

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

Uncorrected

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

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

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as Advisers.

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

2 Please be seated.

3

4 Good morning, ladies and gentlemen. After a well-deserved rest yesterday, we will
5 now resume proceedings this morning with Côte d'Ivoire. Côte d'Ivoire will present
6 the first round of its oral pleadings.

7

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

10

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

13

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

18

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

23

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

29

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

34

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

37

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

40

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

46

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

49

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

11
12 What else could Côte d'Ivoire have done without running the risk of jeopardizing
13 peace and good neighbourliness?

14
15 Côte d'Ivoire has made peace its second religion and has always preferred
16 negotiation and dialogue to conflict.

17
18 The maritime boundary between Côte d'Ivoire and Ghana remains to be delimited.

19
20 The purported imaginary customary boundary invoked by Ghana does not alter the
21 fact that there is an urgent need to address this issue.

22
23 Despite circumstantial, economic and even occasional disagreements, Côte d'Ivoire
24 and Ghana remain two fraternal countries whose history is based on fraternity,
25 friendship and cooperation. This common history is enshrined in the bilateral Treaty
26 for Friendship and Cooperation dated 8 May 1970, through which the two States
27 agreed to maintain in all circumstances the bonds of friendship and fraternity that
28 unite them. I believe that Côte d'Ivoire and Ghana have respected this text on
29 boundary issues by setting up a joint commission for the re-demarcation of their land
30 boundary between 1963 and 1988. There was a second joint commission on related
31 negotiations, namely delimitation of their common maritime boundary. Unfortunately,
32 this commission met without success, which further proves that the maritime
33 boundary between our two countries remains to be delimited.

34
35 Mr President, Members of the Special Chamber, I have trust in the strength of
36 relations between Côte d'Ivoire and Ghana, and have trust in your wisdom to help us
37 overcome the problem in this particular dispute.

38
39 Mr President, Members of the Special Chamber, I would like to thank you for your
40 courteous attention. I now request that you give the floor to Maître Pitron, who will
41 present the main outline of the case and the structure of our pleadings, which, today
42 and tomorrow, will form the first round of Côte d'Ivoire's pleadings.

43
44 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
45 Thank you, Minister Toungara, Agent for Côte d'Ivoire. I now give the floor to Maître
46 Michel Pitron.

47
48 Maître Pitron, you have the floor.
49

1 **MR PITRON** (*Interpretation from French*): Mr President, gentlemen, it is an honour
2 for me and for our entire team to represent the interests of Côte d'Ivoire and to speak
3 on its behalf before your eminent Chamber in the dispute between Côte d'Ivoire and
4 Ghana on the delimitation of their common maritime boundary.

5
6 For the next 20 minutes I will give an overview of Côte d'Ivoire's arguments in this
7 case, which, Mr President, Members of the Special Chamber, is of particular
8 importance, as Mr Toungara has explained, as is the decision that you will be
9 required to take. Two sovereign States have entrusted you with the task of delimiting
10 their respective maritime areas. They have conflicting positions and a very different
11 approach to the matter in hand. One is claiming, against all the odds, a unilaterally
12 proclaimed *de facto* situation, which it is seeking to turn into a *de jure* situation. The
13 other, by contrast, has undertaken genuine maritime delimitation work and has
14 immersed itself in the study of decisive circumstances and appropriate methods to
15 assist you in finding an equitable solution.

16
17 This case came into its own from the beginning of its judicial phase. Almost two
18 years ago we met for the oral pleadings in incidental proceedings brought by Côte
19 d'Ivoire to guarantee the preservation of its rights until the end of the dispute.

20
21 On 25 April 2015, in an innovative and much discussed order, the Special Chamber
22 ordered Ghana to comply with various measures in order to preserve the rights of
23 Côte d'Ivoire up until the end of the dispute in the area claimed by the two States.
24 You held inter alia that the unilateral oil exploration and exploitation activities
25 undertaken by Ghana in the disputed area were likely to result in a significant and
26 permanent modification of the physical characteristics of that area and likely to cause
27 irreparable prejudice to the sovereign rights of Côte d'Ivoire.

28
29 When that decision became public, it attracted the attention of a number of States in
30 the sub-region. Today, Togo and Benin, fully aware of the detrimental effects that the
31 application of the equidistance method would have on their own boundaries with
32 Ghana, as is also claimed by Ghana in respect of its immediate neighbour Togo,
33 gained access, with your agreement, Mr President, to the documents in the
34 proceedings. Their concern persists. Their representatives are present in this
35 Chamber today.

36
37 The case before you is that of two States which have never succeeded in agreeing
38 on a common maritime boundary, their respective positions being irreconcilable.

39
40 Ghana adheres to the claim of an equidistance line, described in 2011 for the first
41 time as a tacit agreement between the two States. Today, it also uses the more
42 general and imprecise term "customary equidistance line", repeated as a mantra with
43 the apparent objective of enchanting its audience. Côte d'Ivoire, for its part, which
44 has never agreed to the establishment of such a line, under any of the forms of
45 agreement recognized by international law, strives to achieve an equitable solution in
46 accordance with international law.

47
48 Therein lies a major difference, because an agreement in international law is not to
49 be presumed. The same holds, *a fortiori*, where the purpose of the agreement is to
50 draw a line determining where the respective maritime areas of two neighbouring

1 States begin and end, areas over which they will exercise exclusive sovereign rights.
2 To presume it or consider it to exist in the absence of conclusive evidence would be
3 a sign of great legal uncertainty. With regard to the tacit agreement in particular, your
4 Tribunal agreed on this when the first delimitation dispute was referred to it in the
5 case between Bangladesh and Myanmar. You shared the view of the ICJ, holding
6 that – and I quote – “evidence of a tacit legal agreement must be compelling”.

7
8 In the present case, you will be able to note that the arguments put forward by
9 Ghana seeking to establish the existence of a tacit agreement on a common
10 maritime boundary for the two States cannot be compelling. In truth, however often
11 they are rehearsed, these arguments only ever concern one area, the oil practice of
12 the Parties. Their number does not result in their quality, and they cannot under any
13 circumstances have probative value for the establishment of a maritime boundary
14 between two sovereign States.

15
16 The argument of tacit agreement is not viable, especially since Ghana conveniently
17 omits two key elements of the history of this dispute. You will have noted that I spoke
18 of “omission”, and not of “manipulation” or “invention”, terms which are, to say the
19 least, inappropriate to characterize relations between States in this Chamber.

20
21 Two elements, I said. First, official recognition – often reiterated by the two States,
22 including by their respective leaders – of the absence of delimitation of a common
23 maritime boundary.

24
25 Second, the systematic refusal of Côte d'Ivoire, as from 1970-1975, to recognize the
26 western limit of the Ghanaian oil concessions as a boundary. This clear position is
27 completely incompatible with the existence of such an agreement. Ghana's reliance
28 on the tacit agreement is merely an attempt to ascribe a semblance of legal support
29 to its unilateral and hegemonic oil practice. Your Chamber will be convinced of this
30 from the factual and legal arguments which will be presented to it this morning,
31 following this statement, by Mr Kamara, Sir Michael Wood and Professor Miron
32 respectively. Mr Kamara will give you an overview of the relations between the
33 Parties over the last 50 years, which is essential to an objective understanding of the
34 historical reality. Sir Michael Wood, for his part, will demonstrate how nothing in
35 those relations suggests the existence of a tacit agreement on the maritime
36 boundary between the two States. Lastly, Professor Miron will rebut recourse to the
37 estoppel theory.

38
39 Mr President, Members of the Special Chamber, do not be content with taking the
40 role of a scribe, as Ghana proposes to you, being called to confirm on parchment the
41 existence of an agreement (is that, moreover, what is asked of Judges such as
42 yourselves with an *imperium?*); but you will perform the role for which the Parties, or
43 rather Ghana, initially submitted the matter to you, that is to say to delimit an
44 equidistance maritime boundary between the two States.

45
46 To this effect, Côte d'Ivoire will begin by setting out the evidence which is of crucial
47 importance in the approach you adopt.

48
49 There are geographical circumstances. I myself will present these to you tomorrow
50 morning. There are five of them:

- 1
2 - the straightness of this segment of the coast, which governs the construction
3 of the provisional equidistance line and which explains the concentration of
4 base points on a tiny portion of coastline;
5
6 - the opposite direction of that segment to the general direction of the two
7 States;
8
9 - the existence of the Jomoro Peninsula, a Ghanaian protuberance that blocks
10 the seaward projection of a substantial part of the Ivorian land mass;
11
12 - the instability of the coasts, automatically giving rise to the instability of the
13 base points situated thereon, which has a direct and significant effect on the
14 reliability of the boundary line drawn using them;
15
16 - finally, the fifth and last of these circumstances, the exceptional concentration
17 of hydrocarbon resources in the disputed area and to the east of it.
18

19 As we will demonstrate, these circumstances have a two-fold effect, not only on the
20 choice of delimitation method to be favoured in order to arrive at an equitable
21 solution, but also on the course of the delimitation line.
22

23 In the light of these elements, Côte d'Ivoire has tried to find the method which allows
24 an equitable solution to be achieved in this particular case. The equitable solution is
25 the primordial objective, the fundamental principle, as is stated in the *Tunisia v. Libya*
26 judgment, of any maritime delimitation operation. The Tribunal constituted to hear
27 the dispute between Bangladesh and India stated that it was "the paramount
28 objective" of any delimitation. This objective of equity cannot be achieved without
29 taking into account all the circumstances of each case, which can lead to a choice of
30 different methods of delimitation. That is the applicable law in this case, and
31 Professor Pellet will recall it briefly. It is your task and your honour, I believe, to
32 pursue this approach, and I have to admit that I do not understand Ghana, which,
33 through its Counsel, threatens you – yes, I really did hear and read this – with losing
34 your powers because you will have exercised them.
35

36 In this case, Members of the Special Chamber, a number of the circumstances which
37 I have just mentioned call for the application of the angle bisector method, as I will
38 demonstrate.
39

40 First, the tiny segment on which the base points selected by the Parties are located.
41 The straightness of the segment located close to boundary post 55 gives rise to the
42 selection of base points on a tiny portion of the coastline, representing less than 1%
43 of the total coast of the two States. Constructing a maritime boundary on such a
44 small segment would not reflect the general configuration of the coasts of the States
45 in a maritime delimitation operation.
46

47 There is also coastal instability. A line constructed from points situated on an
48 unstable segment would become "arbitrary and unreasonable in the near future", as
49 the International Court of Justice ruled in *Nicaragua v. Honduras*.
50

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

3
4 Given these circumstances, the solution that combines the two advantages of
5 reliability and equity is to draw the bisector of the angle formed by the general
6 direction of the coasts of the two States. In this particular case, this leads to an
7 azimuth line of 168.7 degrees. As I will have the honour to explain, this angle
8 bisector method is not only fully established in case law but is also used by States in
9 similar geographical situations to that of Côte d'Ivoire and Ghana.

10
11 In the alternative, but in no contradiction with the angle bisector method – because,
12 after all, it is no contradiction to envisage an alternative, should a first argument fail,
13 without denying that argument or acquiescing in principle to the second, as Ghana
14 has done, moreover, by successively relying on the tacit agreement on the maritime
15 boundary and then its delimitation by the three-stage method – Professors Miron and
16 Pellet will explain, in succession, how your Tribunal could, should it so wish, also
17 come to an equitable solution – the same, in fact – by applying the equidistance and
18 relevant circumstances method, adjusting the line in light of the geographic
19 circumstances of the specific case.

20
21 The adjustment is made in light of the straight segment and the opposite direction to
22 the general direction of the coast, which governs the course of the provisional
23 equidistance line. The adjustment of the equidistance line would remedy the cut-off
24 effect caused by the line constructed from that segment.

25
26 It also follows from consideration of the Jomoro Peninsula and the blocking of the
27 Ivorian land mass to which it gives rise.

28
29 Lastly, the adjustment of the line should be appropriate in the light of one last
30 geographical circumstance, namely the exceptional presence of hydrocarbons in the
31 disputed area and to the east of it.

32
33 These are the main circumstances which have to be taken into account in making an
34 adjustment of the line if the equidistance/relevant circumstances method is applied,
35 to the exclusion of the *modus vivendi* claimed by Ghana, which, as we will
36 demonstrate tomorrow, does not in fact exist.

37
38 The decisive geographical circumstances which, for delimitation of the maritime
39 boundary within 200 nautical miles, militate in favour of the application of the angle
40 bisector method in this case or the adjustment of the provisional equidistance line
41 have the same effect as for delimitation of the boundary beyond the 200-nautical-
42 mile limit. There is nothing in the conduct of the Parties, including their respective
43 submissions for extension to the Commission on the Limits of the Continental Shelf,
44 that attests to any kind of agreement on the line beyond 200 nautical miles. Sir
45 Michael Wood will demonstrate this tomorrow.

46
47 I will also show you, lastly, that the single azimuth line of 168.7 degrees thus drawn
48 divides the maritime areas between the two States equitably, whatever method is
49 chosen. This line takes into account the overall coastal geography of the two States,

1 corrects the cut-off effect generated by the equidistance line and is equitable in the
2 regional context of the Gulf of Guinea.

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

14
15 Members of the Tribunal, it also falls to you to sanction the infringements by Ghana
16 of the obligations which you imposed on it in your Order for the prescription of
17 provisional measures of 25 April 2015. Ghana has breached its obligation to carry
18 out no new drilling in the disputed area prescribed by paragraph 108(1)(a) of the
19 Order and its obligation of cooperation under paragraph 108(1)(e). The terms of the
20 decision of the Chamber deserve to resonate with the strength you wished to give
21 them.

22
23 I would like to thank you for your kind attention and would request that you be so
24 kind as to give the floor to Mr Kamara, who will present to you the historical
25 background to the dispute.

26
27 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
28 Thank you, Me Pitron, for your submission. I would now like to give the floor to
29 Me Adama Kamara.

30
31 **MR KAMARA:** Mr President, Members of the Special Chamber, it is an honour for
32 me to come before your eminent court today to represent my country. This morning I
33 shall be focusing on giving you a general presentation of the historical context of this
34 dispute with Ghana relating to the delimitation of the common maritime boundary.

35
36 A State generally starts negotiations on delimitation of its maritime boundary with a
37 neighbour when there is an economic interest to do so, when the domestic political
38 context so permits, and when bilateral relations with that neighbour are favourable.

39
40 When it comes to this delimitation, various factors come into play: the history of
41 bilateral relations between the Parties, their internal political and institutional history,
42 or their macroeconomic history, of which the oil industry is but one part. Each of
43 these histories can only be understood in the light of the others, so that none of them
44 can be properly understood in isolation, contrary to what Ghana is trying to
45 encourage you to do.

46
47 Ghana in fact has restricted itself almost obsessively to addressing just one aspect
48 of the history of the Parties, namely, their oil history. Indeed, it focuses even more on
49 the granting and the outline of the concessions in the border area. That is what it
50 uses as a basis for banging on about the existence of a *customary equidistance*

1 *boundary*. This is a very partial and biased presentation of the facts because we
2 have to look at the picture as a whole. It is minimising, even ignoring, certain
3 fundamental aspects of our bilateral relations and of the internal history of the
4 Parties. This needs to be rectified because it distorts that oil history by taking it out of
5 context.

6
7 My pleadings will be focusing on these aspects, so as to give you an overall
8 presentation. It will not be exhaustive in view of the time afforded to me, but it will at
9 least be objective and show the dispute in a factual context.

10
11 The Parties, Ghana and Côte d'Ivoire, are two countries in West Africa which gained
12 their independence in 1958 and 1960, respectively. In the following 33 years, Côte
13 d'Ivoire was presided over by President Félix Houphouët-Boigny, until his death in
14 1993.

15
16 This political stability allowed Côte d'Ivoire to focus on its economic development,
17 which was so dear to the "father of the nation", and focused in particular on
18 agriculture, the cultivation of coffee and cocoa, and forestry. Even though offshore oil
19 exploration began towards the end of the Fifties, the Ivorian oil industry until just
20 recently only played a minor role in the economic development of the country.

21
22 The political stability under the presidency of Houphouët-Boigny allowed Côte
23 d'Ivoire to develop peaceful bilateral relations with its Ghanaian neighbour, nurturing
24 relations of friendship and fraternity between the two countries.

25
26 It is within this context that the Parties established in 1963 a bilateral commission
27 entrusted with looking at the delimitation of the land boundary between the two
28 States, respecting the principle of the inviolability of borders. This operation was
29 intended to facilitate forestry in that area, because it had been agreed that forestry
30 operations would be suspended until redemarcation was completed.

31
32 In the Seventies, during the work of that bilateral commission, Côte d'Ivoire became
33 aware of the need to have a policy for managing and developing its maritime areas
34 as well, in light of the constant developments in the international law of the sea. This
35 policy began in 1977 with the adoption of a law laying down the limits of the Ivorian
36 territorial sea to 12 nautical miles, proclaiming an exclusive economic zone
37 extending up to 200 nautical miles off the Ivorian coast. This law laid the foundations
38 for the delimitation of Côte d'Ivoire's maritime boundaries, establishing the principle
39 according to which this should be achieved through agreement with neighbouring
40 countries.

41
42 The second stage of this assertive action took place 11 years later, in 1988, when
43 the issue of delimitation of the maritime boundary between Côte d'Ivoire and Ghana
44 was put on the agenda of the bilateral discussions between the Parties during the
45 work of the commission for redemarcation of the land boundary, which was coming
46 to an end.

47
48 During that meeting, Côte d'Ivoire, which was thus the applicant party in the
49 delimitation of a non-existent maritime boundary, suggested that the straight line
50 between BPs 54 and 55 be extended seaward, which led to a line being drawn in a

1 south-south-east direction. Ghana refused to follow up on the Ivorian proposal on the
2 grounds that its delegation did not have an appropriate mandate.

3
4 This meeting, Mr President, Judges, is a significant event, because this was the first
5 official bilateral contact on delimitation of the maritime boundary. The tenor of this
6 meeting attests to the fact that at that time there was no maritime boundary, and that
7 Côte d'Ivoire was even then proposing a maritime boundary which was not based on
8 equidistance. This was in 1988, almost 20 years before the first significant oil find in
9 the maritime border area. We are far away from the "ocean grab" that Ghana was
10 going on about on Tuesday.

11
12 Ghana adopted a similar approach four years later, when it came back to Côte
13 d'Ivoire in February 1992, requesting that a bilateral meeting be held in order to
14 discuss, in its words, "the question of boundary delimitation".

15
16 Ghana's request, according to information from the Côte d'Ivoire ambassador in
17 Accra, was motivated by the "MANY ONGOING DRILLING PROJECTS [being
18 carried out by Ghana] IN THE MARITIME BOUNDARY ZONE".

19
20 At this time, when its offshore oil industry was in its infancy, Ghana refused to
21 envisage a major drilling campaign in the maritime boundary zone, part of which,
22 moreover, had also been claimed by Côte d'Ivoire four years earlier, without having
23 previously delimited its maritime boundary with its Ivorian neighbour through any
24 written agreement.

25
26 In the hope that the boundary issue could be settled, Côte d'Ivoire welcomed this
27 proposal from Ghana to meet and welcomed the fact that

28
29 the Ghanaian Government, which chose not to react to its proposed maritime
30 boundary delimitation first presented in 1988 at the 15th session of the Joint
31 Ivoir-Ghanaian Commission, no doubt now believes it an opportune time to
32 carry out the delimitation of that boundary.

33
34 Like the moratorium on forestry issues agreed at the time, Côte d'Ivoire expressly
35 urged Ghana to refrain, pending the organization of the meeting, from any drilling
36 activity in the area to be delimited. For Côte d'Ivoire it was a question of making sure
37 that no irreparable physical damage would be caused to part of the continental shelf
38 which might be deemed to be Ivorian once the boundaries had been delimited. This
39 was at a time, I repeat, when there had been no significant oil finds in the boundary
40 area.

41
42 However, this invitation to negotiate from Côte d'Ivoire was not replied to by Ghana,
43 and in fact Ghana abandoned its drilling projects in the disputed area.

44
45 As from 1993, the question of delimitation of the maritime boundary was hampered
46 by successive military, social and political crises in Côte d'Ivoire, which considerably
47 weakened its state apparatus. During this period Côte d'Ivoire had a number of
48 compelling priorities: reunifying the country, restoring peace, organizing free
49 elections as exhorted by the international community, stabilizing institutions; in short,

1 trying to make sure that the crisis was overcome, and indeed, this was a process in
2 which Ghana was closely involved.

3
4 This period of torment began in 1993, when there was a historical turning point in the
5 form of the death of President Houphouët-Boigny. That became a full-blown crisis
6 after the military coup in December 1999, which plunged Côte d'Ivoire into a long
7 period of political, military and institutional instability, with frequent riots and several
8 hundreds of deaths.

9
10 In 2002 there was again an attempted coup d'état in the country, which was so
11 severe that the United Nations deployed a military contingent in the zone separating
12 the two warring parties.

13
14 These events plunged Côte d'Ivoire into a profound and unprecedented crisis, from
15 which it only emerged as of 2007, after several years of negotiations between the
16 parties to this domestic conflict, under the aegis of the United Nations, the African
17 Union, ECOWAS, and other friendly countries, primary amongst them Ghana.
18 Between 2002 and 2004, Ghana organized a number of meetings and negotiating
19 sessions, which were difficult, but led to three peace agreements being concluded,
20 Accra 1, 2 and 3. Ghana was therefore particularly *au fait* with the domestic situation
21 in Côte d'Ivoire because it played a very active part in the resolution of the crisis.

22
23 Despite these efforts, the crisis lasted for several more years because of the tense
24 political climate, which made it impossible to hold elections. It was only in 2007, after
25 the Ouagadougou Agreements were signed, that the domestic situation gradually
26 improved.

27
28 During these 14 years of instability, interrupted by a number of serious crises,
29 between 1993 and 2007, whereas our neighbours were enjoying political stability
30 conducive to their economic development, the Ivorian State apparatus was seriously
31 impaired, when it was not simply non-existent, during the most serious stages of the
32 crisis. Even if the continued existence of purely administrative bodies, such as the
33 directorate general of hydrocarbons, meant that there could be day-to-day
34 management of Ivorian oil activities, this internal situation nevertheless explains the
35 fact that, during these years, Côte d'Ivoire's attention was distracted from the
36 problems of maritime delimitation and from Ghana's conduct in the boundary areas,
37 which really did require action at the highest levels of the State.

38
39 Negotiations pertaining to the delimitation of the maritime boundary were only able to
40 resume as of 2008, once the domestic Ivorian situation became stabilized.

41
42 During the six subsequent years, the Parties met on ten occasions within a joint
43 commission whose aim was to "deliberate on the delimitation of [their] international
44 maritime boundaries".

45
46 I quote here the wording employed by Ghana in its note verbale dated 20 August
47 2007, inviting Côte d'Ivoire to the negotiating table. The purpose of these bilateral
48 talks thus set out by Ghana was clear: on the day talks opened, to seek to agree on
49 the non-existent maritime boundary.

1 This objective was furthermore clearly recalled in November 2009, during a bilateral
2 meeting between the Ivorian and Ghanaian heads of State in Ghana, according to
3 which they publicly called for a swift conclusion to the negotiations with a view to "the
4 delimitation of the maritime border". During the ten meetings of this Commission,
5 Ghana in fact did not really negotiate. According to the International Court of Justice,
6 "negotiate" implies that the Parties

7
8 conduct themselves [such] that the negotiations are meaningful, which will not
9 be the case when either of them insists upon its own position without
10 contemplating any modification of it.

11
12 Specifically, instead of negotiating, Ghana obstinately sought to impose on Côte
13 d'Ivoire a boundary following the western limit of oil blocks that it had unilaterally
14 granted to its operators and from which it never considered departing. To that end,
15 during the negotiations, Ghana called upon various legal and geographic arguments.
16 It first of all maintained, in 2008, that the boundary should follow a strict equidistance
17 line, then, as of 2011, realising that that line did not reflect its oil line, claimed an
18 adjusted equidistance line. Ghana in fact only once took up the idea of tacit
19 agreement, in August 2011, which it subsequently abandoned, before it appeared
20 once again suddenly in its arbitration notification, and then during the course of the
21 present case. In any event, never did the boundary it proposed change.

22
23 Côte d'Ivoire, for its part, formally rejected the Ghanaian proposal of a boundary that
24 followed the lines of its concessions, however it was presented, and, on several
25 occasions, asked Ghana to desist from oil activity in the disputed area. This position
26 adopted by Côte d'Ivoire at the outset of the negotiations was fully consistent with
27 what it had adopted back in 1988 and 1992. During negotiations, Côte d'Ivoire
28 furthermore proposed in good faith to Ghana several lines resulting from the
29 application of different delimitation methods, as it refined the knowledge it acquired
30 and tools available to it, with a view to better ascertaining the coastal geography and
31 thereby achieve an equitable solution. It first of all proposed, in February 2009, that
32 the boundary be delimited according to the method of the geographic meridian. In
33 May 2010, Côte d'Ivoire proposed another line, also based on the meridian method,
34 starting this time from BP 55. In November 2011, the Ivorian side once again
35 formulated an alternative delimitation proposal based on the angle bisector method,
36 to which it still lays claims today. Ghana made snide remarks about these various
37 proposals from Côte d'Ivoire. It was wrong to do so because that reflects the spirit of
38 compromise that only the latter displayed.

39
40 These proposals were invariably rejected by Ghana. It is under these conditions that
41 it abruptly put an end to negotiations by delivering without prior notice to Côte
42 d'Ivoire an arbitration request barely ten days before the 11th meeting of the Joint
43 Commission, having simultaneously withdrawn its declaration under article 298 of
44 UNCLOS that it had made in 2009.

45
46 Discussions during these six years of negotiations thus focused on the delimitation
47 method, the relevant circumstances of the case, and the location of BP 55 and base
48 points. In spite of Ghana's circumlocutions, the content of these negotiations clearly
49 shows, Mr President, Judges - were that still required - that their purpose was the

1 delimitation of a non-existent maritime border and not to confirm or affirm an existing
2 boundary.

3
4 That is, Mr President, Judges, the historical context of the maritime boundary
5 delimitation dispute between the Parties. In summary, it is the history of a discussion
6 that was broken off in 1988, then in 1992; of negotiations that were prevented
7 between 1993 and 2007; and negotiations that at last took place between 2008 and
8 2014, but to no avail, because of Ghana's behaviour that sought to impose a
9 boundary exclusively favouring its economic interests, without taking into account
10 applicable legal rules.

11
12 Ghana today seeks to present a totally different story - its history. That of oil activities
13 allegedly undertaken hand-in-hand, since their independence, by two friendly,
14 neighbouring States. That of a tacit agreement on the course of a maritime boundary
15 of which this oil activity is said to be both the basis and the proof. In addition to the
16 fact that this oil history is only one component of the historical context of the dispute,
17 the reality is very different and must be set out again. To that end, it is important to
18 distinguish between the creation of oil concessions and activities, essentially the
19 drilling that was carried out there. Professor Miron will return in detail to these
20 various aspects.

21
22 The first oil blocks off the Ghanaian and Ivorian coasts were created at the end of
23 the colonial period, in 1956 and 1957, respectively. Ghana believes this is indicative
24 of a tacit agreement on delimitation that was established before the Parties gained
25 independence, without ever giving a single indication as to the conditions under
26 which it was established.

27
28 Two years after Ghana, in 1970, Côte d'Ivoire in turn established its first offshore oil
29 block, granted to Esso. Ghana referred on several occasions during its oral
30 pleadings to the decree that established this block, presenting it as the cornerstone
31 of its demonstration, claiming that its eastern limit is characterized as "the boundary
32 line with Ghana". Ghana, however, deliberately omits to state that, from this first act
33 of its offshore oil exploration policy, the Ivorian State in full responsibility took care to
34 introduce an express and unequivocal reservation, stating that its western and
35 eastern limits were "given by way of indication" and could in no way prejudice
36 maritime delimitation.

37
38 Furthermore, Côte d'Ivoire restated its position in 1975 by setting out unambiguously
39 and explicitly, in an oil contract in January and a decree in October, that

40
41 [t]he coordinates of reference points K, Y, X and W are given by way of
42 indication and cannot in any case be regarded as being the national jurisdiction
43 boundaries.

44
45 Thus, how can Ghana present these decrees as the basis of the agreement of the
46 Parties on the delimitation of their maritime boundary?!

47
48 Furthermore, oil activities undertaken in these oil blocks located in the disputed area
49 in no way constitute a historical fact that is significant for the dispute. Ghana only
50 carried out three drilling operations before resumption of negotiations in 2008,

1 without the prior authorization of Côte d'Ivoire or informing it beforehand: the first in
2 1989, to the west of the line claimed as the maritime boundary in the previous year
3 by Côte d'Ivoire within the Joint Redemarcation Commission; the second in 1999,
4 barely ten days prior to the military coup that struck Côte d'Ivoire; and the third in
5 2002, barely a few weeks before the first crisis resolution meeting held in Accra.
6 Three drilling operations too many, because Côte d'Ivoire had expressly requested
7 Ghana to refrain back in 1999. But only three drilling operations in over 40 years of
8 offshore activity in a very troubled Ivorian context that easily accounts for the
9 absence of a diplomatic reaction on its part.

10
11 As of 2008, having noticed that from the beginning of negotiations Côte d'Ivoire was
12 not going to comply with its wishes as regards delimitation, Ghana stepped up
13 exponentially its drilling activities in the disputed area, thereby breaking with the
14 *status quo* that prevailed there. Whereas only three drilling operations had been
15 carried out during the previous 50 years, Ghana performed no fewer than 31 in the
16 six years between 2008 and 2014. In order to fulfil its strategy to impose a *fait*
17 *accompli* on Côte d'Ivoire, Ghana protected itself against all remedies that could
18 disrupt these operations by invidiously filing in 2009 a declaration of exclusion
19 pursuant to article 298 of the Convention. This declaration was withdrawn only on
20 22 September 2014, once the drilling operations necessary to the production of the
21 TEN field had been carried out, in order to implement the present procedure that it
22 introduced by serving Côte d'Ivoire, on 19 September 2014, with an arbitration
23 notification.

24
25 You will observe, Mr President and Judges, that, contrary to what Ghana has
26 endlessly repeated, the oil history is not one of intense and continuous activity over
27 50 years conducted with the assent of both Parties. Two periods are to be
28 distinguished. The first, which goes from independence up until 2007, during which
29 the disputed area was the subject only of scattered activities, including only three
30 drilling operations, and a second period of intense activity during 2008 that Ghana
31 stepped up as of 2009 when it realized that it would not be able to impose its oil line
32 on Côte d'Ivoire amicably, whilst taking care to preserve this unilateralism from all
33 judicial interference by filing a declaration under article 298 of the Convention.

34
35 Mr President, Judges, contrary to what Ghana maintains, we are not in the presence
36 of a smooth and uniform historical context in which the Parties agreed on a maritime
37 boundary that they had respected for over 50 years before Côte d'Ivoire did an
38 about-turn. Rather, the historical background is more complex, one during which
39 Côte d'Ivoire, when it had to, when it could, affirmed its sovereign rights in maritime
40 matters and sought to resist, with the weapon of the strong, that is, peaceful
41 dialogue, Ghana's endeavour to impose upon it as boundary the oil line which it had
42 drawn unilaterally.

43
44 Mr President, that is the historical context of the dispute submitted to you by the
45 Parties.

46
47 Mr President, I would ask you to kindly give the floor to Sir Michael Wood. Thank
48 you.

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

2 Thank you, Mr Kamara, for your presentation. I give the floor to Sir Michael Wood.

3
4 **MR WOOD:** Mr President, Members of the Special Chamber, it is a great honour to
5 appear before you and to do so once again on behalf of Côte d'Ivoire.

6
7 I shall begin with some general comments on Ghana's tacit agreement/customary
8 equidistance boundary argument. I shall then address points made by our friends
9 opposite earlier this week. I shall not, of course, repeat all that we said on the subject
10 in our Counter-Memorial and Rejoinder, which we maintain in their entirety.

11
12 Mr President, we heard again and again in Ghana's oral pleadings earlier this week
13 references to a customary equidistance boundary or a customary boundary based
14 on equidistance (which may or may not be the same). Such repetition brings to mind
15 the words of the Bellman in Lewis Carroll's poem *The Hunting of the Snark*: "What I
16 tell you three times is true." In our case it seems more like 300 times.

17
18 We have been told time and again that this argument is central to Ghana's case. The
19 distinguished Attorney General of Ghana, in introducing Ghana's pleadings on
20 Monday, went so far as to assert that

21
22 the central task that the Special Chamber faces is ... quite simple. Ghana
23 respectfully asks you to affirm the customary equidistance boundary as our
24 maritime boundary.¹

25
26 Yet Ghana seems uncertain of succeeding with its central argument that there is a
27 tacit agreement. Its lines of argument are constantly shifting. Sometimes it seems to
28 be saying that the so-called customary equidistance boundary arises out of a tacit
29 agreement; sometimes it seems to be referring to its customary boundary as though
30 that were some new category of maritime boundary agreement; and then it invokes
31 estoppel. But even Ghana's estoppel argument seems to be based on Côte d'Ivoire's
32 acceptance of a tacit agreement. Professor Miron will address the estoppel argument
33 following this statement.

34
35 Mr President, Members of the Special Chamber, I would like first to say a word about
36 Ghana's notion of a customary equidistance boundary. The expression "customary
37 equidistance boundary" is not a term of art in international law. It has no particular
38 meaning. Ghana has not sought to explain it, even after we questioned it in the
39 Counter-Memorial.² It seems to be an invention of Ghana's ever inventive lawyers,
40 conceived for the purposes of the present dispute.

41
42 I shall make three points about the use of the term "customary equidistance
43 boundary":

44
45 First, by referring to an equidistance boundary, Ghana's newly minted expression
46 assumes the result that Ghana wishes to achieve. Even where the three-stage
47 methodology is chosen as the way to achieve an equitable solution, the construction
48 of a provisional equidistance line – line, not boundary – is but the first stage. An

¹ ITLOS/PV.17/C23/1, p. 8, lines 7-8 (Akuffo).

² CMCI, para. 3.23.

1 adjusted equidistance line may result from the second stage when relevant
2 circumstances are taken into account. An equidistance boundary may or may not be
3 the final outcome where the three-stage or indeed any other appropriate
4 methodology is chosen.

5
6 Second, using the word “customary” to qualify a supposed equidistance boundary
7 simply muddies the waters, if I may put it that way. The word seems to have been
8 included simply to dignify Ghana’s chosen expression, perhaps to give it the
9 appearance of some spurious legal worth. It may bring to mind customary
10 international law, but clearly Ghana’s notion has nothing to do with that:

11
12 Ghana has never argued that this “customary equidistance line” reflects a
13 bilateral custom.³

14
15 We have heard nothing about two elements, about general practice (State practice),
16 about *opinio juris*, or the notion of particular custom.⁴ Presumably, Ghana here
17 attempts to escape the law: the law on international custom, which would require it to
18 produce evidence of both a general practice and of acceptance as law, and the law
19 relating to tacit agreement, which imposes upon Ghana the burden of producing
20 compelling evidence.⁵

21
22 My third point is that Ghana’s use of the term adds nothing to its arguments except
23 confusion. It adds nothing to its argument that that there has somehow come into
24 existence a tacit agreement between the two States or that Côte d’Ivoire is somehow
25 estopped from denying the existence of an all-purpose maritime boundary out to
26 200 nautical miles and beyond.

27
28 In short, Mr President and Members of the Special Chamber, the term “customary
29 equidistance boundary” is no more than a name dreamt up by Ghana’s lawyers for
30 the line that they urge you to adopt. It has no legal meaning or effect. Perhaps
31 Ghana hopes that it will be reassuring to the Members of the Chamber, but we are
32 confident that it will not affect your application of the law of maritime delimitation in
33 order to achieve an equitable solution in the present case.

34
35 Mr President, Members of the Special Chamber, it is important at the outset to stress
36 that the onus is on Ghana to establish the existence of a tacit agreement between
37 the Parties on a maritime boundary. Ghana argues as though the burden is on Côte
38 d’Ivoire to show that there is no tacit agreement. That is simply not the case. The
39 burden – and, as the case law indicates, it is a heavy one – lies on Ghana.

40
41 Ghana’s attempt to reverse the burden of proof has another dimension. On Monday
42 Ghana suggested that Côte d’Ivoire claimed to have demonstrated a “constant
43 opposition” [*opposition continue*] to Ghana’s claimed line.⁶ This, of course, is not

³ RG, para. 2.5.

⁴ International Law Commission, Draft conclusions and commentaries on the topic of ‘*Identification of customary international law*’ adopted on first reading, 68th session (2016), U.N. doc. A/71/10, at p. 114-117 (draft conclusion 16) ; ICJ, *Case concerning Right of Passage over Indian Territory (Merits)*, Judgment of 12 April 1960, *I.C.J. Reports 1960*, p. 6, at p. 39.

⁵ *Maritime Dispute (Peru v. Chile)*, Judgment, *I.C.J. Reports 2014*, p. 3, at p. 38, para. 91.

⁶ ITLOS/PV.17/C23/1, p. 14, line 41 ; p. 15, line 1 (Sands).

1 what we are saying. A constant opposition is not required to defeat a claim to the
2 existence of a tacit agreement. On the contrary, it is for the Party invoking a tacit
3 agreement to show that the other Party has consistently accepted such an
4 agreement. In fact, Ghana's preferred line only emerged as a boundary proposal in
5 2008, and Côte d'Ivoire, as we have already heard this morning, immediately
6 rejected it.

7
8 You will also have noted that Ghana is quite unspecific about the subject matter of its
9 so-called tacit agreement. Sometimes its lawyers talk about an agreement on what
10 they call the equidistance method; sometimes they claim there is an agreement on a
11 specific line, most often a petroleum line, though the actual line they have in mind
12 seems to shift as and when that suits their purpose. We dealt with this at some
13 length in our Counter-Memorial.⁷ Also, they extrapolate such lines far beyond any
14 alleged practice. Indeed, on Monday you were shown from 1957 extending
15 eight kilometres from the coast, but on Ghana's own sketch it was prolonged out to
16 200 nautical miles⁸.

17
18 Ghana's explanation of the origin of the so-called tacit agreement in a 1957 Decree
19 issued in Paris by the then French colonial power⁹ is hardly convincing.¹⁰ That
20 Decree did not mention the eastern limit of the concession. The subsequent map of
21 1959¹¹ was prepared by a private company. The 1957 Decree did mention a total
22 surface area for the concession. Our friends opposite claim that "[o]nly a maritime
23 boundary following an equidistance line produces that surface area."¹² With respect,
24 that assertion is self-serving and speculative. The calculation could be done quite
25 differently. It cannot seriously be argued that the 1957 Decree establishes that the
26 eastern limit of the concession followed an equidistance line.

27
28 Mr President, Members of the Special Chamber, as Côte d'Ivoire has shown at
29 length in its written pleadings, the claim that there is a tacit agreement is simply
30 untenable. In fact, it was only in August 2011, a mere three years before it
31 commenced the present proceedings, that Ghana first came up with the notion that
32 the Parties had somehow entered into a tacit agreement. It did so, curiously, in the
33 middle of ongoing negotiations aimed at reaching agreement on the delimitation of a
34 maritime boundary, which Mr Kamara described earlier this morning. Up until then,
35 and thereafter, the conduct of both Parties clearly indicated the absence of any such
36 tacit agreement. It is of particular note that in 2009 and again in 2015 the Presidents
37 of Côte d'Ivoire and Ghana agreed that maritime boundary negotiations were
38 needed. It was Ghana that commenced arbitration under Annex VII of UNCLOS in
39 September 2014 seeking the delimitation of a maritime boundary between the
40 Parties. Ghana's Notification and Statement of Claim read:

⁷ CMCI, paras. 311-3.17.

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).

1
2 Ghana requests that the Tribunal delimit, in accordance with the principles and
3 rules set forth in UNCLOS and international law, the complete course of the
4 single maritime boundary.¹³
5

6 That was in their application instituting proceedings.
7

8 My friend and colleague Mr Kamara has just described the main aspects of the
9 relations between the two Parties relevant to this case. In particular he has described
10 the efforts to negotiate in 1988, in 1992 and finally between 2008 and 2014. As he
11 has demonstrated, these show clearly that both Parties understood that there was no
12 existing delimitation in place.
13

14 Mr President, Members of the Special Chamber, I shall now turn to some particular
15 matters which show that Ghana's assertion that there is a tacit agreement on
16 delimitation of the maritime boundary (or as Ghana also puts it, a customary
17 equidistance boundary) is wholly unfounded.
18

19 First, I shall say a very brief word about the law on tacit agreements. You are very
20 familiar with this, but, as Ghana has signally failed to deal with it, so I shall recall it
21 briefly. The case-law of ITLOS and the ICJ has consistently stated that the existence
22 of a tacit agreement relating to maritime delimitation needs to be demonstrated by
23 clear and convincing evidence. This morning Mr Kamara took you to the relevant
24 passage. As the International Court stated in *Nicaragua v. Honduras*,

25
26 [e]vidence of a tacit legal agreement must be compelling. The establishment
27 of a permanent maritime boundary is a matter of grave importance and
28 agreement is not easily to be presumed.¹⁴
29

30 This essential principle has been endorsed in subsequent cases, by the International
31 Court in the *Black Sea* case,¹⁵ and by ITLOS in the case of *Bangladesh v.*
32 *Myanmar*.¹⁶
33

34 Mr President, this may be a convenient moment to respond to the question that the
35 Chamber put to the Parties on Monday. As you will recall, the question read as
36 follows: "Could the Parties provide information on any arrangements which could
37 exist between them on fisheries matters or with respect to other uses of the maritime
38 area concerned?"
39

40 Mr President, our answer to this question is as follows: The Parties signed an
41 agreement on fishing and oceanographic research on 23 July 1988.¹⁷ We have
42 included a copy in your folders at tab 6. We also have a copy of the Decree

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.

¹⁴ ICJ, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean sea* (Nicaragua v. Honduras), Judgment, *I.C.J. Reports 2007*, p. 659, at p. 735, para. 253.

¹⁵ *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), judgment, *I.C.J. Reports 2009*, p. 61, at p.86, para. 68.

¹⁶ ITLOS, *Delimitation of the maritime boundary in the Bay of Bengal* (Bangladesh/Myanmar), Judgment, *ITLOS Reports 2012*, p. 4, at p. 36, para. 95.

¹⁷ Accord de pêche entre la République du Ghana et la République de Côte d'Ivoire, 23 juillet 1988

1 published in the official journal of Côte d'Ivoire ratifying the agreement, and we will
2 also provide copies of that to the Special Chamber and to our colleagues opposite.
3 Under the treaty, the Parties authorize fishing boats and oceanographic vessels to
4 operate in each other's territorial sea and exclusive economic zones. Article 12,
5 which is now on the screen, provides – and this is our translation – that

6
7 [t]his Agreement shall not affect the rights, claims or views of either
8 Contracting Party with regard to the limits of its territorial waters or its fisheries
9 jurisdiction.

10
11 It is clear from this provision that in 1988 the negotiating States contemplated that
12 there could be differing rights, claims and views on limits and jurisdiction over
13 fisheries. Incidentally, this agreement was signed just five days after the 1988
14 meeting of the Joint Commission on Demarcation at which Côte d'Ivoire proposed
15 negotiations on the maritime boundary.

16
17 Mr President, Members of the Special Chamber, on Tuesday Mr Tsikata replied to
18 your question saying that, within the time available, Ghana's summary response was
19 that "[t]here are no arrangements between Ghana and Côte d'Ivoire with respect to
20 fisheries."¹⁸ However, he also referred to possible arrangements with a private
21 company while informing you about what he had been told about a map, but he did
22 not produce any documents. Obviously that matter cannot be of assistance to the
23 Special Chamber.

24
25 Mr Tsikata also took the opportunity to refer at some length to Côte d'Ivoire's
26 Fisheries Partnership Agreement with the European Union. He mentioned in
27 particular a map which is to be found in a report funded by the European
28 Commission but written by private experts. What Mr Tsikata did not draw to your
29 attention, however, was that the experts' report says that the map merely indicates
30 the limits used by community ship-owners "in the absence of official limits". We
31 would say that this has no probative value.¹⁹

32
33 As for the map from a website of the Food and Agriculture Organization, also
34 invoked by Mr Tsikata, this was prepared by private experts and contains the usual
35 disclaimer.²⁰ It too is of no probative value.

36
37 Mr President, Members of the Special Chamber, mention of these fishery and
38 oceanographic arrangements reminds us that Ghana is seeking to construct a tacit
39 international maritime boundary agreement, out to 200 nautical miles and beyond, on
40 the shaky foundation of limited petroleum conduct. This attempt is defective in many
41 respects. It is based on petroleum activities the most distant of which is a mere
42 87 nautical miles from the coast. The conduct itself is by no means as clear as
43 Ghana would have you believe, and has been contested by Côte d'Ivoire; and,
44 above all, the conduct upon which Ghana relies is exclusively related to petroleum.

¹⁸ ITLOS/PV.17/C23/2, p. 2, lines 37-39 (Tsikata).

¹⁹ Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (available at http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en).

²⁰ Profil des pêches et de l'aquaculture par pays – La République de Côte d'Ivoire, available at <http://www.fao.org/fishery/facp/CIV/fr>

1 Ghana seeks to extrapolate from this limited petroleum conduct an all-purpose
2 maritime boundary dividing the seabed and the water column of the exclusive
3 economic zones and the continental shelf. Such a delimitation would cover the whole
4 range of rights, jurisdiction and duties of the coastal State in the EEZ, set forth in
5 article 56 of UNCLOS, and over the continental shelf as set out in part 6 of UNCLOS.
6 Mr President, that may be a convenient time at which to take the usual break, if that
7 is acceptable to the Special Chamber.

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

10 Thank you, Sir Michael Wood. You have saved me the painful duty of having to
11 interrupt you. We will take a coffee break, slightly ahead of time, and we will resume
12 at 11.55 a.m. Thank you.

13
14 (Break)

15
16 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): We
17 will now resume our proceedings until 1.00 p.m. and I give the floor to Sir Michael
18 Wood.

19
20 (*Continued in English*) Sir Michael, you have the floor.

21
22 **MR WOOD:** Mr President, Members of the Special Chamber, before the break I had
23 offered some comments in light of the Tribunal's question, for which we were very
24 grateful.

25
26 I shall now turn to the impression of continuity and agreement between the two
27 States in relation to their maritime boundary that Ghana seeks to create. As
28 Maître Kamara demonstrated this morning, this impression is false. There has been
29 joint conduct of the Parties that directly contradicts the existence of any agreement.
30 There have been acts by Côte d'Ivoire protesting Ghana's unilateral acts in the
31 disputed zone or that are otherwise incompatible with any idea of agreement on
32 maritime delimitation; and there have been acts by Ghana itself amounting to an
33 admission of the absence of any agreement.

34
35 Mr President, Members of the Special Chamber, among Ghana's many omissions is
36 a failure to acknowledge that, on two recent occasions, in 2009 and again in 2015,
37 the Presidents of Côte d'Ivoire and Ghana issued joint statements reaffirming their
38 determination to find a negotiated delimitation of the maritime boundary.²¹ The joint
39 statement dated 4 November 2009 is at tab 7. It affirmed, and this is our translation,
40 that

41
42 the land boundary has been delimited whereas discussions aiming at the
43 delimitation of the maritime boundary had been initiated by the two countries.

²¹ Communiqué conjoint établi à l'issue de la visite officielle au Ghana de son Excellence Monsieur Laurent Gbagbo, Président de la République de Côte d'Ivoire, 3-4 novembre 2009, CMCI, Annex 34, at para. 8; Communiqué conjoint publié à l'issue de la rencontre entre le Président de la République de Côte d'Ivoire, le Président de la République du Ghana et S.E. M. Kofi Annan, Genève, 11 mai 2015, RCI, Annex 201 (also in Rapport de la Côte d'Ivoire sur le suivi de l'application des mesures conservatoires, 25 mai 2015, CMCI, Annex 52).

1 The two leaders called upon the competent authorities of the two countries to
2 proceed further with the discussions in order to reach a quick outcome.

3
4 A further joint statement was issued on 11 May 2015. It is at tab 8. In its
5 paragraph 3, it recalls (and again this is our translation) that

6
7 [t]he delimitation of the maritime boundary remains an objective of the Parties.
8

9 Such statements, made at the highest State level, are compelling evidence of the
10 absence of an agreement on delimitation.

11
12 I now turn to the bilateral negotiations within the framework of the Mixed Commission
13 between 2008 and 2014,²² which Maître Kamara has described already this morning.
14 As we have already set out in our written pleadings, the various steps in the
15 negotiations confirm the absence of any agreement on delimitation.²³ Ghana's July
16 2008 contention that its claimed line had been used by the Parties for a long time
17 was rejected by Côte d'Ivoire in February 2009.²⁴ Côte d'Ivoire then recalled that
18 delimitation was yet to be agreed upon. It was only in August 2011 that Ghana, for
19 the first time, asserted that there was a tacit agreement between the Parties
20 delimiting their maritime boundary.²⁵ The expression "customary equidistance
21 boundary" seems first to have been used by Ghana during a meeting in November
22 2011²⁶ and that was only a few weeks after Côte d'Ivoire warned the businesses
23 operating under Ghanaian licenses in the disputed zones. The expression then
24 featured prominently, of course, in Ghana's written and oral pleadings.²⁷ Ghana's
25 last move was to abruptly interrupt the negotiations; withdraw its UNCLOS
26 article 298 declaration, which precluded access to courts and tribunals under
27 Part 15, in September 2014; and then immediately initiated arbitration proceedings
28 seeking a delimitation of the boundary.²⁸

29
30 In the *Gulf of Maine* case, the Chamber declined to recognize the existence of a tacit
31 agreement or a situation of estoppel in circumstances where the granting of
32 concessions by Canada had met with no reaction by the United States for several
33 years.²⁹ In our case, by contrast, Ghana's conduct in the undelimited area has
34 indeed regularly met with protests from Côte d'Ivoire. In *Guinea v. Guinea-Bissau*, the
35 Arbitral Tribunal stated that

²² CMCI, at para. 2.48-2.82 and related Annexes.

²³ CMCI, at para. 2.48-2.82; RCI, at para. 4.23-4.32.

²⁴ CMCI, at para. 4.23; Communication de la partie ivoirienne, 2ème réunion de la Commission mixte ivoiro-ghanéenne de délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 23 février 2009, CMCI, Annex 30; RCI, para. 4.71.

²⁵ Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 août 2011, CMCI, Annex 39.

²⁶ Government of Ghana and Government of Côte d'Ivoire, Minutes Côte d'Ivoire/Ghana Maritime Boundary Negotiation (Fifth Meeting) (2 November 2011), MG, Annex 53.

²⁷ This expression, or variants of it, was used 304 times in Ghana's Memorial : CMCI, para. 3.23, footnote 167.

²⁸ Courrier de l'Ambassade du Ghana en Côte d'Ivoire au Ministère des Affaires étrangères ivoirien, n°ABJ/HMFA/COR.VOL.18, 19 septembre 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.

²⁹ ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, *I.C.J. Reports* 1984, p. 246, at p. 307, para. 138.

1
2 the conflicting nature of the Parties' claims and of their measures of application
3 is enough to exclude any notion of implicit agreement on any lateral
4 delimitation of the maritime zones.³⁰
5

6 In our case, the conflicting nature of the Parties' claims has been evident throughout.
7

8 As you heard this morning, during the 15th meeting of the Mixed Commission in July
9 1988, Côte d'Ivoire proposed to Ghana to extend the discussions to the question of
10 the maritime delimitation. That proposal confirms that there was then no agreement
11 between the Parties as to the delimitation of the maritime boundary. Ghana seems
12 now to be trying to question the very existence of the Ivorian proposal on the ground
13 that it is difficult to ascertain its content. But what matters is not the content but the
14 fact that Côte d'Ivoire proposed to include the issue of delimitation talks on the
15 agenda, and Ghana's reaction. The record of the meeting, which was signed by each
16 Party, expressly confirms that the proposal was made by Côte d'Ivoire, and
17 discussed by the Parties. The relevant passage is now on the screen. It reads:

18
19 Following the presentation made by the Ivorian Party on the issue of the
20 delimitation of the maritime boundary, the Ghanaian delegation took note of
21 the inclusion of this item on the agenda.³¹
22

23 Ghana's subsequent refusal to pursue discussions on the matter was based on the
24 inadequacy of the mandate of the delegation to the Commission,³² not on an
25 assertion that there was already an existing tacit agreement or so-called "customary
26 equidistance boundary" that would render delimitation talks pointless.
27

28 Mr President, Members of the Special Chamber, I now turn to some of Ghana's
29 conduct which indicates its acceptance that the maritime border has yet to be
30 delimited. As we have just seen, Ghana took note of Côte d'Ivoire's 1988 proposal to
31 hold negotiations on maritime delimitation. It was only because of the Ghanaian
32 delegation's limited mandate that Ghana ultimately declined to proceed further with
33 the question within the framework of the Mixed Commission. From this episode it is
34 not possible to deduce a general refusal by Ghana to examine the issue of
35 negotiations based on the principled position that the maritime border had already
36 been delimited.
37

38 Early in 1992, Ghana itself proposed that the Parties engage in negotiations on
39 maritime delimitation.³³ Côte d'Ivoire's reaction to this proposal in April 1992 is now

³⁰ *Delimitation of the maritime boundary between Guinea and Guinea-Bissau*, arbitral award of 14 February 1985, *R.I.A.A.* vol. XIX, p. 149, at p. 175, para. 66; 25 *I.L.M.* 252 (1986) p. 252 at p. 282, para. 66.

³¹ Procès-verbal de la 15ème session ordinaire de la Commission mixte de réajournement de la frontière ivoiro-ghanéenne, 18-20 juillet 1988, CMCI, Annex 12 (at p. 5).

³² CMCI, para. 2.37 ; Procès-verbal de la 15ème session ordinaire de la Commission mixte de réajournement de la frontière ivoiro-ghanéenne, 18-20 juillet 1988, CMCI, Annex 12.

³³ Compte-rendu des réunions du Comité technique chargé du recueil et de l'actualisation des données sur la délimitation de la frontière maritime entre le Ghana et la Côte d'Ivoire, 16 et 18 mars 1992, CMCI, Annex 14; Télégramme du Ministère des Affaires étrangères ivoirien à l'Ambassadeur de Côte d'Ivoire à Accra, 1er avril 1992, CMCI, Annex 16.

1 on the screen. It is also in your folders at tab 10. The relevant part of the note
2 begins – and I shall try to read it in the original French:

3
4 (*Interpretation from French*)

5
6 The Ghanaian Government proposed the holding, on 12 February 1992 at
7 Abidjan, of a meeting of Ghanaian and Ivorian experts charged with discussing
8 the issue of border demarcation ... between Côte d'Ivoire and Ghana.³⁴

9
10 (*Continued in English*) The following paragraph of the note recalls Côte d'Ivoire's
11 1988 proposal. It confirms Ghana's favourable position as to engaging in delimitation
12 negotiations. Thus, within a reasonably short period of time (three and a half years
13 between 1988 and 1992), each of the Parties proposed negotiations with the clear
14 objective of delimitating the common maritime border. Côte d'Ivoire's reaction to
15 Ghana's 1992 request is telling. Côte d'Ivoire welcomed Ghana's proposal and
16 requested that the two States abstain from any invasive activities (drillings) in the
17 disputed area pending a final settlement.³⁵ Ghana did not react to such explicit
18 language, yet it is now trying to use Côte d'Ivoire's failure to follow up with a
19 negotiation proposal in its attempt to show that the boundary was in fact delimited in
20 Côte d'Ivoire's view.³⁶

21
22 In 2009, Côte d'Ivoire rejected³⁷ Ghana's claim to an equidistance line allegedly
23 defined by the Parties' long-term conduct.³⁸ This Communication was made on
24 23 February 2009 ahead of the second meeting of the Mixed Commission. It clearly
25 states that – and this is our translation:

26
27 [t]his proposed line of the Ghanaian Party does not constitute an official
28 agreement between our two countries, following from bilateral negotiations for
29 the delimitation of the maritime boundary between Côte d'Ivoire and Ghana,
30 as recommended by articles 15, 74 and 83 of the Montego Bay Convention.³⁹

31
32 This communication reminded Ghana that, in 2009, a delimitation had yet to be
33 agreed between the Parties. The communication also recalled Côte d'Ivoire's 1988

³⁴ Note Verbale from Ministry of Foreign Affairs of the Republic of Côte d'Ivoire, to Ministry of Foreign Affairs of the Republic of Ghana, No 2678/AE/AP/RM-13 (April 1992), RG, Annex 112. The English translation of the original French text is not accurate. See also Télégramme du Ministère des Affaires étrangères ivoirien à l'Ambassadeur de Côte d'Ivoire à Accra, 1er avril 1992, CMCI, Annex 16.

³⁵ Télégramme du Ministère des Affaires étrangères ivoirien à l'Ambassadeur de Côte d'Ivoire à Accra, 1er avril 1992, CMCI, Annex 16; MG, Annex 66.

³⁶ RG, para. 2.53.

³⁷ Communication de la partie ivoirienne, 2ème réunion de la Commission mixte ivoiro-ghanéenne de délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 23 février 2009, CMCI, Annex 30. For the English version of this document, see Government of Côte d'Ivoire, Second Meeting of the Joint Ivoiro-Ghanaian Commission on the Demarcation of the Maritime Border Between Côte d'Ivoire and Ghana: Presentation by the Ivorian Side (23 February 2009), MG, Annex 48.

³⁸ Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45 ; Discours d'ouverture du Ghana, 1ère réunion de la Commission mixte ivoiro-ghanéenne sur la délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 17-18 juillet 2008, CMCI, Annexe 28

³⁹ Communication de la partie ivoirienne, 2ème réunion de la Commission mixte ivoiro-ghanéenne de délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 23 février 2009, CMCI, Annex 30 (at para. 7). The English translation of the original French text is not accurate.

1 and 1992 requests for the suspension by Ghana of any unilateral steps in the
2 disputed area. Ghana did not react to this statement,⁴⁰ let alone challenge it. Instead
3 it simply proceeded with its inflexible position culminating in its first claim to tacit
4 agreement, in August 2011.⁴¹

5
6 In September 2011, as Professor Miron will explain, Côte d'Ivoire issued a warning
7 letter to the businesses operating under Ghanaian licence in the disputed area,⁴²
8 and Côte d'Ivoire repeated this warning in 2014. After the warning, in a letter dated
9 19 October 2011 Ghana's Minister of Energy responded to a request for clarification
10 from Tullow (copying the letter to Ghana's Attorney General and Foreign Minister).
11 This letter is at tab 12. In the letter, Ghana's Minister confirmed the absence of
12 agreement on the maritime boundary in the clearest terms. The third paragraph
13 reads, and I quote:

14
15 As regards the maritime boundary, as you are aware, it has always been
16 publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire
17 have not yet delimited their maritime boundary. It is also publicly known that in
18 the recent years the two Governments have met in an effort to negotiate their
19 maritime boundary in accordance with international law. Those negotiations
20 remain ongoing.⁴³

21
22 This, Mr President, could not be clearer. It is another explicit acknowledgement by
23 Ghana of the Parties' diverging views on the maritime boundary and the absence of
24 any agreement, tacit or otherwise.

25
26 The 2008-2014 bilateral negotiations within the Mixed Commission were also
27 initiated by Ghana. On 20 August 2007 Ghana sent a note to Côte d'Ivoire calling for
28 delimitation negotiations.⁴⁴ This note may be found at tab 13. In the second
29 paragraph, you will see that there is a reference to articles 74 and 83 of UNCLOS. In
30 the third paragraph that is now on the screen the note states, and I quote:

31
32 The Ministry is proposing a joint Ghana Ivory Coast team to deliberate on the
33 delimitation of our international maritime boundaries to enable Ghana to make
34 its claim to the UN Commission on the Limits of the Continental Shelf.

35
36 The very fact that Ghana made this new proposal for negotiations (the second one
37 by Ghana and the third one between the Parties within two decades) confirms
38 Ghana's awareness that there was no agreement, tacit or otherwise, on the
39 delimitation of the maritime boundary.

40
41 In its opening statement at the first meeting of the Mixed Commission in 2008,
42 Ghana stated that

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⁴⁰ CMCI, at para. 2.57.

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 août 2011, CMCI, Annex 39.

⁴² CMCI, Annex 71.

⁴³ Courrier du Ministère de l'énergie du Ghana à Tullow, 19 octobre 2011, CMCI, Annex 78.

⁴⁴ CMCI, at para. 16 ; Note verbale n°LE/TL/2 du Ministère des affaires étrangères du Ghana à l'Ambassade de Côte d'Ivoire à Accra, 20 août 2007, CMCI, Annex 25.

1 any agreement reached here would have to be approved by the Legislature
2 and/or the Executive of both countries.⁴⁵

3
4 The aim was clearly not the mere formalization of an existing agreement.

5
6 In short, Mr President, the 2008-2014 negotiations reflect Ghana's recent
7 commitment to negotiating the delimitation and thus confirms the absence of an
8 agreement.⁴⁶

9
10 Mr President, taken individually, and taken together, this conduct shows clearly that
11 Côte d'Ivoire openly and consistently rejected any suggestion that the Parties'
12 common maritime boundary had been delimited by tacit agreement, or that there
13 existed a so-called "customary boundary". Côte d'Ivoire's position has been clear
14 and consistent throughout. This conduct also points unmistakably to Ghana's
15 awareness and acceptance of the absence of agreement and of the undelimited
16 character of the disputed area.

17
18 Mr President, I now turn to certain matters invoked by Ghana in its efforts to
19 construct a case for a tacit agreement. These are matters particularly relating to
20 petroleum.

21
22 I begin by saying that the case-law has consistently confirmed the irrelevance of
23 petroleum conduct for the purpose of maritime delimitation unless such conduct
24 clearly reflects a tacit agreement between the Parties. A leading case is
25 *Cameroon v. Nigeria*,⁴⁷ which Professor Pellet will come to when he touches on
26 Ghana's *modus vivendi* argument. The Court in that case based itself on previous
27 consistent case law.⁴⁸ In accordance with the case law, the petroleum conduct of the
28 Parties in our case is irrelevant for the purpose of maritime delimitation unless such
29 conduct clearly and unambiguously reflects a tacit agreement. That cannot be the
30 case here: as I have just recalled, Côte d'Ivoire has regularly repeated its objection
31 to Ghana conducting invasive activities in the undelimited area, and Ghana's own
32 behaviour, for instance proposing negotiations and indeed engaging in negotiations,
33 clearly indicates that the maritime boundary has not yet been delimited.

34
35 The petroleum conduct invoked by Ghana in the present case cannot be expressive
36 of a tacit agreement between the Parties on delimitation of their maritime boundary.

⁴⁵ Government of Ghana, Maiden Meeting Between Ghana and Côte d'Ivoire on the Delineation of the Ghana/Côte d'Ivoire International Maritime Boundary: Opening Statement by the Ghana National Continental Shelf Delineation Project (17-18 July 2008), MG, Annex 46.

⁴⁶ Note verbale n°LE/TL/2 du Ministère des affaires étrangères du Ghana à l'Ambassade de Côte d'Ivoire à Accra, 20 août 2007, CMCI, at para. 16; Annex 25.

⁴⁷ ICJ, *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.

⁴⁸ *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.

1 Ghana appears to attach great importance to the seismic requests and
2 authorizations that passed between the Parties in the disputed area.⁴⁹ However,
3 occasional requests and authorizations for one Party's seismic missions do not
4 amount to mutual recognition of the existence of a delimited boundary. The wording
5 of the various requests and authorizations was vague and did not make express
6 mention of a boundary line, with precise coordinates.⁵⁰ Rather, such requests and
7 authorizations refer to approximate geographic zones where the seismic missions
8 were operating. They reflect caution in a context of uncertainty relating to an
9 undelimited area rather than to a formal request or authorization to cross a delimited
10 boundary.

11
12 Ghana seeks to rely on the Parties' bilateral cooperation and joint projects in an
13 attempt to suggest the existence of a tacit agreement.⁵¹ As Côte d'Ivoire has shown
14 in its written pleadings, the examples invoked by Ghana do not evidence a tacit
15 agreement on delimitation.⁵² None of these examples relates to delimitation. Some
16 of the projects, such as a linguistic programme and an agreement on the use of the
17 Takoradi base, do not even refer to the disputed area.⁵³

18
19 Ghana then seeks to rely on the Parties' petroleum-related legislation and contracts
20 in relation to the undelimited area; but again, in our submission, this is to no avail.
21 The activities that actually took place in the disputed area under such legislation
22 were neither invasive nor even called for a reaction. These activities, as we have
23 heard today, remained sparse at the time and were not such as to call for the other
24 Party's reaction. Moreover, in the case of the Ivorian decrees, it must be questioned
25 how far mere legislative action, not accompanied by actual implementation of the
26 national law, may be held against the State. In any event, as is shown in our written
27 pleadings, the Parties' conduct demonstrates the absence, rather than the existence,
28 of a tacit agreement.
29

⁴⁹ MG, paras. 3.71-3.76, 5.13-5.17; RG, paras. 2.104-2.105.

⁵⁰ 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 from M. Lamine Fadka, Minister of Petroleum Resources, Republic of Côte d'Ivoire, to F. Ohene-Kena, Minister of Mines and Energy, Republic of Ghana, No. 0907 MIRMP/CAB/dh (28 November 1997), MG, Annex 68; Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re Authorization for seismic vessel to turn around in Ghanaian waters (9 Mar. 2007), RG, Annex 137; Email from Boblai Victor Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC) (13 Mar. 2007), RG, Annex 138; Letter from Thomas Manu, Ghana National Petroleum Corporation (GNPC), to the Minister of Energy, Republic of Ghana (19 Mar. 2007), RG, Annex 139; Fax from Thomas Manu, Ghana National Petroleum Corporation (GNPC) to Boblai V. Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI) (22 Mar. 2007), RG, Annex 140; Letter from F. K. Owusu-Adjapong (MP), Minister, Ministry of Energy, Republic of Ghana, to The Minister, Ministry of Mines & Petroleum Resources, Republic of Côte d'Ivoire (3 November 2008) and Letter from F. Kadio Morokro, Director of Cabinet for the Minister of Mines and Energy, Republic of Côte d'Ivoire, to The Minister, Ministry of Energy, Republic of Ghana (11 December 2008), MG, Annex 69.

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.

1 Professor Miron will deal with Côte d'Ivoire's decrees from the 1970s. I will just say a
2 word about article 8 of Côte d'Ivoire's Law of 17 November 1977.⁵⁴ I hope you can
3 now see article 8 of the Law on the screen. The Law itself is at tab 14. The 1977 Law
4 settles the principles to be used by Côte d'Ivoire in delimiting its maritime boundaries
5 with its neighbours. In English translation it reads:

6
7 With respect to adjoining coastal States, the territorial sea and zone referred
8 to in article 2 of this Law

9
10 that is, the exclusive economic zone

11
12 shall be delimited by agreement in conformity with equitable principles and
13 using, if necessary (*le cas échéant*) the median line or the equidistance line,
14 taking all pertinent factors into account.⁵⁵

15
16 The Law indicates the methodology endorsed by Côte d'Ivoire in view of future
17 delimitations with its two neighbours. It is clearly consistent with international law.
18 Read properly, including the reference to equitable principles and the words "*le cas*
19 *échéant*", which Ghana slides over, it most certainly does not require the application
20 of any so-called principle of equidistance.

21
22 The 1977 Law was adopted several years after the first decrees granting petroleum
23 concessions in the area adjacent to the disputed zone. If the relevant boundaries
24 were delimited already as of 1977, it would be difficult to understand the *raison d'être*
25 of such legislation. The 1977 Law was of course envisaging future delimitations. This
26 is evident from the text, which expresses the need for an agreement on delimitation
27 of the maritime boundary, thus confirming the absence of such delimitation with Côte
28 d'Ivoire's two neighbours.

29
30 The insistence in the 1977 Law on the need for an agreement also excludes any
31 delimitation that would be effected by way of unilateral acts such as Ghana's
32 activities in the disputed area.⁵⁶ In the absence of delimited maritime boundaries, the
33 rationale of the 1977 Law was to state Côte d'Ivoire's understanding of relevant
34 principles of the international law of maritime delimitation. They are very clearly
35 expressed in article 8: maritime delimitation is to be effected by means of agreement
36 in conformity with equitable principles. These principles reflected customary
37 international law at the time of the 1977 Law, and they have since been consecrated
38 by articles 74 and 83 of UNCLOS.

39
40 It is clear from the wording of article 8 that the use of the equidistance or median line
41 is only relevant "if necessary" – "*le cas échéant*" – meaning that the use of such line

⁵⁴ Loi n°77-926 portant délimitation des zones marines placées sous la juridiction nationale de la République de Côte d'Ivoire, 17 novembre 1977, CMCI, Annex 2.

⁵⁵ Republic of Côte d'Ivoire, Law No. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast, adopted on 17 November 1977, reprinted by United Nations DOALOS/OLA - National Legislation, MG, Annex 24. For the original French version, see Loi n°77-926 portant délimitation des zones marines placées sous la juridiction nationale de la République de Côte d'Ivoire, 17 novembre 1977, CMCI, Annex 2.

⁵⁶ ICJ, *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, preliminary objections, Judgment of 2 February 2017, at para. 90.

1 will be dependent on the circumstances of the case. Moreover, it is clear from
2 article 8 that an equidistance line, where it is to be used, is only a provisional
3 equidistance line, to be adjusted “taking into account all relevant factors”. In short,
4 Mr President, Ghana’s heavy reliance on the Law of 1977 is simply not supported by
5 the text of the law.

6
7 Côte d’Ivoire’s petroleum contractual practice confirms the position reflected in its
8 legislation. With the uncertainties surrounding an undelimited boundary, as you will
9 have seen, Côte d’Ivoire developed a practice of including a model clause reserving
10 Côte d’Ivoire’s position as to the limits of its jurisdiction. Such wording would have
11 had no *raison d’être* if there were already a delimited maritime boundary. The details
12 of such practice have been set out at length in our written submissions.⁵⁷

13
14 Mr President, Members of the Special Chamber, on Tuesday Professor Klein
15 developed two legal points concerning the alleged tacit agreement. I can be brief in
16 response.

17
18 First, he suggested that the fact (which he accepts) that PETROCI is not empowered
19 to commit the Republic of Côte d’Ivoire in matters concerning frontiers was of no
20 importance.⁵⁸ Of course, it is important in the present context, when Ghana asserts
21 that PETROCI’s publications, its maps, somehow commit the State to a certain
22 delimitation. Moreover, Professor Klein omitted to draw your attention to the very
23 next paragraph in our Rejoinder,⁵⁹ where we make a number of other important
24 points about PETROCI, in particular that it is not an emanation of the State, the very
25 point that Professor Klein seems to accept is crucial.⁶⁰

26
27 Second, Professor Klein took us to task for relying on a series of cases that he tried
28 to say were totally different from the present one. I do not have time today to
29 respond in detail to his lengthy and learned efforts to distinguish these cases (in a
30 truly common law manner, which I greatly respect). Of course, the circumstances of
31 each case turn on their own particular facts, and we certainly did not intend to
32 suggest otherwise. What these cases do show is the great caution with which
33 international courts and tribunals approach “evidence” put forward to establish a tacit
34 agreement, and the very high threshold that must be met, especially where a
35 maritime border is concerned.

36
37 Ghana refers to certain maps in an attempt to shore up its claim to a customary
38 equidistance boundary. We have dealt with these at length in our written pleadings,⁶¹
39 and, as we have shown, these maps do not evidence the course of the maritime
40 boundary or the existence of a tacit agreement that would support such course.
41 Almost all the maps relied on by Ghana are those of petroleum concessions, many
42 of them produced by private actors not representing or engaging either State.
43 Moreover, such maps stand alone, without any accompanying text or explanation.
44

⁵⁷ CMCI, at paras. 4.67-4.68; RCI, paras. 4.35-4.39.

⁵⁸ ITLOS/PV.17/C23/2, p. 6, lines 4-5 (Klein).

⁵⁹ RCI, para. 4.61.

⁶⁰ ITLOS/PV.17/C23/2, p. 6, lines 4-5 (Klein).

⁶¹ CMCI, at paras 4.92-4.110; RCI, paras. 2.127-2.136.

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

7
8 In *Burkina Faso v. Mali*, the ICJ made this very clear: maps, it said, can

9
10 have no greater legal value than that of corroborative evidence endorsing a
11 conclusion at which a court has arrived by other means unconnected with the
12 maps.⁶²

13
14 This has been confirmed in other instances, such as in *Indonesia v. Malaysia* and
15 *Nicaragua v. Colombia*.⁶³

16
17 The maps put forward by Ghana were prepared and used either by private
18 companies or by public bodies with a limited, technical mandate. These maps did not
19 purport to express a view engaging the State on the position of the maritime border,
20 nor could they have done so. As a result, such maps cannot be a "physical
21 expression of the will of the State", to quote the formula used by the International
22 Court in *Burkina Faso v. Mali*, and

23
24 they cannot in themselves alone be treated as evidence of a frontier [*and*] they
25 cannot be given the character of a rebuttable or *juris tantum* presumption such
26 as to effect a reversal of the onus of the proof.⁶⁴

27
28 Mr President, Members of the Chamber, I now turn to the Parties' 2009 submissions
29 to the Commission on the Limits of the Continental Shelf (CLCS). Ghana seems to
30 rely heavily on these.⁶⁵ As Côte d'Ivoire explained in its written pleadings, these
31 submissions do not provide any evidence of a tacit agreement between the Parties
32 on the delimitation of their maritime boundary; quite the contrary.

33
34 First, the limits of the areas respectively claimed by each Party were determined only
35 by the technical information available to it, not by agreement. Second, the limits of
36 the Parties' respective claims in their submissions do not, as Ghana contends, follow
37 a single line. Third, contrary to what Ghana may suggest,⁶⁶ the submissions explicitly

⁶² ICJ, *Frontier Dispute (Burkina Faso/Mali)*, Judgment, *I.C.J. Reports 1986*, p. 554, at p. 583, para. 56.

⁶³ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, *I.C.J. Reports 2002*, p. 625, at p. 668, para. 90; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, *I.C.J. Reports 2007*, p. 832, at p. 868, para. 118; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012*, p. 624, at p. 661, para. 100. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, *I.C.J. Reports 2002*, p. 303, at p. 345, para. 58, and p. 383, para. 144; *Maritime Dispute (Peru v. Chile)*, Judgment, *I.C.J. Reports 2014*, p. 3, at p. 64, para. 170; *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India)*, arbitral award of 7 July 2014, at p. 51, para. 184.

⁶⁴ ICJ, *Frontier Dispute (Burkina Faso/Mali)*, Judgment, *I.C.J. Reports 1986*, p. 554, at p. 583, para. 56. See also *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, *I.C.J. Reports 1984*, p. 246, at p. 307-308, para. 139.

⁶⁵ MG, paras. 2.9-2.16 and 3.78; RG, at paras. 4.2-4.3.

⁶⁶ RG, para. 4.16.

1 state that there is a boundary dispute. Section 5 of each submission contains a
2 standard without-prejudice clause that clearly distinguishes between delineation of
3 the outer limits of the continental shelf of a State and delimitation of the maritime
4 boundary between two or more States.⁶⁷ It is particularly inappropriate for Ghana to
5 claim otherwise, since it attended, together with other States in the region, an
6 ECOWAS meeting in 2009, where all these States agreed that:

7
8 [i]ssues of the limits of adjacent/opposite boundaries shall continue to be
9 discussed in a spirit of cooperation to arrive at a definite delimitation even after
10 the presentation of the preliminary information/submission. Member States
11 should therefore write “no objection” Note to the submission of their
12 neighbouring States.⁶⁸

13
14 The Chairman of the CLCS, as well as Ghana itself in its initial submission,
15 confirmed and accepted this view.⁶⁹ In its 2009 submission, Ghana expressly
16 acknowledged that it

17
18 has overlapping claims with adjacent States in the region, but has not signed
19 any maritime boundary delimitation agreements with any of its neighbouring
20 States to date.⁷⁰

21
22 Mr President, Members of the Chamber, to conclude: for the reasons given in our
23 written pleadings, and again at this hearing, it is, in our submission, clear that Ghana
24 has not established that there is a tacit agreement between the Parties delimiting
25 their common maritime boundary, even out as far as where there has been some
26 petroleum activity. Ghana is far from meeting the high threshold laid down in the
27 case law of the ITLOS and the ICJ for the establishment of a tacit maritime boundary
28 agreement. The absence of a tacit agreement is manifest. It is confirmed by Côte
29 d’Ivoire’s conduct, reflecting its position that the maritime boundary has yet to be
30 delimited, and protesting Ghana’s intrusive activities in the disputed area. All such
31 conduct was well known to Ghana and was not contested by it. The absence of a
32 tacit agreement is further confirmed by Ghana’s own conduct, amounting to an
33 admission that the maritime boundary has yet to be delimited. The absence of tacit
34 agreement is further confirmed by the joint conduct of the Parties, including the joint
35 statements of the two Presidents, to which I referred you, clearly indicating the

⁶⁷ Submission by the Government of Côte d’Ivoire for the Establishment of the Outer limits of the Continental shelf of Côte d’Ivoire pursuant to article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive summary, 8 mai 2009, CMCI, Annex 175; Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74.

⁶⁸ Procès-verbal de la réunion d’experts de certains États membres de la CEDEAO sur les limites extérieures du

plateau continental, Accra, 25-26 février 2009, CMCI, Annex 31 (bold characters in the original).

⁶⁹ CMCI, paras. 4.119-4.122; Déclaration du Président de la Commission des limites du plateau continental sur l’avancement des travaux de la Commission, document CLCS/64, 1er octobre 2009, p. 25, par. 118, CMCI, Annex 178; Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74, p. 5, at para. 5.3.

⁷⁰ Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74, p. 4, at para. 4.1.

1 undelimited character of the maritime boundary, and by initiating and participating in
2 delimitation negotiations over an extended period of time.

3
4 For all these reasons, we respectfully submit that the Chamber should conclude that
5 there is no tacit agreement on the delimitation of the Parties' common maritime
6 boundary.

7
8 Mr President, Members of the Chamber, before concluding, I feel obliged to say that
9 I was surprised that in his introductory speech Professor Sands saw fit to suggest
10 that all roads led to a customary equidistance boundary, and that if the Special
11 Chamber took any other approach, the International Tribunal for the Law of the Sea
12 would "disqualify itself from settling disputes of this kind".⁷¹ Such language is, to put
13 it mildly, out of place. We are confident that you will approach this case with an open
14 mind, with the sole aim of achieving an equitable solution in accordance with the law.

15
16 Mr President, this concludes what I have to say. I thank you all for your attention,
17 and I request that you now give the floor to Professor Miron.

18
19 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank you, Sir Michael, for your
20 statement. (*Interpretation from French*) Professor Alina Miron, you have the floor.

21
22 **MS MIRON** (*Interpretation from French*): Mr President, Members of the Special
23 Chamber, it is a great honour for me to appear once again before you. This is due to
24 the confidence shown in me by the authorities of Côte d'Ivoire, for which I thank
25 them.

26
27 To close this morning's session, I would like to present an alternative history of
28 estoppel; a history where essential documents are not shrouded in silence; a history
29 where five years of Ghanaian unilateral oil activities do not become five decades of
30 "effectivités" consented to by Côte d'Ivoire; a history where the protests of Côte
31 d'Ivoire are not characterized as hopes dashed by its neighbour; a history where
32 economic benefits are not depicted as apocalyptic prejudice.

33
34 It is a history of the oil activities of the Parties, activities in the primary meaning of the
35 word, which is a "real deployment, a tangible manifestation of power".

36
37 With regard to oil, this means invasive drilling activities, as opposed to simply
38 mapping out oil blocks on paper for commercial purposes. It means sustained and
39 irreversible activities, unlike seismic surveys carried out by transient vessels. You
40 noted in your Order of 25 April 2014 that this type of activity

41
42 results in significant and permanent modification of the physical character of
43 the area in dispute.

44
45 When these activities are spread out over time, they can lead to a draining of
46 resources. In short, they are activities which modify the status quo.

47

⁷¹ ITLOS/PV.17/C23/1, p. 10, line 32 (Sands).

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

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

16
17 Briefly, Ghana's argument relating to estoppel is as follows. To undertake its
18 activities it relied on representations – “*assurances*” in French – from Côte d'Ivoire to
19 the effect that the maritime boundary followed an equidistance line. Ghana was all
20 the more entitled to do so because we did not protest. Stopping these activities
21 would cause it considerable prejudice. I will in turn examine these three elements,
22 which constitute the three cumulative conditions for estoppel.

23
24 Ghana repeats *ad nauseam* the refrain of Côte d'Ivoire's acceptance, over decades,
25 of a boundary following the equidistance line. Sir Michael has just demonstrated that
26 there never was any acceptance. The estoppel argument, which based entirely on
27 this, is as doomed to failure as the tacit agreement argument.

28
29 It is therefore very easy for me to rebut each of the examples of so-called
30 representations given by Professor Klein. The first of these was the 1970 decree.
31 Mr Kamara and Sir Michael have shown how Ghana takes this out of its broader
32 context but, over and above this, what does the text say? It grants an exclusive
33 concession to Esso and Shell in Ivorian territorial waters, specifying that coordinates
34 A, B, K, L, M and T are approximate.

35
36 In 1975 another decree issued by President Houphouët-Boigny very clearly
37 separates the oil concessions from the maritime boundary. I quote:

38
39 The coordinates of reference points M, L and K separating Côte d'Ivoire and
40 Ghana are given by way of indication and cannot in any case be considered
41 as being the national jurisdiction boundaries of Côte d'Ivoire.

42
43 If Ghana had really interpreted the 1970 decree as – and I quote Professor Klein – “a
44 representation likely to create legal effects”, even though this is not confirmed by any
45 activity in the disputed area, in any event the 1975 decree dissipates any false
46 impression. It is hardly surprising then that Professor Klein opted to forget it.

47
48 Our opponents make much of the authorizations for seismic surveys, once again
49 failing to place them in their context. In reality, they are part of broader cooperation,
50 as requested by article 83, paragraph 3, of the Convention. PETROCI and GNPC

1 undertook to exchange data collected, be it from the boundary area or elsewhere. In
2 addition, it is in keeping with this collaboration, “without prejudice to the final
3 delimitation”, that, moreover, Ghana proposed an exchange of seismic data for the
4 preparation of submissions to the Commission on the Limits of the Continental Shelf.
5

6 This leads me to say a few words about those submissions. Without batting an
7 eyelid, Professor Klein interprets them as an *urbi et orbi* proclamation of Côte
8 d’Ivoire’s recognition of the existence of a delimited maritime boundary following an
9 equidistance line. Really? How does Ghana reconcile this interpretation with its
10 position in 2007, when Ghana itself was proposing to Côte d’Ivoire to settle the
11 dispute on the maritime boundary on the pretext that it was an obstacle to filing the
12 submission to the CLCS? Or with the fact that in 2008, during the first meeting of the
13 Joint Commission, it reasserted the same point of view? Thus, in 2007-2008 Ghana
14 considered, without a shadow of a doubt, that the boundary was not delimited. Today
15 Ghana swears, and urges you to believe, that back then Ghana was convinced, in all
16 good faith, that the boundary had been drawn for more than 50 years.
17

18 The last example of representations given by Professor Klein concerns the absence
19 of concessions or Ivorian activities in the disputed area. In short, Ghana reproaches
20 us for having shown restraint, as is required by the Convention. The mere act of
21 making this complaint attests to its derisory nature.
22

23 Mr President, I have just demonstrated that the first condition for estoppel is not met.
24 I am not therefore required, *a priori*, to dwell on the other two, but I will do so *ex*
25 *abundante cautela*.
26

27 Ghana asserts that it invested in the area relying on the purported Ivorian
28 representations, but nothing is further from the truth. On the contrary, the most
29 substantial investments – those relating to drilling – were made in disregard of Côte
30 d’Ivoire’s protests and at the cost of the failure of the negotiations.
31

32 It should be recalled that in 1988 the Parties dealt with the question of delimitation of
33 the maritime boundary for the first time. At that time the disputed area was virgin
34 territory; it had never been drilled. Ghana did not respond to the invitation but in 1989
35 it drilled its first well in the Tano North West field, without having informed Côte
36 d’Ivoire in any fashion.
37

38 When it received confirmation of the Ghanaian drilling, Côte d’Ivoire protested
39 against this kind of invasive activities, and I quote from the letter of 1992:
40

41 The Ivorian Government ... therefore hopes that whilst awaiting the meeting
42 of the Joint Border Redemarcation Commission, the two countries shall
43 abstain from all operations or drilling works in the Zone whose status remains
44 to be determined.
45

46 For Professor Sands, this note verbale, sent by the Ivorian Minister for Foreign
47 Affairs to his Ghanaian opposite number, is “an expression of hope [which] faded
48 away and was dropped.”
49

1 So does Ghana interpret a formal protest, admittedly made in subdued diplomatic
2 language, as mere inconsequential gesture?
3

4 Mr President, this “hope” was surely dashed, but it was not dropped. On the
5 contrary, Côte d’Ivoire reiterated its opposition, in any event when it was aware of
6 Ghana’s unilateral activities and when its government apparatus was in a position to
7 react.
8

9 Our opponents make a great deal of our silence during the period 1992-2002. What
10 really happened in the disputed area during this period of lengthy domestic crises in
11 Côte d’Ivoire?
12

13 In 1999 and then in 2002, Ghana drilled two wells. These activities took place when
14 the Ivorian civil war was at its height. The two wells are located in the Tano West 1
15 field, which straddles the provisional equidistance lines, whether Ghana’s line or
16 ours. If at that time Ghana thought that the boundary followed the equidistance line,
17 should it not at least have informed Côte d’Ivoire of the configuration of this deposit?
18 It did not do so, and in any event these wells were quickly abandoned.
19

20 Mr President, that was the status quo in the disputed area in 2007-2008 when the
21 negotiations on the boundary resumed. What happened then? In June 2007 Tullow
22 discovered the Jubilee field, which lies outside the disputed area, but close to it. This
23 discovery heralded significant resources further to the west.
24

25 On 20 August 2007, Ghana contacted Côte d’Ivoire with a view to resolving the
26 question of maritime delimitation. Côte d’Ivoire responded immediately, all the while
27 expressing concern about the invasive activities in the disputed area, as can be seen
28 from an internal note that defines the terms of reference of the Ivorian negotiators:
29

30 In order to avoid any conflict between the two countries on the issue of oil
31 exploitation, it would be highly desirable for the ... Joint Commission ... to
32 consider this matter as well.
33

34 While the Commission was being set up, Ghana authorized Tullow to drill a well in
35 the Ebony field. This quickly proved to be non-viable and Tullow therefore sold its
36 licences for the block.
37

38 The Joint Commission met in February 2009 and Côte d’Ivoire quite normally took
39 the opportunity to reaffirm its opposition to the drilling:
40

41 Côte d’Ivoire reiterates its request to Ghana in respect of any unilateral activity
42 in the neighbouring maritime zone until a determination by consensus of the
43 maritime border between the two countries.
44

45 What does Ghana do? It authorizes Tullow to drill two further wells in the Tweneboa
46 field, located close to the equidistance lines and doubtless linked to the Enyenra
47 field, which straddles those lines. The commercial viability of the field is confirmed at
48 the end of 2009. Does Ghana inform Côte d’Ivoire about it? Absolutely not. On
49 15 December 2009 Ghana makes its declaration under article 298.
50

1 Now, sheltered from all judicial supervision, Ghana gives the green light to the
2 drilling of a number of wells in the disputed area. You can see on the screen the
3 statistics showing the acceleration of invasive activities and the build-up of heavy
4 installations in an area whose delimitation was *a priori* at the heart of the
5 negotiations between the two States.
6

7 On Tuesday Mr Alexander perfectly illustrated this unstoppable dynamic of Ghana's
8 *fait accompli* in the TEN field: two wells in 2010, five in 2011, two in 2012, three in
9 2013, two in 2014, and so on.

10
11 Côte d'Ivoire's protests did nothing to hamper this irresistible acceleration. In 2011
12 Côte d'Ivoire renewed its appeal to Ghana.

13
14 [The Côte d'Ivoire] negotiator went on *to ask Ghana to suspend all economic*
15 *activities* in the areas concerned until the boundary issue was resolved.
16

17 We know what happened next. Ghana turned a deaf ear and Côte d'Ivoire
18 addressed the oil companies directly, cautioning them against the risks caused by
19 continuing their activities. It is this attitude that Ghana today characterizes as
20 "surprising" or even "threatening".
21

22 Mr President, I have just shown that all the significant investments in the disputed
23 area have been made despite the protests of Côte d'Ivoire and in disregard of the
24 negotiation process. Against this background, Ghana is particularly ill advised to
25 complain about any damage which the cessation of the unlawful activities might
26 cause it.
27

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

37 With regard to prejudice to Ghana, it should be noted that the oil concessions gave
38 rise to payment of taxes and fees to Ghana. Evidently, these can hardly be seen as
39 damage; and, moreover, Ghana states that its economy has profited from them.
40 Given the state of the case, it is impossible to establish to what extent those profits
41 have been derived from the disputed area. On the other hand, it is certain that Côte
42 d'Ivoire, for its part, has been deprived of all those profits.
43

44 With regard to prejudice suffered by the British company Tullow, let me just make a
45 few remarks in shorthand by way of conclusion. First, Tullow is not a party to these
46 proceedings and Ghana does not exercise diplomatic protection. Second, Tullow
47 presents its investments as dead losses, but they are not, because for a company
48 specializing in oil exploration they are part and parcel of the risk calculation. Third,
49 the confirmation of the commercially viability of the wells in the TEN field generated
50 considerable revenues for Tullow, derived, inter alia, from the increase in its stock

1 market value. Last, but not least, Tullow has made these investments despite Côte
2 d'Ivoire's cautions. Indeed, in 2011, when Côte d'Ivoire contacted the company
3 directly, its investments amounted to USD 630 million, so the 4 billion about the
4 potential loss of which Tullow complains were spent only after 2011.

5
6 Mr President, Members of the Special Chamber, the facts being what they are, I do
7 not think it is really necessary to quibble over the greater or lesser similarities
8 between our case and all the others in which international courts or tribunals rejected
9 estoppel.

10
11 Let me conclude by stating that international law does not include the concept of
12 delimitation by estoppel. In reality, Ghana relies on this argument to give a
13 semblance of legal justification to unlawful, unilateral activities which engage its
14 international responsibility.

15
16 That concludes my presentation and that of Côte d'Ivoire for today and I would like to
17 thank you for your kind attention.

18
19 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I
20 would like to thank Professor Alina Miron. Her statement concludes our session this
21 morning. The oral pleadings of Côte d'Ivoire will resume tomorrow morning at
22 10 o'clock.

23
24

(*The sitting closed at 12.55 p.m.*)