delimitation even after the presentation of the preliminary information/submission. Member States should therefore write “no objection” Note to the submission of their neighbouring States.

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MG, paras 2.9-2.16 and 3.78; RG, at paras 4.2-4.3.

RG, para. 4.16.


The Chairman of the CLCS, as well as Ghana itself in its initial submission, confirmed and accepted this view. In its 2009 submission, Ghana expressly acknowledged that it “has overlapping claims with adjacent States in the region, but has not signed any maritime boundary delimitation agreements with any of its neighbouring States to date.”

Mr President, Members of the Chamber, to conclude: for the reasons given in our written pleadings, and again at this hearing, it is, in our submission, clear that Ghana has not established that there is a tacit agreement between the Parties delimiting their common maritime boundary, even out as far as where there has been some petroleum activity. Ghana is far from meeting the high threshold laid down in the case law of the ITLOS and the ICJ for the establishment of a tacit maritime boundary agreement. The absence of a tacit agreement is manifest. It is confirmed by Côte d’Ivoire’s conduct, reflecting its position that the maritime boundary has yet to be delimited, and protesting Ghana’s intrusive activities in the disputed area. All such conduct was well known to Ghana and was not contested by it. The absence of a tacit agreement is further confirmed by Ghana’s own conduct, amounting to an admission that the maritime boundary has yet to be delimited. The absence of tacit agreement is further confirmed by the joint conduct of the Parties, including the joint statements of the two Presidents, to which I referred you, clearly indicating the undelimited character of the maritime boundary, and by initiating and participating in delimitation negotiations over an extended period of time.

For all these reasons, we respectfully submit that the Chamber should conclude that there is no tacit agreement on the delimitation of the Parties’ common maritime boundary.

Mr President, Members of the Chamber, before concluding, I feel obliged to say that I was somewhat surprised that in his introductory speech Professor Sands saw fit to suggest that all roads led to a customary equidistance boundary, and that if the Special Chamber took any other approach, the International Tribunal for the Law of the Sea would “disqualify itself from settling disputes of this kind”. Such language is, to put it mildly, out of place. We are confident that you will approach this case with an open mind, with the sole aim of achieving an equitable solution in accordance with the law.

Mr President, this concludes what I have to say. I thank you all for your attention, and I request that you now give the floor to Professor Miron.

THE PRESIDENT OF THE SPECIAL CHAMBER: I thank you, Sir Michael, for your statement. (Interpretation from French) Professor Alina Miron, you have the floor.

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71 ITLOS/PV.17/C23/1, p. 10, line 32 (Sands).
Ms Miron (Interpretation from French): Mr President, Members of the Special Chamber, it is a great honour for me to appear once again before you. This is due to the confidence shown in me by the authorities of Côte d’Ivoire, for which I thank them.

To close this morning’s session, I would like to present an alternative history of estoppel; a history where essential documents are not shrouded in silence; a history where five years of Ghanaian unilateral oil activities do not become five decades of “effectivités” consented to by Côte d’Ivoire; a history where the protests of Côte d’Ivoire are not characterized as hopes dashed by its neighbour; a history where economic benefits are not depicted as apocalyptic prejudice.

It is a history of the oil activities of the Parties, activities in the primary meaning of the word, which is a “real deployment, a tangible manifestation of power”. 1

With regard to oil, this means invasive drilling activities, as opposed to simply mapping out oil blocks on paper for commercial purposes. It means sustained and irreversible activities, unlike seismic surveys carried out by transient vessels. You noted in your Order of 25 April 2014 that this type of activity “results in significant and permanent modification of the physical character of the area in dispute.” 2

When these activities are spread out over time, they can lead to a draining of resources. In short, they are activities which modify the status quo. 3

In reality, this is the history of the unilateral activities in the disputed area not carried out by the Parties but by Ghana alone. I am going to keep to the disputed area. This clarification would be wholly axiomatic were it not for the unfortunate tendency of the other side to make repeated incursions outside the disputed area.

On Monday we heard Professor Philippe Sands count hundreds of wells drilled by the two States between 1970 and 1990. 4 Mr Tsikata presented a sketch map, which you can currently see on screen, as illustrating the offshore drilling activities up to the end of 2009. 5 What our esteemed opponents failed to say is that before 2009 only four wells had been completed in the disputed area, and in fairly dubious circumstances, which I will come back to. The others? A smokescreen intended to create the impression that the development of the oil industry of the two States hinged on the recognition of the western limits of the Ghanaian concessions as the maritime boundary. Let us blow away the smoke, Mr President, and concentrate on the activities in the disputed area.

Briefly, Ghana’s argument relating to estoppel is as follows. To undertake its activities it relied on representations – “assurances” in French – from Côte d’Ivoire to the effect that the maritime boundary followed an equidistance line. Ghana was all the more entitled to do so because we did not protest. Stopping these activities

1 http://www.cnrtl.fr/definition/activit%C3%A9.

2 Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146, para. 89.

3 See contra ITLOS/PV.17/C23/3, 07/02/2017, p. 29, lines 30-42 (Ms Macdonald).

4 ITLOS/PV.17/A23/1, 06/02/2017, p. 14, lines 9-22 and 38-40 (Prof. Sands).

5 ITLOS/PV.17/C23/1, 06/02/2017, p. 37, line 9 (Mr Tsikata).
would cause it considerable prejudice.\textsuperscript{6} I will in turn examine these three elements, which constitute the three cumulative conditions for estoppel.\textsuperscript{7}

Ghana repeats \textit{ad nauseam} the refrain of Côte d'Ivoire's acceptance, over decades, of a boundary following the equidistance line. Sir Michael has just demonstrated that there never was any acceptance. The estoppel argument, which based entirely on this, is as doomed to failure as the tacit agreement argument.

It is therefore very easy for me to rebut each of the examples of so-called representations given by Professor Klein. The first of these was the 1970 decree.\textsuperscript{8} Mr Kamara and Sir Michael have shown how Ghana takes this out of its broader context but, over and above this, what does the text say? It grants an exclusive concession to Esso and Shell in Ivorian territorial waters, specifying that coordinates A, B, K, L, M and T are approximate.

In 1975 another decree issued by President Houphouët-Boigny very clearly separates the oil concessions from the maritime boundary: “The coordinates of reference points M, L and K separating Côte d'Ivoire and Ghana are given by way of indication and cannot in any case be considered as being the national jurisdiction boundaries of Côte d'Ivoire.”\textsuperscript{9}

If Ghana had really interpreted the 1970 decree as – and I quote Professor Klein – “a representation likely to create legal effects”,\textsuperscript{10} even though this is not confirmed by any activity in the disputed area, in any event the 1975 decree dissipates any false impression. It is hardly surprising then that Professor Klein opted to forget it.

Our opponents make much of the authorizations for seismic surveys,\textsuperscript{11} once again failing to place them in their context. In reality, they are part of broader cooperation, as requested by article 83, paragraph 3, of the Convention. PETROCI and GNPC undertook to exchange data collected, be it from the boundary area or elsewhere. In addition, it is in keeping with this collaboration, “without prejudice to the final delimitation”,\textsuperscript{12} that, moreover, Ghana proposed an exchange of seismic data for the preparation of submissions to the Commission on the Limits of the Continental Shelf.\textsuperscript{13}

This leads me to say a few words about those submissions.\textsuperscript{14} Without batting an eyelid, Professor Klein interprets them as an \textit{urbi et orbi} proclamation of Côte d'Ivoire’s recognition of the existence of a delimited maritime boundary following an

\begin{itemize}
\item \textsuperscript{6} ITLOS/PV.17/A23/3, 07/02/2017, p. 12, line 23 (Prof. Klein).
\item \textsuperscript{7} CMCI, Vol. I, paras 5.2-5.7; RCI, Vol. I, paras 5.38 and 5.
\item \textsuperscript{8} Decree n° 70-618 granting an oil exploration licence to the companies ESSO, SHELL and ERAP, 14 October 1970 (CMCI, Annex 59).
\item \textsuperscript{9} Decree n° 75-769 renewing oil exploration licence no. 1, 29 October 1975 (CMCI, Annex 61).
\item \textsuperscript{10} ITLOS/PV.17/A23/3, 07/02/2017, p. 15, lines 9-12 (Prof. Klein).
\item \textsuperscript{11} TIDM/PV.17/A23/1, p. 15, line 21 et seq., p. 16, line 6 et seq. (Prof. Sands); TIDM/PV.17/C23/1, p. 37, line 6 et seq., p. 39, line 19 (Tsikata); TIDM/PV.17/C23/2, pp. 1 and 2 (Tsikata); TIDM/PV.17/A23/2, p. 7, line 15 et seq., p. 10, line 32 (Prof. Klein); TIDM/PV.17/A23/3, p. 14, line 11, p. 17, lines 8 and 42 (Prof. Klein).
\item \textsuperscript{12} Article 83, paragraph 3 of UNCLOS.
\item \textsuperscript{13} RCI, Vol. I, para. 6.33.
\item \textsuperscript{14} ITLOS/PV.17/C23/3, p. 14 (Prof. Klein).
\end{itemize}
equidistance line.\textsuperscript{15} Really? How does Ghana reconcile this interpretation with its position in 2007, when Ghana itself was proposing to Côte d’Ivoire to settle the dispute on the maritime boundary\textsuperscript{16} on the pretext that it was an obstacle to filing the submission to the CLCS? Or with the fact that in 2008, during the first meeting of the Joint Commission, it reasserted the same point of view?\textsuperscript{17} Thus, in 2007-2008 Ghana considered, without a shadow of a doubt, that the boundary was not delimited. Today Ghana swears, and urges you to believe, that back then Ghana was convinced, in all good faith, that the boundary had been drawn for more than 50 years.

The last example of representations given by Professor Klein concerns the absence of concessions or Ivorian activities in the disputed area.\textsuperscript{18} In short, Ghana reproaches us for having shown restraint, as is required by the Convention. The mere act of making this complaint attests to its derisory nature.

Mr President, I have just demonstrated that the first condition for estoppel is not met. I am not therefore required, \textit{a priori}, to dwell on the other two, but I will do so \textit{ex abundante cautela}.

Ghana asserts that it invested in the area relying on the purported Ivorian representations, but nothing is further from the truth. On the contrary, the most substantial investments – those relating to drilling – were made in disregard of Côte d’Ivoire’s protests and at the cost of the failure of the negotiations.

It should be recalled that in 1988 the Parties dealt with the question of delimitation of the maritime boundary for the first time. At that time the disputed area was virgin territory; it had never been drilled. Ghana did not respond to the invitation but in 1989\textsuperscript{19} it drilled its first well in the Tano North West field, without having informed Côte d’Ivoire in any fashion.

When it received confirmation of the Ghanaian drilling, Côte d’Ivoire protested against this kind of invasive activities, and I quote from the letter of 1992:

\begin{quote}
The Ivorian Government … therefore hopes that whilst awaiting the meeting of the Joint Border Redemarcation Commission, the two countries shall abstain from all operations or drilling works in the Zone whose status remains to be determined.\textsuperscript{20}
\end{quote}

\textsuperscript{15} \textit{Ibid}.

\textsuperscript{16} Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d’Ivoire in Accra, 20 August 2007, CMCI, Annex 25.

\textsuperscript{17} Opening statement of Ghana, maiden meeting of the Ivorian-Ghanaian Joint Commission for the Delimitation of the Maritime Boundary, 16 and 17 July, CMCI, Annex 28.

\textsuperscript{18} TIDM/PV.17/A23/3, p. 11, line 2 (Prof. Klein).

\textsuperscript{19} See also State of activities in the oil blocks granted by Ghana in the disputed area, 27 February 2015, CMCI Vol. IV, Annex 83.

For Professor Sands, this note verbale, sent by the Ivorian Minister for Foreign Affairs to his Ghanaian opposite number, is "an expression of hope [which] faded away and was dropped." So does Ghana interpret a formal protest, admittedly made in subdued diplomatic language, as mere inconsequential gesture? Mr President, this "hope" was surely dashed, but it was not dropped. On the contrary, Côte d'Ivoire reiterated its opposition, in any event when it was aware of Ghana's unilateral activities and when its government apparatus was in a position to react. Our opponents make a great deal of our silence during the period 1992-2002. What really happened in the disputed area during this period of lengthy domestic crises in Côte d'Ivoire? In 1999 and then in 2002, Ghana drilled two wells. These activities took place when the Ivorian civil war was at its height. The two wells are located in the Tano West 1 field, which straddles the provisional equidistance lines, whether Ghana's line or ours. If at that time Ghana thought that the boundary followed the equidistance line, should it not at least have informed Côte d'Ivoire of the configuration of this deposit? It did not do so, and in any event these wells were quickly abandoned. Mr President, that was the status quo in the disputed area in 2007-2008 when the negotiations on the boundary resumed. What happened then? In June 2007 Tullow discovered the Jubilee field, which lies outside the disputed area, but close to it. This discovery heralded significant resources further to the west. On 20 August 2007, Ghana contacted Côte d'Ivoire with a view to resolving the question of maritime delimitation. Côte d'Ivoire responded immediately, all the while expressing concern about the invasive activities in the disputed area, as can be seen from an internal note that defines the terms of reference of the Ivorian negotiators: "In order to avoid any conflict between the two countries on the issue of oil exploitation, it would be highly desirable for the … Joint Commission … to consider this matter as well."
While the Commission was being set up, Ghana authorized Tullow to drill a well in the Ebony field. This quickly proved to be non-viable and Tullow therefore sold its licences for the block.  

The Joint Commission met in February 2009 and Côte d’Ivoire quite normally took the opportunity to reaffirm its opposition to the drilling: “Côte d’Ivoire reiterates its request to Ghana in respect of any unilateral activity in the neighbouring maritime zone until a determination by consensus of the maritime border between the two countries.”

What does Ghana do? It authorizes Tullow to drill two further wells in the Tweneboa field, located close to the equidistance lines and doubtless linked to the Enyenra field, which straddles those lines. The commercial viability of the field is confirmed at the end of 2009. Does Ghana inform Côte d’Ivoire about it? Absolutely not. On 15 December 2009 Ghana makes its declaration under article 298.

Now, sheltered from all judicial supervision, Ghana gives the green light to the drilling of a number of wells in the disputed area. You can see on the screen the statistics showing the acceleration of invasive activities and the build-up of heavy installations in an area whose delimitation was a priori at the heart of the negotiations between the two States.

On Tuesday Mr Alexander perfectly illustrated this unstoppable dynamic of Ghana’s fait accompli in the TEN field: two wells in 2010, five in 2011, two in 2012, three in 2013, two in 2014, and so on.

Côte d’Ivoire’s protests did nothing to hamper this irresistible acceleration. In 2011 Côte d’Ivoire renewed its appeal to Ghana. “[The Côte d’Ivoire] negotiator went on to ask Ghana to suspend all economic activities in the areas concerned until the boundary issue was resolved.”

We know what happened next. Ghana turned a deaf ear and Côte d’Ivoire addressed the oil companies directly, cautioning them against the risks caused by continuing their activities. It is this attitude that Ghana today characterizes as “surprising” or even “threatening”.

Mr President, I have just shown that all the significant investments in the disputed area have been made despite the protests of Côte d’Ivoire and in disregard of the negotiation process. Against this background, Ghana is particularly ill advised to

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32 Letter from Tullow to Ghana, 14 October 2011, CMCI, Vol. III, Annex 77 [tab 12 of the Judges’ folder]. See also RCI, paras 6.31-6.34.
33 ITLOS/PV.17/C23/2, p. 17, lines 5-7.
34 RG, p. 149, para. 5.33.
complain about any damage which the cessation of the unlawful activities might cause it.

However, beyond this, one might wonder what is the basis for Ghana’s catastrophic forecasts. Throughout the entire proceedings our opponents have merely advanced these forecasts without ever supporting them: during the provisional measures phase,\textsuperscript{35} in the Memorial,\textsuperscript{36} in the Reply, and on Monday and Tuesday.\textsuperscript{37} In our Counter-Memorial we demonstrated that these figures and claims were to be taken with precaution.\textsuperscript{38} But as Ghana persists in dodging the issue, it is difficult to engage in any kind of adversarial debate on this subject. So let me just briefly summarize our factual arguments.

With regard to prejudice to Ghana, it should be noted that the oil concessions gave rise to payment of taxes and fees to Ghana. Evidently, these can hardly be seen as damage;\textsuperscript{39} and, moreover, Ghana states that its economy has profited from them.\textsuperscript{40} Given the state of the case, it is impossible to establish to what extent those profits have been derived from the disputed area. On the other hand, it is certain that Côte d’Ivoire, for its part, has been deprived of all those profits.\textsuperscript{41}

With regard to prejudice suffered by the British company Tullow, let me just make a few remarks in shorthand by way of conclusion. First, Tullow is not a party to these proceedings and Ghana does not exercise diplomatic protection. Second, Tullow presents its investments as dead losses,\textsuperscript{42} but they are not, because for a company specializing in oil exploration they are part and parcel of the risk calculation. Third, the confirmation of the commercially viability of the wells in the TEN field generated considerable revenues for Tullow, derived, inter alia, from the increase in its stock market value. Last, but not least, Tullow has made these investments despite Côte d’Ivoire’s cautions. Indeed, in 2011, when Côte d’Ivoire contacted the company directly, its investments amounted to USD 630 million, so the 4 billion about the potential loss of which Tullow complain were spent only after 2011.\textsuperscript{43}

Mr President, Members of the Special Chamber, the facts being what they are, I do not think it is really necessary to quibble over the greater or lesser similarities

\textsuperscript{35} TIDM/PV.15/A23/2, p. 6, lines 37-46; TIDM/PV.15/A23/2, p. 6, lines 39-43; TIDM/PV.15/A23/2, pp. 16-21.
\textsuperscript{36} MG, Vol. I, paras 1.30, 2.122, 2.125, 3.89-3.90 and 5.30.
\textsuperscript{37} TIDM/PV.17/A23/3, p. 12, lines 19-36; p. 13, lines 1-5; p. 15, lines 20-23; p. 18, lines 19-24.
\textsuperscript{38} CMCI, 5.34-5.54.
\textsuperscript{40} \textit{Dispute concerning delimitation of the maritime boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire), Provisional Measures, Written Statement of Ghana, 23 March 2015}, paras 48-57.
\textsuperscript{41} CMCI, paras 5.41-5.42.
\textsuperscript{43} CMCI, paras 5.53-5.54.
between our case and all the others in which international courts or tribunals rejected estoppel.

Let me conclude by stating that international law does not include the concept of delimitation by estoppel. In reality, Ghana relies on this argument to give a semblance of legal justification to unlawful, unilateral activities which engage its international responsibility.

That concludes my presentation and that of Côte d’Ivoire for today and I would like to thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER (Interpretation from French): I would like to thank Professor Alina Miron. Her statement concludes our session this morning. The oral pleadings of Côte d’Ivoire will resume tomorrow morning at 10 o’clock.

(The sitting closed at 12.55 p.m.)