

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



2017

Public sitting

held on Monday, 13 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

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

---

*Ghana is represented by:*

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

*as Agent;*

Mrs Helen Ziwu, Solicitor-General,

*as Co-Agent;*

*and*

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

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

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

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

Ms Anjolie Singh, New Delhi, India,

Mr Fui S. Tsikata, Reindorf Chambers, Accra,

*as Counsel and Advocates;*

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

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

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

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

Ms Vivienne Gadzekpo, Ministry of Petroleum,

Mr Godfred Dame, Adviser to the Attorney-General,

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

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

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

*as Counsel;*

Mr Kwame Mfodwo, Maritime Boundaries Secretariat,

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

Ms Adwoa Wiafe, Ghana National Petroleum Corporation, Accra,

*as Legal Advisers;*

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

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

*as Advisers;*

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

*as Technical Advisers;*

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

*as Assistants.*

*Côte d'Ivoire is represented by:*

Mr Adama Toungara, Minister, Head of Delegation,

*as Agent;*

Dr Ibrahima Diaby, Director-General of PETROCI,

*as Co-Agent;*

*and*

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

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

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

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

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

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

*as Counsel and Advocates;*

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

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

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

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

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

*as Counsel;*

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

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

Ms Nanssi Félicité Tezai, Assistant to the Agent,

*as Advisers.*

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): Good  
2 morning, ladies and gentlemen. The Special Chamber is meeting today to resume its  
3 work. We are going to begin the second round of oral pleadings and today will be  
4 entirely devoted to Ghana, to its pleadings in the dispute concerning the delimitation  
5 of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean.  
6

7 So I was saying that this morning and this afternoon will be given over to Ghana.  
8 This morning we will have a break at 11.30, as usual for the coffee-break and  
9 resume at 12 o'clock, to end at 1 o'clock.

10  
11 I shall now give the floor immediately to Professor Philippe Sands, who will fire first!  
12 Professor Sands, you have the floor.  
13

14 **MR SANDS** (*Interpretation from French*): Thank you very much, Mr President.  
15

16 (*Continued in English*) Before I start my oral argument, last week Elihu Lauterpacht  
17 passed away at the ripe old age of 88. He had of course been involved in the  
18 negotiations of the 1982 Convention and appeared before this Tribunal and over 50  
19 years before the International Court of Justice. I had the great fortune and privilege  
20 to be a pupil of his, and he came to be my mentor and later a friend, and it was from  
21 him more than anyone that I learned about advocacy. I therefore wish, through you  
22 and your colleagues, to pass on my sincere condolences and those of all in this  
23 room who knew him – Sir Michael, Professor Pellet and I am sure many of you – to  
24 his widow Cathy, his children, his family and his friends. I thank you very much for  
25 that, Sir.  
26

27 (*Interpretation from French*) Mr President, distinguished Members of the Special  
28 Chamber, the Parties have now presented to you two rounds of written pleadings  
29 and one complete round of oral argument over four days, all of this after a phase of  
30 proceedings devoted to provisional measures. The facts of the case are well known  
31 to you and we do not intend to present them to you once again. Furthermore, you  
32 have exceptional expertise in the legal field before us and you certainly do not need  
33 the Parties to instruct you in this matter. This Chamber possesses huge experience  
34 in terms of maritime delimitation and each of you is fully aware of the relevant case  
35 law in this matter.  
36

37 As such, our role as counsel during this second round of oral argument will be to  
38 assist you as far as is possible. We will try to deal with the points of the case that you  
39 still need to answer. What that means in concrete terms is that we are going to look  
40 at the core questions, questions which have now very clearly emerged. Our Ivorian  
41 friends have just offered you a smokescreen and a few red herrings: bisector lines,  
42 regional problems, unequal access to resources, to name but a few. We have noted,  
43 as I am quite sure you have, the numerous points on which they said virtually  
44 nothing. In particular, they found nothing to say to you with respect to Côte d'Ivoire's  
45 compliance with a customary boundary following an equidistance line as from its  
46 accession to independence all the way through to 2009. Today we will revisit these  
47 silences.  
48

49 But, for the time being, the points which truly divide the Parties and are put to you for  
50 your resolution are clear and can be identified by three questions. First, do we have

1 here an existing maritime boundary? Secondly, if that is not the case, where is the  
2 provisional equidistance line? Thirdly, should adjustments be made to this line if  
3 necessary?  
4

5 My colleagues and I will deal with these questions *seriatim* but, if you will allow me, I  
6 will dwell on a few preliminary considerations.  
7

8 First, let us look at this angle bisector line. We noted that Professor Pellet dealt only  
9 with the legal aspects of this claim, and that in rather abstract fashion. He then  
10 passed the poisoned chalice on to his colleague. He said, “Mr Pitron will show why  
11 this method is our preferred method”, a task which was obviously too difficult for  
12 Professor Pellet to swallow.  
13

14 Mr Pitron then merely repeated the contents of Côte d’Ivoire’s written pleadings  
15 without taking the trouble to consider the responses made by Ghana at the  
16 beginning of last week to the Ivorian Rejoinder. As we have already dealt amply with  
17 the angle bisector, it is no longer necessary to revisit all those arguments that we  
18 have already set out with respect to the case law and applicable principles. It is clear  
19 that the argument of the angle bisector line has no merit whatsoever in this case.  
20 Our opponents assert that the coastlines are straight and that this factor justifies  
21 recourse to the bisector. As we have set out, it is not so. Our opponents assert that  
22 there are too few base points and that these base points are too close together. All  
23 you have to do is look at the case law; look at *Cameroon v. Nigeria* to note that this  
24 once again is inaccurate. Our opponents assert that considerations of a regional  
25 nature have to dictate the choice for the bisector line, but they do not advance any  
26 convincing case law, any precedent, to support this assertion. Mr Pitron sings the  
27 praises of the arbitral award in the *Guinea v. Guinea Bissau* case. It seems that he  
28 does not know that his colleague Professor Pellet had said just a little earlier in  
29 pleadings about this arbitral award that it was not “well grounded” and was not  
30 Professor Pellet’s “cup of tea.”  
31

32 Maître Pitron will have reminded you that some of Ghana’s counsel, in those cases  
33 which opposed Bangladesh against Myanmar and India, had relied on a number of  
34 bilateral agreements that Ghana itself adduced to support the bisector line argument.  
35

36 However, Mr President, this argument, as you well know, was reduced to nothing in  
37 those two cases and, if I can allow myself a minor comment here, quite rightly so.  
38 The arbitral tribunal in *Bangladesh v. India* did not mince its words. It observed that  
39 the angle bisector method and that of equidistance/relevant circumstances are both  
40 based on a geometrical approach. After saying that, the Tribunal firmly ruled in  
41 favour of the latter, since it offered, in the view of the arbitrators, the advantage of  
42 *(Continued in English)* “clearly separate[ing] the steps to be taken and is thus more  
43 transparent.” *(Interpretation from French)* The tribunal continued by setting out that,  
44 given that it was not based on objective geometrical criteria, *(Continued in English)*  
45 “the angle-bisector method involves subjective considerations [and offers] more than  
46 one way of depicting the relevant coast with straight lines.”  
47

48 *(Interpretation from French)* Maître Pitron demonstrated the extent to which this risk  
49 of subjectivity is a real risk in cutting off from Ghana’s coasts substantial parts of its

1 land territory and, in one fell swoop, adding more than 15,000 square kilometres to  
2 the land territory of Côte d'Ivoire.

3  
4 Our opponents have submitted no new element supporting their argument of the  
5 alleged coastal instability. They were incapable of showing the least significant  
6 difference between the coast as represented on British charts from the 1840s and  
7 that which appears on those charts recently prepared by Côte d'Ivoire with the  
8 assistance of Gide-Loyel. Maître Pitron attempted to convince you of the instability of  
9 the Aby lagoon, but he carefully omitted to point out that this lagoon is 20-odd  
10 kilometres to the west of the Ivorian base point furthest from BP55. Maître Pitron  
11 explained to you that this lagoon represented "one of the most striking examples of  
12 the coastal instability of Côte d'Ivoire" and asserted to you, pushing the boat out  
13 further still, that "the instability of the mouth of this lagoon ... can perfectly well be  
14 transposed to the area around BP55".

15  
16 However, he submits no proof of this similarity. If instability of the coasts of  
17 Bangladesh and India was insufficient to justify setting aside the method of  
18 equidistance/relevant circumstances, we really cannot see - really not - on what  
19 basis our opponents with the slightest credibility can argue that there is any  
20 instability near one of the base points or parts of the coast used by Ghana or Côte  
21 d'Ivoire to identify these base points.

22  
23 Mr President, distinguished Members of the Special Chamber, in the case of  
24 *Bangladesh v. Myanmar*, four of you underscored (*Continued in English*) "the need  
25 to avoid subjective determinations." (*Interpretation from French*) That was the reason  
26 why you opted for the equidistance/relevant circumstances method in that case.  
27 Ghana is convinced that you want to avoid all subjectivity in this case too, and that is  
28 why I said last week that "any approach other than equidistance would put the  
29 Tribunal for the Law of the Sea in a position as unreasonable as it is unlikely."

30  
31 Now, I chose my words with care; and it may be because I said them in French that  
32 Sir Michael Wood got it wrong when he paraphrased me, but I am convinced that it  
33 was an innocent mistake.

34  
35 Let me come back to my questions. The Parties put to you three lines of  
36 equidistance. The first is the customary boundary following an equidistance line.  
37 Ghana roundly asserts that this line is well established and has been accepted  
38 without the slightest deviations by the Parties over five decades. This is an extant  
39 boundary based on an agreement. The second option is Ghana's provisional  
40 equidistance line. The third one is that which Côte d'Ivoire has been able to draw  
41 with patent ease, confirming in the same breath how ridiculous the bisector approach  
42 is. The Chamber could, of course, come up with a fourth option by drawing its own  
43 provisional equidistance line. Mr President, the Chamber could also opt for other  
44 approaches to equidistance, for example combining the different lines, like the ICJ's  
45 judgment did in the *Peru v. Chile* case, about which our opponents have remained  
46 remarkable discreet.

47  
48 Let us stick to the first three options. We noted that counsel for Côte d'Ivoire have  
49 had ample recourse to a specific sketch map or variations thereof. *This* sketch map  
50 shows the real questions that confront you, by showing the customary equidistance



1 line close to the Tano West 1 well, drilled in 1999 in a block granted to the Dana  
2 Company by Ghana in 1996. Côte d'Ivoire never protested about the award of this  
3 concession either with regard to preparatory activities or the drilling of the well. The  
4 sketch map shows the customary boundary, which leaves the entirety of the Tano  
5 West 1 oilfield on Ghana's side. The two provisional equidistance lines, however,  
6 divide this field between Côte d'Ivoire and Ghana.

7  
8 However, what this sketch map does not show is the limits of the Ghanaian  
9 concessions on the basis of which these wells were drilled in 1999 and 2002 without  
10 any protest on the part of Côte d'Ivoire. Let us just look at the limits of this  
11 concession granted to Dana Petroleum. You can now see that in green. Let us then  
12 add the limits of the block granted by Côte d'Ivoire to the west of the boundary  
13 following the same equidistance line. This is the concession that you can now see,  
14 granted by Côte d'Ivoire in 2002 to ...? To whom? – To Dana Petroleum, the same  
15 company to which a block had been granted on the Ghanaian side of the customary  
16 boundary following the same equidistance line.

17  
18 Now this sketch map, as you can see, illustrates the key question before you: does  
19 the mutual respect shown by the two States with respect to the customary boundary  
20 following the equidistance line and their recognition of it constitute behaviour  
21 resulting in legal effects? If the answer to this is "yes", as Ghana argues because of  
22 the existence of a tacit agreement, we do not need to go any further. Sir Michael  
23 Wood reminded you repeatedly that the customary boundary following the  
24 equidistance line was to the subject of a mutual application up to a point 87 M from  
25 the coasts. That is the limit of the converging practice of the Parties with respect to  
26 oil concessions, exploration activities, seismic surveys and drilling of wells, and, as  
27 the case may be, oil extraction. I will say more about this later.

28  
29 Mr President, maybe this is the right time to revisit the question posed by your  
30 Chamber with respect to fishing arrangements between Côte d'Ivoire and Ghana.  
31 Both Parties agree that there are none, given that the agreement of 1988, mentioned  
32 last week by Côte d'Ivoire, is not in force. On Tuesday last, Mr Tsikata pointed out  
33 the existence of an arrangement with a private company and, as Côte d'Ivoire  
34 produced new evidence in response to your question and as Mr Wood pointed out  
35 that Mr Tsikata had not produced any document, now is the time to do it. Ghana is  
36 bound by an agreement with a private company – CLS – for the monitoring of fishing  
37 activities, and the same applies to Côte d'Ivoire; it is the same company. This  
38 company has an internet site to which both Ghana and Côte d'Ivoire have access.

39  
40 You can see on your screens a shot of this site, taken, not 20 years ago but two  
41 days ago, on Saturday, 11 February 2017 at 18h30; you can see the exact details at  
42 the top right. You can see the coasts of Ghana and Côte d'Ivoire with a  
43 representation of different vessels that are being monitored by the system, and you  
44 can also see a boundary dividing the maritime areas of the two States. This  
45 boundary corresponds to the boundary based on an equidistance line defended by  
46 Ghana. It seems perfectly acceptable to both the Ghanaian and Ivorian authorities  
47 with respect to their relations with CLS. The same goes for the boundary line  
48 appearing on the map reproduced in the report concerning the application of the  
49 fishing agreement between Côte d'Ivoire and the European Union, which Mr Tsikata  
50 told you about last week. Mr Wood criticized this document, pointing out that it came

1 from a private source and that it mentioned that the boundary was not the subject of  
2 a formal agreement. Those two points are correct, but the most important finding  
3 with respect to this document, which you can see on the screen now, is surely that it  
4 confirms that it is indeed this limit, following the customary equidistance line, that the  
5 fishing vessels of the European Union and CLS consider as marking the eastern  
6 maritime boundary of Côte d'Ivoire, without Côte d'Ivoire apparently being over-  
7 troubled by this. Once again, our opponents have difficulty in distinguishing the  
8 essential from the merely accessory.

9  
10 Mr President, distinguished Members of the Special Chamber, it is the converging  
11 and perfectly consistent application and recognition of a shared boundary that makes  
12 this case so unique. There are no blank spaces here, or even concessions left  
13 fallow. This case is one of the rare cases where an international court has been  
14 called upon to settle a dispute over an area characterized by such intense activities  
15 conducted over such a long time – an area with respect to which a judicial decision  
16 could have such meaningful and possibly disruptive consequences. Ghana is  
17 therefore persuaded that, as was the case in your Order prescribing provisional  
18 measures, the Special Chamber will be especially careful to proceed with the  
19 greatest possible prudence before calling into question the multiple extant  
20 arrangements. Mr Alexander will revisit this point in a little while.

21  
22 Regarding the Tano West 1 field and all the other concessions and wells, it would  
23 only be if the Chamber were to decide that there was no tacit agreement or  
24 customary boundary following an equidistance line that the Chamber would then  
25 need to take another way, namely that of a provisional equidistance line. It would  
26 only be if you were to feel it necessary to do this that you would have to consider  
27 possibly adjusting that line. Mr Reichler will revisit this question as well this  
28 afternoon. However, let me dwell briefly on this question of adjustment, since Côte  
29 d'Ivoire has asserted that the need to come to an equitable solution under article 83  
30 of the Montego Bay Convention requires the line to be shifted eastwards.

31  
32 What are the factors that need to be taken into account to come to an equitable  
33 solution? To reply to this question, let me start by expressing my real gratitude to my  
34 close friend Professor Pellet for reminding us of the passage from the arbitral award  
35 between *Barbados v. Trinidad and Tobago*, which he quoted with enthusiasm, an  
36 enthusiasm shared by Ghana. For me, Professor Pellet has for many years been  
37 Mr Liberty, Equality and Fraternity; but, as of this day, he will also be for me  
38 Mr Equity, Stability and Certainty. In the case of *Barbados v. Trinidad and Tobago*,  
39 the tribunal asked how it should (*Continued in English*) “exercise judicial discretion in  
40 order to achieve an equitable result.” (*Interpretation from French*) The tribunal  
41 concluded that it could do that by opting for a line (*continued in English*)

42  
43 that is, in its view, both equitable and as practically satisfactory as possible,  
44 while at the same time in keeping with the requirements of achieving a stable  
45 legal outcome. Certainty, equity and stability are thus integral parts of the  
46 process of delimitation.

47  
48 (*Interpretation from French*) Does Côte d'Ivoire seek to apply these principles? Alas  
49 no. Quite the contrary, Côte d'Ivoire promotes a solution which very clearly leads to  
50 uncertainty, instability and inequity. Côte d'Ivoire is inviting the Chamber to take into

1 consideration what Professor Pellet calls “an exceptional concentration of  
2 hydrocarbons”, abundant wealth and riches, which, he tells us, would only be  
3 accessible to Ghana if the customary boundary following an equidistance line was  
4 enshrined. I have to say that when you hear that, it brings tears to the eyes of the  
5 most hardened counsel. The manifest injustice of geography makes us weep, does it  
6 not?  
7

8 The answer, of course, is that it does not, not in this particular case in any event.  
9 You have all the written pleadings and have seen all the annexes, so you are  
10 perfectly informed of the geological reality in the area and of the real distribution of  
11 resources in hydrocarbons, far removed from the description that our opponents  
12 have made. The reality is that recent oil discoveries in Ghanaian waters were found  
13 in the eastern extremity of an extended geological basin that is often called the Tano  
14 Ivorian basin, and it is very often just referred to as the "Ivorian basin" or even the  
15 "basin of Côte d'Ivoire". This basin, which was formed a very long time ago, has a  
16 breadth of several hundred kilometres and covers approximately 126,000 square  
17 kilometres. It extends from Liberia in the west to Ghana in the east, and the major  
18 part of this basin extends from the Ivorian side of the existing maritime boundary. So  
19 why did Professor Pellet not tell you all of that?  
20

21 (*Continued in English*) Let us look at a picture of the basin. Let us look at the picture  
22 provided by Côte d'Ivoire back in 2005,<sup>1</sup> superimposing what Professor Pellet  
23 actually showed you. It is entitled - this little picture; sorry, the large picture is entitled  
24 - “Deepwater Opportunities in Côte d'Ivoire” and, as you can see, we have, for  
25 convenience, superimposed the existing boundaries with Ghana and Liberia and the  
26 boundary that they are claiming in this case. As you can see, almost the entirety of  
27 the Tano-Ivorian basin lies directly south of Côte d'Ivoire’s mainland, in Ivorian  
28 waters. For reasons unknown, Professor Pellet focused only on the Tano end of the  
29 basin; he forgot entirely about the Ivorian side.<sup>2</sup> Maybe he forgot too about his own  
30 annex, in particular Annex 191, submitted with Côte d'Ivoire’s Reply. We commend  
31 you to read the academic article there. It states, “most of the countries along the Gulf  
32 of Guinea stretch are producers of hydrocarbons”, and then I emphasize, “Most of  
33 these hydrocarbons are produced from the deep Ivorian basin of which the Tano  
34 basin is considered to be its eastern extension”.<sup>3</sup> It is Côte d'Ivoire that has most of  
35 the hydrocarbons, but it seems that for Côte d'Ivoire that is not enough, and now  
36 they want to have more.  
37

38 Having been selective in the matter of geology – (*interpretation from French*)  
39 “geomorphological circumstances which are quite exceptional”, (*continued in*  
40 *English*) as Professor Pellet said of the so-called Tano basin<sup>4</sup> – he went even further  
41 on the ghastly consequences for Côte d'Ivoire of this terribly unfair geology. Giving  
42 effect to Ghana’s case, Professor Pellet told you, (*Interpretation from French*) "would

---

<sup>1</sup> Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Opportunities in Côte d'Ivoire* (May 2005). Ghana PM, Vol. IV, Annex 8.

<sup>2</sup> See RCI, paras. 2.86-2.91.

<sup>3</sup> Tetteh, The Cretaceous Play of Tano Basin, Ghana, *International Journal of Applied Science and Technology*, Vol 6, No 1 (Feb. 2016), p. 1 (emphasis added). RCI, Vol. III, Annex 191.

<sup>4</sup> TIDM/PV/A23./6, p.10:26-27; ITLOS/PV.17/C23/6 p.8:27-28 (Pellet).

1 mean that one of the Parties is deprived completely ... [of] any access to the natural  
2 resources off those coasts."<sup>5</sup>

3

4 (*Continued in English*) I must confess that we were pretty surprised when we heard  
5 those words spoken, so I took very great care to read them in the transcript. Côte  
6 d'Ivoire and Professor Pellet told you that there was a total deprivation of natural  
7 resources found off its coast: a total deprivation would be the consequence of this  
8 Special Chamber giving effect to the existing boundary or an unadjusted other  
9 equidistance line, and that would be seriously unfair, would it not?

10

11 Perhaps it would, but not as a matter of the law of the sea. However, the bigger point  
12 is that what he said is totally untrue.

13

14 Côte d'Ivoire summarized the reality of the situation – its own oil activity – in 2005, as  
15 follows:

16

17 more than 178 wells, for exploration and development, have been drilled in  
18 Côte d'Ivoire's sedimentary basin leading to a cumulative production of 90  
19 million barrels of oil and 400 [m]illion cubic feet of gas.<sup>6</sup>

20

21 That was back in 2005. There has been a lot more since then, as we will see.  
22 90 million is a lot more than Ghana has ever had access to.

23

24 Let us look at the scale of oil production in Côte d'Ivoire over the years before this  
25 dispute arose. As you can see from this graph on the left, oil production in Côte  
26 d'Ivoire was around 20,000 barrels a day in 1996. It rose to about 60,000 barrels a  
27 day in 2006, and reached a peak of 70,000 barrels a day in 2009. To reach that level  
28 of production, Côte d'Ivoire brought in foreign investors, and they came, amongst  
29 other reasons, because Côte d'Ivoire was able to offer and rely on a stable, agreed  
30 boundary, one it knew was fully respected by Ghana.

31

32 It is worth adding, Mr President, that the Prime Minister of Côte d'Ivoire, and  
33 Mr Toungara himself, have recently said that they planned to step up production to  
34 200,000 barrels per day.

35

36 I pause here for a moment to remind you, as you digest a chart which shows  
37 impressive activity, that this is the same period during which Maître Kamara told you  
38 that Côte d'Ivoire was in such a state of *crise profonde* that it could not address  
39 matters of delimitation, and could not be expected to protest any of the activities of  
40 Ghana in granting concessions, authorizing exploration and authorizing drilling.<sup>7</sup> The  
41 claim is totally not credible, and it is also unsupported by a shred of evidence before  
42 you.

43

44 Let us now compare what was happening on the Côte d'Ivoire side with what was  
45 going on on Ghana's side of the maritime boundary in the same period. As you can

---

<sup>5</sup> TIDM/PV/A23/6, p.10:27-30; ITLOS/PV.17/C23/6, p.8:28-31 (Pellet).

<sup>6</sup> Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), *Deepwater Opportunities in Côte d'Ivoire* (May 2005), p. 7 (emphasis added). Ghana PM, Vol. IV, Annex 8.

<sup>7</sup> ITLOS/PV.17/C23/4, pp.9:45-10:37, 12:48-13:9; TIDM/PV.17/A23/4, pp.11:16-12:18, p.15:15-27 (Kamara), ITLOS/PV.17/C23/4, p.33 (Miron); TIDM/PV.17/A23/4 p.37-38 (Miron).

1 see, from 1995 until the period when the dispute began, in early 2009, Ghanaian  
2 production was minimal, certainly less than 10,000 barrels a day and probably only  
3 about 1000 barrels a day. In the decade before 2009, relying on the benefit of an  
4 agreed boundary, Côte d'Ivoire was producing up to 70 times as much oil every day  
5 as Ghana: every day, 365 days a year, for more than ten years. Did Ghana make a  
6 fuss about the agreed boundary? It did not. Ghana respected the geography, the  
7 geology and the boundary. Yet now Côte d'Ivoire seeks to present itself to this  
8 Special Chamber as, somehow, a poor relation to Ghana, a resource-deprived  
9 country for which equity requires that it, Côte d'Ivoire, should now have access to  
10 petroleum resources located on Ghana's side of the existing boundary. Côte  
11 d'Ivoire's lawyers come before you with a legal begging-bowl. They ask you to make  
12 a massive change to the existing boundary so that they can add to what they already  
13 have in the Tano-Ivorian basin. We listened with incredulity to what you were being  
14 told. If anyone has a "fairness" claim in this room to claim new quantities of  
15 hydrocarbons – if such a thing were recognizable in law, which it is not – it is surely  
16 Ghana.

17  
18 Mr President, the principles identified by the *Barbados/Trinidad and Tobago* tribunal  
19 are fully applicable to this case, but they operate entirely in favour of maintaining the  
20 *status quo*, in support of the existing boundary, not against it. If the Special Chamber  
21 departs from the existing maritime boundary, the consequences will be very  
22 significant indeed. The concessions that have been granted by Ghana will be  
23 undermined, and issues may arise under the contracts that underpin them and which  
24 have been entered into in consequence of them. How would that add to certainty and  
25 stability? How could it be an equitable solution for Côte d'Ivoire, having known about,  
26 accepted and never once protested Ghanaian concessions and activities based on  
27 an agreed maritime boundary to now turn around and say to this Court that it no  
28 longer recognizes the boundary? How could it be equitable where Côte d'Ivoire has  
29 relied on the same boundary to develop its own oil industry? Those questions  
30 answer themselves.

31  
32 Before concluding, let me say something briefly about the alleged violation of  
33 article 83. Côte d'Ivoire's argument on sovereign rights involves another astonishing  
34 leap. It starts from the uncontroversial proposition about the exclusive nature of a  
35 State's rights over its maritime territory, and the declarative nature of judicial  
36 proceedings of this kind. So far, so good. Then comes the unprecedented leap into  
37 the void: you, the Special Chamber, should hold Ghana to have violated international  
38 law in respect of any these activities which Ghana has carried out in its territory  
39 which your judgment will (improbably, we say) assign to Côte d'Ivoire.

40  
41 You will have seen in the written pleadings, and in Ms Macdonald's oral argument,  
42 that Ghana declines to follow Côte d'Ivoire down this legal path. Professor Miron  
43 accuses Ghana of failing to draw proper conclusions from the nature of sovereign  
44 rights; but if there is a failure here, it is that of the International Court of Justice and  
45 Annex VII arbitral tribunals. It is not Ghana's failure. They have been asked to draw  
46 precisely this conclusion in a number of boundary cases, land and maritime, and  
47 they have always emphatically refused to do so. The ICJ's decision in *Cameroon v.*  
48 *Nigeria*, for example, could hardly be clearer: "the very fact" of the Judgment (and of  
49 the evacuation of the Cameroonian territory occupied by Nigeria) sufficiently

1 addressed the situation.<sup>8</sup> That approach is surely right: courts and tribunals have  
2 consistently declined to punish a State for good-faith use of territory which is  
3 ultimately awarded to its neighbour. That is all the more so where, as in this case,  
4 Côte d'Ivoire had full knowledge of Ghana's use and activity and never once  
5 objected, which is why we say that you never get to this issue at all.

6  
7 As regards article 83, I can be even briefer. Côte d'Ivoire has simply failed to point to  
8 any conduct whatsoever by Ghana which could be said to conceivably jeopardize or  
9 hamper the determination of the boundary, all the more so where the boundary  
10 exists. Côte d'Ivoire seems to believe that when, for example, Ghana awarded the  
11 Deep Water Tano Concession in 2006, that would lead to the TEN development, it  
12 should somehow have been able to anticipate the dramatic turn of events three  
13 years later, when Côte d'Ivoire suddenly and unexpectedly changed position – and  
14 that Ghana should have left these oil reserves untouched. As we have shown, this is  
15 not what the framers of the Convention intended – and we note Côte d'Ivoire's total  
16 silence on the Convention's *travaux*.

17  
18 A State cannot be expected to put its oil industry on hold for years on end while its  
19 neighbour decides to abandon a long-agreed maritime boundary. That is all the more  
20 so where, as in this case, as you will recall, in the course of just five years, Côte  
21 d'Ivoire hops from meridian 1 to meridian 2, to bisector 1, to bisector 2, and now  
22 back to a provisional equidistance line. (On which point, may I say, we had  
23 tremendous difficulty understanding Maître Kamara's argument that claims to an  
24 ever-expanding maritime area were made in a reflection of a "spirit of compromise".<sup>9</sup>)  
25 Those are his words. Be that as it may, it is hardly credible to present activities as  
26 undermining the *status quo* when they are the very same activities – including  
27 drilling – carried out for many years before the dispute arose. Côte d'Ivoire's logic  
28 leads in entirely the opposite direction to the opposite conclusion, namely that it  
29 jeopardized the settlement of the boundary when it wrote, out of the blue, to Ghana's  
30 operators abruptly demanding that they cease work.

31  
32 Mr President, in the speeches that follow, Mr Tsikata will address a subject that  
33 passed in near silence in the course of Côte d'Ivoire's first round, namely those facts,  
34 maps and domestic laws which positively expressed the mutual understanding and  
35 recognition of an existing boundary, and that totally undermines Côte d'Ivoire's case.  
36 I will then return to address another area of near silence, the concessions and  
37 contracts and all the petroleum activity over the course of fifty years, which Côte  
38 d'Ivoire knew all about but never once protested. Professor Klein will address the  
39 legal consequences that attach to these matters, including in respect of tacit  
40 agreement and estoppel, on which Côte d'Ivoire also had remarkably little to say.  
41 Mr Reichler will then address the plotting of the maritime boundary on our alternative  
42 argument, and why the maritime boundary must remain where it is if you are to  
43 attach yourselves to the stability and certainty that are the hallmarks of an equitable  
44 solution. Finally, Mr Alexander will address Côte d'Ivoire's claim in relation to your  
45 Provisional Measures Order, and some of the practical consequences that might flow  
46 if you were to move, or be inclined to move, the maritime boundary. To conclude, our  
47 distinguished Agent will tie all the threads together.

---

<sup>8</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea intervening)*, Judgment, ICJ Reports 2002, p.303, para. 319.

<sup>9</sup> ITLOS/PV.17/C23/4, p.11:37-38; TIDM/PV.17/A23/4, p.13:33-34 (Kamara).

1 You will, in these following submissions, find a common theme in our second round,  
2 as we respond to what we heard last week. It may be that you too were struck by  
3 Côte d'Ivoire's apparent unhappiness with the situation as it was in early 2009, from  
4 matters of geography to matters of concessions, all of which had been, for fifty years,  
5 until then, acceptable to both States. Let us look at how matters stood when 2008  
6 became 2009. There is so much that Côte d'Ivoire would like to change.

7  
8 First, they would like to drop the existing, long-established customary boundary –  
9 “let's get rid of that”. Then, they would like to get rid of Ghana's concessions – “let us  
10 get rid of those too”. Then they present you with a version of geology that delights in  
11 removing the entirety of the Ivorian-Tano Basin off Côte d'Ivoire's coast – “that too  
12 can be gone”. They do not like the “Jomoro Peninsula”, which you can see in red –  
13 “so let us just remove that; and while we are at it, let us get rid of large parts of  
14 Ghana's territory and create the straight coastline that they believe to exist; and  
15 having done that, why not creatively do a little bit of landfill to straighten out poor  
16 Côte d'Ivoire's forlorn coast?” This is the world of alternative facts, this is the world of  
17 fantasy.

18  
19 All that remains for you, Mr President and Members of the Special Chamber, in the  
20 words of Côte d'Ivoire, is to add a new angle-bisector. Then you can step back and  
21 admire your handiwork. That is what they are inviting you to do. You can now  
22 compare the two situations: the fantasy world according to Côte d'Ivoire, the one that  
23 exists and the real world that they would like. Mr President, that concludes my  
24 presentation and I ask you to give the floor to Mr Tsikata.

25  
26 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Philippe Sands, for  
27 your statement. I now give the floor to Mr Fui Tsikata.

28  
29 **MR TSIKATA:** Mr President, distinguished Members of this Special Chamber, my  
30 task is to address you once again on the evidence the Parties have put before you to  
31 assist you in determining whether or not there is a tacitly agreed maritime boundary  
32 between our two countries.

33  
34 As I listened to our brothers and friends on the other side, I was led to wonder  
35 whether, somehow, they had been unable to access the material that we have put  
36 before you; and that they had been compelled to make their arguments without  
37 having heard us or seen our material, including that submitted with our Reply, as  
38 long ago as 25 July 2016.

39  
40 In our view, we assist you in the task the Parties have placed on you by  
41 (a) acknowledging the material that one or the other side has put before you and  
42 (b) joining issue as to their meaning and significance, on the interpretation and  
43 application of the law to the evidence and facts before you. If we simply pretend that  
44 our opponents' material does not exist, if we merely talk past each other, as it were,  
45 and only repeat the same assertions, we would not have fulfilled our responsibilities  
46 to you; nor, of course, would we have done so if we misrepresented the content of  
47 the mass of material we have submitted to you.

48  
49 Mr President, Distinguished Members of the Special Chamber, there are,  
50 unfortunately, more instances than I would have wished to cite where our brothers

1 and friends on the other side have simply ignored or even misrepresented evidence  
2 we have put before you and contented themselves with asserting alternative facts,  
3 with no evidence to support them.

4  
5 It was a matter of some surprise to hear Sir Michael Wood say on Thursday of last  
6 week that,

7  
8 it was only in August 2011, a mere three years before it commenced the  
9 present proceedings that Ghana first came up with the notion that the Parties  
10 had somehow entered into a tacit agreement.<sup>10</sup>

11  
12 Côte d'Ivoire had, of course, made that assertion in its Counter-Memorial. On  
13 Tuesday, last week, in this room, I drew your attention to the record of the talks held  
14 in Abidjan in July 2008, where the Ghanaian delegation clearly refers to the existing  
15 international boundary in use between the parties.<sup>11</sup> Not to engage with that material,  
16 but simply to repeat the pleadings of Côte d'Ivoire does not, with respect, assist the  
17 Special Chamber. It would, of course, not be significant if all that were being said  
18 was that the words "tacit agreement" were not used before 2011. But if the  
19 substantive point being made is that Ghana had not previously invoked the existence  
20 of a boundary used and agreed by the Parties, that is clearly erroneous.

21  
22 With regard to the official correspondence between the two States relating to the use  
23 of vessels for seismic surveys, which we have submitted, Sir Michael Wood says  
24 that "the wording of the various requests and authorizations was vague and did not  
25 make express mention of a boundary line, with precise coordinates".<sup>12</sup> That is simply  
26 wrong. As I showed you last week Tuesday<sup>13</sup> and as Professor Sands has just  
27 reminded you, as long ago as 1997 Côte d'Ivoire granted permission for the conduct  
28 of seismic activity (*Interpretation from French*) "in the territorial waters close to the  
29 maritime boundary between Ghana and Côte d'Ivoire".

30  
31 (*Continued in English*) They even had a map before them showing the customary  
32 equidistance boundary.<sup>14</sup> There is nothing vague about that; it did make express  
33 mention of a boundary line; and co-ordinates were provided. The Ivorian Minister  
34 who signed the letter of authorization, Rear Admiral Lamine Fadika, surely knew  
35 what he was talking about when he referred to the (*Interpretation from French*)  
36 "maritime boundary between Ghana and Côte d'Ivoire."

37  
38 (*Continued in English*) In any event, as you recall, last week on Tuesday, I  
39 specifically drew the Special Chamber's attention to the precise co-ordinates  
40 indicated on *this* sketch map accompanying a 2008 letter from Ghana's Minister of  
41 Energy to his Ivorian counterpart and to the map plotted on the basis of those  
42 co-ordinates.<sup>15</sup> In none of the instances we supplied can it accurately be said that

---

<sup>10</sup> ITLOS/PV.17/C23/4, p. 16:30-23 (Wood); TIDM/PV.17/A23/4, p. 19:23-25 (Wood).

<sup>11</sup> See also, 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).

<sup>12</sup> ITLOS/PV.17/C23/4, p.25:10-12; TIDM/PV.17/A23/4, p.28:16-18 (Wood).

<sup>13</sup> ITLOS/PV.17/C23/2, p. 4:12-22 (Tsikata); TIDM/PV.17/A23/2, p. 5:6-13 (Tsikata).

<sup>14</sup> 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.

<sup>15</sup> ITLOS/PV.17/C23/2, p. 2:7-16 (Tsikata); TIDM/PV.17/A23/2, p. 2:21-32 (Tsikata).



1 they were “vague”, did not make mention of a boundary line, or did not provide  
2 co-ordinates.<sup>16</sup>

3  
4 Sir Michael also said, “[t]he maps put forward by Ghana were prepared and used  
5 either by private companies or by public bodies with a limited technical mandate.”<sup>17</sup>  
6 Of the 15 maps that I showed you on Monday last week, seven were produced by, or  
7 at least involved, an Ivorian Government Ministry: the Ministry of Economy and  
8 Finance; the Secretariat in charge of Mines & Hydrocarbons; the Ministry of Mines;  
9 the Ministry of Industry, Mines & Energy; and the Ministry of Mines & Energy. None  
10 of these has (as yet) been privatized. It is not clear what is intended by describing  
11 certain bodies as having a “limited technical mandate”. In any case, no explanation is  
12 offered as to why it should not be presumed that maps provided by such bodies  
13 reflect the extent of their national jurisdiction. If they do not know where the limits of  
14 offshore jurisdiction are, who does? On what basis can it be said that their  
15 documents do not reflect where they and their Government understood the boundary  
16 lay?

17  
18 We have provided many maps, such as this one, which explicitly show that Ivorian  
19 governmental authorities acknowledged the existence of a maritime boundary  
20 between our two States. Of this, and of so many other similar maps, Côte d’Ivoire  
21 has nothing to say, beyond dismissing them all in cursory terms.<sup>18</sup> My colleague  
22 Pierre Klein will return to this issue later this morning to show you that, from a strictly  
23 legal perspective as well, Côte d’Ivoire’s arguments on the lack of relevance of maps  
24 in this dispute are devoid of foundation.

25  
26 On Thursday, 9 February 2017, we heard our brother Maître Adama Kamara say  
27 that Ghana had, in a note verbale dated 20 August 2007, inviting Côte d’Ivoire for  
28 negotiations, stated the purpose of the talks as being “to seek to agree on the  
29 non-existent boundary.”<sup>19</sup>

30  
31 We looked for a copy of the note verbale in the Judges’ folder supplied by Côte  
32 d’Ivoire. It is at tab 3 of that folder.<sup>20</sup> We could not find the quoted words there. There  
33 were certain words highlighted in that tab. These were as follows:

34  
35 to deliberate on the delimitation of our international maritime boundaries to  
36 enable Ghana to make its claims to the UN Commission on the Limits of the  
37 Continental Shelf.<sup>21</sup>

38  
39 There is no reference to a “non-existent boundary”. We still have no idea of the  
40 source of Maître Kamara’s quotation.

41  
42 I have already referred to Ghana’s opening statement at the ensuing discussions in  
43 which it clearly stated that there was an existing boundary in use between the two

---

<sup>16</sup> ITLOS/PV.17/C23/4, p. 25:4-6 (Wood); TIDM/PV.17/A23/4, p. 28:16-18 (Wood).

<sup>17</sup> ITLOS/PV.17/C23/4, p. 28:17-18 (Wood); TIDM/PV.17/A23/4, p. 31:23-33 (Wood).

<sup>18</sup> ITLOS/PV.17/C23/4, p. 10:48-49 (Kamara).

<sup>19</sup> TIDM/PV.17/A23/4, p. 12:31-32 (Kamara).

<sup>20</sup> Note verbale No. LE/TL/2 from the Ghana Ministry of Foreign Affairs to the Embassy of Côte d’Ivoire in Accra, 20 August 2007. CMCI, Vol. III, Annex 25.

<sup>21</sup> Dossier des juges de la République de Côte d’Ivoire, onglet 3.

1 countries. There is no evidence whatsoever to suggest that Ghana has ever used  
2 the words that Maître Kamara appears to have sought to attribute to it.

3  
4 I also see that in the copies of the Judges' folder supplied to us, there are two maps  
5 bearing reference AK R1-101 entitled (*Interpretation from French*) "Proposal for the  
6 Ivorian delimitation of 1988."<sup>22</sup> (*Continued in English*) There is no legend. We can  
7 find no reference to them in the transcripts of proceedings, whether in Maître  
8 Kamara's speeches or elsewhere. Both have the note: (*Interpretation from French*)  
9 "This sketch map is solely for illustration." (*Continued in English*) We are in the dark  
10 as to what they are meant to illustrate.

11  
12 The point is simple: there is no evidence before you to support the submission that in  
13 1988 any such proposition was made by Côte d'Ivoire to Ghana; nor is there any  
14 evidence that such a proposition was made or referred to in 1992. The latter  
15 document, the 1992 document, is an internal document. I have drawn the attention of  
16 the Special Chamber to the fact that there is no record of the "proposal" that Côte  
17 d'Ivoire claims to have submitted to Ghana in 1988. I have pointed out that there is  
18 no description in the minutes of the 1988 Ivorian internal meeting of the content of an  
19 Ivorian proposal. I have shown that even those who were told in 1992 that there had  
20 been a proposal in 1988 were not shown a copy of it. I have observed that up to  
21 today, no single individual has been identified as being the source of information  
22 about such a proposal.

23  
24 In the circumstances, it is extraordinary that maps purporting to depict a 1988 Ivorian  
25 delimitation would be sprung on us and the Chamber in this fashion. In any case,  
26 those maps clearly prove nothing in issue in these proceedings and illustrate  
27 nothing.

28  
29 Besides, as I showed you last week on Monday, the minutes of the 1988 Joint  
30 Commission meeting between the parties refers to (*Interpretation from French*): "the  
31 maritime and lagoon boundary existing between the two countries."<sup>23</sup> (*Continued in*  
32 *English*) Any proposals from Côte d'Ivoire would thus have been in the context of an  
33 acknowledgment of an existing boundary in the sea and in the lagoon.

34  
35 The matters on which, in our opinion, the Parties have joined issue with regard to the  
36 facts on which we rely for tacit agreement are the following: (a) do the documents on  
37 which Ghana relies show that the Parties have agreed and represented to each  
38 other and to third parties that there is a maritime boundary between them; (b) do  
39 certain words on the documents on which Ghana relies deprive those documents of  
40 significance as evidence of tacit agreement; (c) is there any confusion or  
41 inconsistency in Ghana's description of the customary equidistance boundary; and  
42 (d) has Côte d'Ivoire made protests which negate the possibility of the existence of a  
43 tacitly agreed boundary?  
44

---

<sup>22</sup> Dossier des juges de la République de Côte d'Ivoire, Tab 1.

<sup>23</sup> Republic of Ghana and Republic of Côte d'Ivoire, *Procès-verbal de la 15ème session ordinaire de la Commission mixte de réarbornement de la frontière ivoiro-ghanéenne* [Minutes of the 15th Ordinary Session of the Joint Commission to Redemarcate the Ivorian-Ghanaian Border] (18-20 July 1988), para. 2. CMCI, Vol. III, Annex 12.

1 In the time available, I shall address these matters. Professor Pierre Klein will again  
2 apply the law to our facts and remind you of the basis in law, on which we ask you to  
3 hold that there is a tacitly agreed maritime boundary between Ghana and Côte  
4 d'Ivoire.

5  
6 Côte d'Ivoire has not been able to offer in these proceedings what it regards as the  
7 meaning of words such as "*frontière*" or (*Interpretation from French*) "line separating  
8 Côte d'Ivoire from Ghana", (*Continued in English*) in laws, decrees and other  
9 documents issued by its governmental authorities. Nor has it been able to say what it  
10 means when maps issued by its officials draw a line and put "Côte d'Ivoire" on one  
11 side and/or "Ghana" on the other. We say that these words mean what they say and  
12 indicate Côte d'Ivoire's view that there is a boundary between the two countries,  
13 even if the co-ordinates of its location may require greater precision.

14  
15 Côte d'Ivoire relies on words such as that certain co-ordinates are given  
16 (*Interpretation from French*) "as an indication", (*Continued in English*) or "cannot be  
17 considered as being the limits of jurisdiction".<sup>24</sup>

18  
19 The *Dictionnaire Larousse* defines (*Interpretation from French*) "as an indication"  
20 (*Continued in English*) as follows: (*Interpretation from French*) "To provide general  
21 information, information for reference purposes".<sup>25</sup> (*Continued in English*) "*Servir de*  
22 *repère*" implies that the "*renseignement*", the information in question, may be used  
23 as a reference, even if it is not absolutely precise. But evidently, when you compare  
24 the equidistance boundary which results from the plotting of the co-ordinates  
25 indicated on the Ivorian Decrees of 1970 and 1975 (as shown in yellow on this map)  
26 with the bisector line claimed by Côte d'Ivoire (as represented in red), the latter does  
27 not correspond whatsoever to the (*Interpretation from French*) "general information  
28 to serve as a reference" (*Continued in English*) provided by the co-ordinates.

29  
30 Whatever the qualifying words mean, they can surely not negate the substance of  
31 the words they qualify, namely the recognition of the existence of a "*frontière*" or  
32 (*Interpretation from French*) "line separating Côte d'Ivoire from Ghana". (*Continued*  
33 *in English*) We have offered an interpretation which gives meaning to both sets of  
34 words. Côte d'Ivoire on the other hand wishes to deny meaning to the words  
35 "*frontière*" or the "*ligne séparant*" the two countries. Whether in French or English,  
36 that cannot be an acceptable approach to interpretation.

37  
38 In a context in which the Parties were making their borders (including the land ones)  
39 more precise, to say that their current renditions are not to be regarded as setting out  
40 the limits of national jurisdiction is more consistent with the expression of a caveat  
41 about the project of greater precision on which they had embarked than a  
42 repudiation of existing boundaries. Surely, Côte d'Ivoire is not saying that, because  
43 of those words, there were no land boundaries between the two countries until the  
44 re-demarcation exercise was completed.

24 TIDM/PV.17/A23/4, pp. 15:1, 15:9(Kamara), 35:22, 35:28 (Miron); ITLOS/PV.17/C23/4, pp. 12:35,  
12:42 (Kamara), 31:34, 31:40 (Miron).

25 Dictionnaire Larousse, "à titre indicatif", available at:  
<http://www.larousse.fr/dictionnaires/francais/indicatif/42577/locution?q=titre+indicatif#156699>. (last  
accessed 12 February 2017).

1 As for the argument that maps of Côte d'Ivoire which show petroleum blocks only  
2 indicate concession limits but not the international maritime boundary with Ghana, in  
3 the first place, that is not in fact what the maps show. This map, which depicts the  
4 location of block CI-06, shows that its boundaries are nowhere close to the  
5 international maritime boundary between Côte d'Ivoire and Ghana, which is also  
6 shown – at a considerable distance away from that block. What does this line  
7 indicate if not the land and maritime boundary?  
8

9 Besides, Côte d'Ivoire has also not offered a response to the observation in  
10 paragraph 5.25 of Ghana's Memorial that

11 Côte d'Ivoire's maps depict a boundary line with Ghana that begins on land  
12 and continues into the sea. Offshore, the boundary extends to the southwest  
13 along the customary equidistance line beyond the limits of the parties' most  
14 southerly oil concessions.  
15  
16

17 Côte d'Ivoire has preferred to ignore the 22 maps which show a territorial boundary  
18 separate from and independent of the concession limits. This 1990 map, published  
19 by Côte d'Ivoire's Ministry of Mines, is one of these many maps. It can be found at  
20 tab 11 in the Judges' Folder.  
21

22 In addition, Côte d'Ivoire cannot wish away the mutual understanding of and respect  
23 for the boundary that was repeatedly demonstrated over a span of 50 years by the  
24 claim of their concession limit with ours – each States' name clearly indicates it on its  
25 territory.  
26

27 The submissions of our colleagues who spoke on behalf of Côte d'Ivoire last week  
28 are full of assertions that there were acts which, according to them, show that Côte  
29 d'Ivoire never agreed to the customary equidistance boundary. Whether it was from  
30 Maître Kamara or Maître Pitron, whether it was from Professor Alina Miron or  
31 Sir Michael Wood, we heard of allegations of resistance, of regular protests, regular  
32 objections, firm and repeated or reiterated opposition, etc. What is striking is that  
33 most of these assertions are kept at a level of generality, unsupported by specific  
34 evidence of any significance.  
35

36 Last week Monday, Professor Sands posed the question, "[w]here is the evidence of  
37 [the] ... 'constant opposition'" alleged by Côte d'Ivoire? We still await an answer.  
38

39 Nothing in the material before you supports the contention of Côte d'Ivoire that it  
40 protested to Ghana on even a single occasion against the use of the customary  
41 equidistance boundary between 1956 and 2009. The only instances which they  
42 regard as examples are occasions in 1988 and 1992. Neither the minutes of the  
43 1988 Joint Commission meeting or the records of the internal discussions among the  
44 officials of Côte d'Ivoire can plausibly be read as an expression of protest. In relation  
45 to the discussions about a meeting between the Parties in 1992, last Monday I drew  
46 attention to the fact that no indication was conveyed by Côte d'Ivoire to Ghana of an  
47 area in respect of which they hoped that the two Parties would suspend petroleum  
48 operations. Professor Miron argued that Côte d'Ivoire was expressing a protest in  
49 diplomatic language. A protest that activity should not be conducted in what area? It

1 is impossible to interpret the particular document, Mr President, distinguished  
2 Members of the Special Chamber, as a protest.

3  
4 Rather than facing Ghana's substantive arguments or the mountain of evidence it  
5 has presented to this Chamber, Côte d'Ivoire's counsel claim to find confusion in the  
6 use by Ghana of the expression "customary equidistance boundary". The problem  
7 for them appears to be with the word "customary". We dare to say that nobody  
8 familiar with the society and legal system of Côte d'Ivoire or Ghana, or practically  
9 any African country for that matter, would have difficulty with the use of "customary".  
10 This captures the idea of an accepted practice, evolved over time and with normative  
11 implications. That Côte d'Ivoire and Ghana have, over time, acted on the basis of an  
12 agreed maritime boundary, that they have recognized each other's rights on their  
13 respective sides of that boundary, and that that boundary is based on equidistance  
14 makes "customary equidistance boundary" a readily recognizable term in discourse  
15 between them. Ghana never claimed that this was a term used by public  
16 international lawyers, but merely that this was the best way to identify the boundary  
17 which has been in existence between our two States for more than five decades.

18  
19 As for the contention that Côte d'Ivoire was in such a state of crisis from the death of  
20 President Houphouët-Boigny, in 1993, until 2007, that they were unable in fact to  
21 focus on maritime boundary issues, that is plainly contradicted by the facts. It is clear  
22 that during this period, the organs of Côte d'Ivoire – official, state, administrative,  
23 diplomatic – were all functional. It granted concessions, amended its petroleum and  
24 tax laws and engaged extensively with the international petroleum industry and its  
25 neighbour Ghana.<sup>26</sup> Professor Sands has offered more evidence on this point.

26  
27 The reference to the drafting of laws reminds us of the contention that

28  
29 in the case of the Ivorian decrees, it must be questioned how far mere  
30 legislative action, not accompanied by actual implementation of the national  
31 law, may be held against the State.<sup>27</sup>

32  
33 In the first place, in this case, the legislative action was accompanied by actual  
34 implementation in the form of the granting of rights to third parties who subsequently  
35 exercised these. Besides, it is puzzling to hear the discounting of "mere legislative  
36 action" as an expression of State practice. It is well accepted that legislative activities  
37 are taken into account as expressions of State practice, on the same footing as acts  
38 from the executive or judiciary.

39  
40 Mr President, distinguished Members of this Special Chamber, in our respectful  
41 opinion, what counts in these proceedings is the relative drudgery involved in the  
42 accumulation and evaluation of hard evidence according to tried and tested  
43 procedures. There is no alternative but to roll up our sleeves and get involved in the  
44 minutiae, what might be called the muck of evidence. These may not be as much fun  
45 as one can have from immersion in the imaginative and wonderful world of Alice's

---

<sup>26</sup> CMCI, paras. 2.8-2.20; RCI (14 Nov. 2016), paras. 4.16-4.19; ITLOS/PV.17/C23/4, p. 10:4-8 (Kamara); TIDM/PV.17/A23/4, p. 11:25-30 (Kamara).

<sup>27</sup> ITLOS/PV.17/C23/4, p.25:30-32; TIDM/PV.17/A23/4, p. 29:10-13 (Wood).

1 Wonderland, which, perhaps regrettably, is worlds away from the serene  
2 surroundings of this impressive and aesthetically pleasing courtroom.<sup>28</sup>

3  
4 Mr President, distinguished Members of this Special Chamber, it has been an  
5 honour for me to appear before you. I thank you for your attention and patience. May  
6 I ask you to invite Professor Philippe Sands to address you once again on behalf of  
7 Ghana.

8  
9 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Tsikata, for your  
10 statement. I give the floor again to Mr Philippe Sands. You have 16 minutes before  
11 the coffee break.

12  
13 **MR SANDS:** Mr President, Members of the Special Chamber, last week Côte  
14 d'Ivoire sought to paint a picture that portrayed Ghana as having acted to impose a  
15 *fait accompli*, as though somehow Ghana forged ahead with oil-related activities in  
16 Côte d'Ivoire's territory against Côte d'Ivoire's protests.<sup>29</sup> None of this is correct, and  
17 none of this is supported by the wealth of evidence before you. You will have noted  
18 that Côte d'Ivoire simply avoided much of the evidence that was before you,  
19 evidence that relates to the Parties' extensive practice in authorizing activities on  
20 their respective sides of the customary equidistance boundary. This includes but is  
21 not limited to the offering and granting of concessions, the carrying out of seismic  
22 and other exploratory activities, and the drilling of wells. From 1957 to 2009 this  
23 activity was carried out on a large scale on Ghana's side of the customary  
24 equidistance boundary without a single note of protest being registered by Côte  
25 d'Ivoire. For 52 years Côte d'Ivoire knew about the activity, and actively supported  
26 some of it. Côte d'Ivoire's conduct in this period was premised on support of and  
27 agreement for the equidistance customary boundary. This is also confirmed and  
28 reflected in Côte d'Ivoire's conduct on its side of the boundary.

29  
30 I want to take you now to the evidence which Côte d'Ivoire would rather you avert  
31 your eyes from. I am going to take it in three stages. First, I will address the  
32 concessions granted by each Party on its respective side of the boundary: first  
33 Ghana, then Côte d'Ivoire, from the late 1950s onwards. Second, I will show you the  
34 wells drilled, first by Ghana, then by Côte d'Ivoire. In a third stage I want to go a little  
35 deeper, and take you to five wells located in the area now or previously claimed by  
36 Côte d'Ivoire to enhance your familiarity with the detail. I will show you that for each  
37 of these wells, as was the case for countless others, there was knowledge,  
38 acquiescence, acceptance, and a total absence of any protest by Côte d'Ivoire. In  
39 the absence of such protest over five decades, the evidence in support of the  
40 conclusion that there was a tacit agreement by 2009, and indeed well before 2009,  
41 is, we submit, overwhelming.

42  
43 The Parties developed their oil industries in mutual, constant reliance on the  
44 customary boundary. Their practice was consistent, and reliance was placed on it. It

---

<sup>28</sup> Lewis Carroll, *Alice's Adventures in Wonderland* (1865): "[A]s she listened, or seemed to listen, the whole place around became alive with the strange creatures of her little sister's dream.... [S]he sat on, with closed eyes, and half believed herself in Wonderland, though she knew she had but to open them again and all would change to dull reality."

<sup>29</sup> TIDM/PV.17/A23/4, p. 15:35 (Kamara); TIDM/PV.17/A23/6, p. 31:27 (Miron); TIDM/PV.17/A23/6, p. 33:33-34 (Miron); TIDM/PV.17/A23/6, p. 36:37 (Miron).

1 was in both cases carried out in full knowledge of the other Party and fully  
2 transparently. In several instances there was active Ivorian co-operation, with Ghana  
3 receiving Côte d'Ivoire's prior written permission to use Ivorian waters, for example,  
4 to conduct seismic surveys in respect of concessions granted by Ghana on its side  
5 of the agreed boundary.<sup>30</sup> Côte d'Ivoire never objected, never protested, and these  
6 activities were carried out openly and in very close co-operation with PETROCI. We  
7 note that Côte d'Ivoire's Co-Agent in this case is Monsieur Ibrahima Diaby, the  
8 Director General of PETROCI.

9  
10 The evidence to which I will take you is in the written pleadings. It includes legislation  
11 and decrees, diplomatic correspondence, public statements, and representations  
12 made by Côte d'Ivoire to third States and international organizations.<sup>31</sup> The evidence  
13 goes back even to the period pre-dating independence.

14  
15 To demonstrate the evidence, I want to take you through a number of maps, and I  
16 apologize for their quantity. As my colleague and friend Mr Tsikata said, there is  
17 simply no avoiding rolling up our sleeves and looking at the factual reality. For the  
18 purposes of this presentation we have taken the original map and illustrated it on  
19 modern charts.

20  
21 You can see on the screen now, in green, Ghana's very first concession. It was  
22 awarded to the Gold Coast Gulf Oil Company in February 1956. It covered, as you  
23 can see, both land and water in the extreme south-west of the country. It was  
24 bounded to the west by an equidistance line.

25  
26 In 1968, Ghana divided its offshore area into 22 blocks. We are now moving forward  
27 12 years. We add Block 1, which was bounded in the west by the same equidistance  
28 line.

29  
30 Activity in the Tano Basin began in the 1960s. In December 1968, Ghana awarded  
31 Blocks 1 and 2, which you can see here, to Mayflower Volta Petroleum, which we  
32 now identify. Volta Petroleum commenced exploration in 1969.

33  
34 We now go forward six years, to 1975, when Phillips acquired six offshore  
35 concession blocks in Ghanaian waters after Mayflower Volta's exit from the Tano  
36 Basin. Two of its blocks, IS and IP, are bounded to the west by the customary  
37 equidistance boundary. There was no protest by Côte d'Ivoire. We are now 15 years  
38 after Côte d'Ivoire's independence. All of this has gone on without a single protest.

39  
40 These early concession blocks were subsequently reconfigured in the 1980s, but the  
41 western boundary always remained the same, and known to Côte d'Ivoire, always  
42 aligned with the equidistance boundary. GNPC was established in this period, in  
43 1983. It began an active campaign to promote its offshore areas to international oil  
44 companies. Events were held in London, Houston and Calgary as part of Ghana's

---

<sup>30</sup> See for example MG Vol. VI Annex 67, *Letter* from N.B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to the President, U;IC Côte d'Ivoire (3 October 1997) & Annex 68, *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).

<sup>31</sup> MG, Chapters 3, 4(III), 5 (I) and RG, Chapter 2.

1 petroleum promotion tour in 1984.<sup>32</sup> These were very widely publicized. Again, there  
2 was no protest from Côte d'Ivoire.

3  
4 We move forward to 1988, 13 years later. Ghana awarded Arco a concession in the  
5 Tano Basin. Once again, its western limit followed the customary equidistance  
6 boundary and once again there was no protest. We are now 28 years after Côte  
7 d'Ivoire's independence.

8  
9 Nine years later, in 1997, Ghana awarded two concessions – the Western Tano and  
10 the South Cape Three Points blocks – to Dana Petroleum, of which I spoke earlier,  
11 and the Ghana Hunt Oil Company respectively. As you can see, concessions are  
12 now going further out to sea, and they are bounded to the west by the very same  
13 customary equidistance boundary. Thirty-six years after Ivorian independence; not a  
14 single protest.

15  
16 In 2002, the Cape Three Points Deepwater block was awarded to Vanco Ghana Ltd.  
17 This block, as you can now see, was also bounded further out to sea to the west by  
18 the customary equidistance boundary. Forty-two years after Ivorian independence;  
19 not a single protest, and no protest on any of the exploration activities undertaken in  
20 Ghana, which by then were pretty extensive. In 2006, as you can now see, the same  
21 equidistance boundary was used for the western border of the Deepwater Tano  
22 contract area granted to the Tullow/Sabre Oil/Kosmos consortium, bringing us into  
23 the time in which the issues would change with Côte d'Ivoire's sudden practice. We  
24 are now 46 years after Ivorian independence; full knowledge, full acceptance, no  
25 protest.

26  
27 This is a composite of the totality of the concessions. We are not hiding anything  
28 from you. We are not being selective. You are looking at the actual situation as it  
29 was at the end of 2008 and the beginning of 2009 by reference to the accumulation  
30 of all of the concessions, all publicly announced, all known to Côte d'Ivoire. How  
31 many protests? Not a single protest in relation to any of this activity.

32  
33 *(Interpretation from French)* Mr President, this might be an appropriate time to take  
34 the coffee break because I start on the other side of the line.

35  
36 **THE PRESIDENT OF THE SPECIAL CHAMBER** *(Interpretation from French)*:  
37 Thank you, Mr Sands. Yes, indeed, we will now have a 30-minute coffee break.

38  
39 *(Break)*

40  
41 **THE PRESIDENT OF THE SPECIAL CHAMBER** *(Interpretation from French)*:  
42 Proceedings have resumed and I shall give the floor back to Professor Philippe  
43 Sands.

44  
45 **MR SANDS**: Mr President when I spoke earlier in my first presentation this morning  
46 about the Aby lagoon and the distance of 20 kilometres to the west of Côte d'Ivoire's  
47 last base point, I was referring, in case it was not made clear, to the mouth of the  
48 Aby lagoon – *l'embouchure*.

---

<sup>32</sup> MG, para. 3.48.



1 I return to the matter of concession practice. We ended with *this* plate up, which  
2 showed you the cumulative situation as at the beginning of 2009 practice over  
3 50-plus years.

4  
5 I turn now to what happened on the other side of the line. We go back to the  
6 customary equidistance boundary and we are back in 1956. Counsel for Côte  
7 d'Ivoire had very little to say about what happened on their side of the line, as you  
8 will recall.

9  
10 **JUDGE WOLFRUM:** Mr Sands, may I briefly interrupt you, please? Could you go  
11 back to the previous slide?

12  
13 **MR SANDS:** I ask my colleagues to put the previous slide up.

14  
15 **JUDGE WOLFRUM:** Your colleagues may do that. Just for curiosity, what is the  
16 distance between the land-based terminus and the outer edge of the end of the  
17 green? What is that distance?

18  
19 **MR SANDS:** Thank you very much for that question. I speak under advisement of  
20 my colleagues but I think that is the point that Sir Michael referred to last week when  
21 he referred to 87 M. I stand to be corrected but I believe that is the point. I have a  
22 recollection that our cartographic colleagues told me that actually it is 86.9 M, but I  
23 believe that it is about 87 M from the land boundary terminus.

24  
25 **JUDGE WOLFRUM:** Thank you very much.

26  
27 **MR SANDS:** We are now back with a clean slate. It is 1956 and independence is on  
28 the horizon for both countries. Last week we heard that the activities that followed on  
29 Côte d'Ivoire's side of the line to the west were limited. As Mr Kamara put it, "until  
30 just recently [they] only played a minor role in the economic development of the  
31 country." You will recall that I showed you the production of oil going back to 1996. In  
32 fact, it dates back earlier.

33  
34 I am not sure if 1957 counts as "recently". If it does, I suppose it could be said that  
35 I was very recently born, which is probably not true, but, as we mentioned last week,  
36 that year, 1957, which will come on to the screen now, was when the first offshore oil  
37 concession was granted in the territory of the country that is now Côte d'Ivoire, up to  
38 the limit of its territorial sea – three nautical miles at the time – to *Société Africaine*  
39 *des Pétroles*. As you can see – and I do not think it is really disputed – this  
40 concession was bounded to the east by the equidistance boundary with Ghana and it  
41 matched the western limit precisely of the Gold Coast Gulf Oil Company's  
42 concession, on the other side, from Ghana.<sup>33</sup> On Thursday Sir Michael Wood  
43 asserted that Ghana's representation of the concession was, as he put it,  
44 "self-serving and speculative" and that it could have been calculated differently.<sup>34</sup>  
45 However, we took note of the fact that he did not offer an alternative calculation, and  
46 of course, if he now does so, we have no opportunity to say anything about it.

47

---

<sup>33</sup> See MG, paras. 3.9 and 4.21.

<sup>34</sup> ITLOS/PV.17/C23/4, p.16:18-26 (Wood).

1 The 1970s – apparently also “just recently” – was a key period in the development of  
2 Ivorian offshore oil industry. In this phase all concessions and drilling activities were  
3 based on and respected the equidistance boundary. On the screen now you can see  
4 added Côte d’Ivoire’s 1970 concession with a consortium led by a very large group,  
5 Esso/Shell, which of course you will know; and we heard a lot about this last week.  
6 This concession was renewed “just recently” in 1975, and these two concessions  
7 clearly and unambiguously reflect a mutual understanding of the equidistance  
8 boundary. Over 20 wells were drilled on Côte d’Ivoire’s side in the 1970s,<sup>35</sup> a  
9 concession based on a stable boundary.

10  
11 PETROCI was also founded very recently, in 1975.

12  
13 The following year, in 1976, as you can now see on the screen, Côte d’Ivoire  
14 extended its concessions further out to sea, further from the coast into its maritime  
15 area. It granted a consortium operated by Phillips Petroleum a concession south of  
16 Esso’s block. The Phillips concession was bounded in the east by the same  
17 equidistance line recognized in the 1970 Ivorian Presidential Decree as the border  
18 with Ghana.

19  
20 It was around this time, in 1977, as Côte d’Ivoire approached its 17<sup>th</sup> birthday, that it  
21 enacted its 1977 maritime legislation intended to clarify the legal framework  
22 applicable to its offshore activities. So this earlier activity is helpful in providing some  
23 context to the interpretation of that 1977 law.

24  
25 The acquisition of seismic data by Phillips resulted in discoveries in its Block B  
26 which, by 1983, was bounded to the east by the customary equidistance boundary.<sup>36</sup>  
27 In 1990, approaching Côte d’Ivoire’s 30<sup>th</sup> birthday, the Ivorian Ministry of Mines  
28 published a report entitled *Côte d’Ivoire Petroleum Evaluation*.<sup>37</sup> The main purpose  
29 of that report, which you will find in our Memorial, was to announce publicly that the  
30 Ministry was offering open acreage for international bidding and oil companies were  
31 invited to bid for eleven new blocks. Eleven blocks were included in the report and  
32 those blocks, the offshore concessions, were bounded in the east by the customary  
33 equidistance boundary with Ghana. This is, of course, a governmental report  
34 prepared by Côte d’Ivoire’s Ministry of Mines to publicize its offshore oil industry. We  
35 now reach the point – about 1993 – that Mr Kamara described as being the moment  
36 when the *crise profonde* for Côte d’Ivoire opened, a situation that he said lasted until  
37 2007.<sup>38</sup> He made the point, of course, to justify, explain or somehow come to terms  
38 with the total absence of protest for now 33 years. I offer three reactions to what he  
39 said. First, on his own account – and it is a major concession by Côte d’Ivoire – his  
40 country was not in a situation of *crise profonde* before 1993, and they have offered  
41 no explanation at all for the failure of protest before that period of the extensive  
42 Ghanaian concessions and the related activity. How does he explain, if there was no  
43 *crise profonde*, why they knew about what Ghana was doing but did nothing about it  
44 and indeed, as you have seen, accepted and participated in it? My second response

---

<sup>35</sup> RG, paras. 2.19-2.20.

<sup>36</sup> RG, para. 2.20.

<sup>37</sup> Ministry of Mines of the Republic of Côte d’Ivoire, *Côte d’Ivoire: Petroleum Evaluation* (1990, Côte d’Ivoire). MG, Vol. V, Annex 36.

<sup>38</sup> ITLOS/PV.17/C23/4, pp. 9:45-10:37, 12:48-13:9 (Kamera); TIDM/PV.17/A23/4, pp. 11:16- 12:18, 15:15-27.

1 to his comments is that, already, at the beginning of the period of the *crise profonde*,  
2 Côte d'Ivoire was producing, as you saw from that chart, about 20,000 barrels of oil a  
3 day, but somehow by the end of the *crise profonde* production had tripled to over  
4 60,000 barrels a day. That, we say, is instructive as to what Côte d'Ivoire was able to  
5 achieve off the back of concessions granted. My third comment is that in this same  
6 period, when we are told that Côte d'Ivoire could not attend to matters international,  
7 that Côte d'Ivoire somehow managed to sign or ratify a significant number of treaties  
8 – for example, bilateral investment treaties with the United Kingdom and Tunisia in  
9 1995; with Ghana in 1997; with Belgium-Luxembourg in 1999 and with China in  
10 2002,<sup>39</sup> and they managed to sign a raft of multilateral treaties, including, for  
11 example, the Straddling Fish Stocks Agreement, which is related to UNCLOS, in  
12 1996, the Deep Sea Mining Agreement, which they signed in 1994 and ratified in  
13 1995, and the Kyoto Protocol in 2007.<sup>40</sup> So, whatever the nature of the *crise*, it was  
14 not, we submit, the cause of any inattention to matters international or to what was  
15 going on in the offshore areas. One of the reasons you sign bilateral investment  
16 treaties is to encourage investment from those countries, and those were countries,  
17 the United Kingdom and China, which make important investments in Africa. So the  
18 *crise*, we think, cannot explain the absence of protest. Indeed, during this period  
19 petroleum activities continued unabated in Côte d'Ivoire, with a reconfiguring of  
20 existing concessions, new concessions being offered and new wells being drilled,<sup>41</sup>  
21 all of which respected the customary boundary.

22  
23 In 1993, for example, as you can see on the screen, Block CI-01 was offered, with  
24 an eastern limit that coincides with the customary equidistance boundary. This was  
25 one of the new concession blocks offered by PETROCI.<sup>42</sup> Just to be clear, we have  
26 put in the footnotes to the speech all the citations where you can find all this material.

27  
28 Soon after, in 1998, Côte d'Ivoire offered for lease block CI-100, located seaward of  
29 CI-01, and, as you can see for yourselves, this too is bounded by the same  
30 equidistance line with Ghana on the east. This block was later granted to Dana  
31 Petroleum in 2000,<sup>43</sup> and that, as you will see, is significant.

32  
33 Several important new concessions were granted by Côte d'Ivoire between 2003 and  
34 2007, whilst it was supposedly in a situation of full *crise*, and all of these used and  
35 respected the customary equidistance line as the boundary in the east. In  
36 2005/2006, Block CI-01 was divided into blocks CI-401 and CI-01. PETROCI's 2006  
37 map of Côte d'Ivoire's Petroleum Exploration Concessions depicts blocks CI-01 and  
38 CI-401 as bounded to the east by the customary boundary.

39  
40 In 2006 Côte d'Ivoire and PETROCI signed a production-sharing contract with YAM's  
41 Petroleum for blocks CI-401 and CI-100. You can see the limits too of CI-100 – in  
42 fact, all the limits – coincide precisely with the customary equidistance boundary. So  
43 we are now up to 2006 and we can go forward to the situation at the end of 2008 and

---

<sup>39</sup> See <http://investmentpolicyhub.unctad.org/IIA/CountryBits/50> (accessed 12 February 2017).

<sup>40</sup> See

<http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=3760&countryName=C%C3%B4te%20d%27Ivoire&countryFlag=treaties> (accessed 12 February 2017).

<sup>41</sup> RG, para 2.56 *et seq.*

<sup>42</sup> "Côte d'Ivoire offers large tracts", *Oil and Gas Journal* (22 Nov. 1993). RG, Vol. IV, Annex 154.

<sup>43</sup> RG, para 2.64.

1 early 2009 and look at the totality of the concessions; and again I have not been  
2 selective but have given you everything that exists. I do not think that these matters  
3 are in dispute between the Parties.

4  
5 You can see here the concessions that date from 1957 to 2009, a period of 52 years,  
6 Mr President. Not a single concession offered by Côte d'Ivoire crosses over to  
7 Ghana's side and, of course, as you can now see, not a single one offered by Ghana  
8 crosses over on to Côte d'Ivoire's side. There is not a single protest in either  
9 direction.

10  
11 Lest it be said by Mr Kamara that, after all, all we are talking about here are  
12 concessions, let us now look at the activity in some of those concessions. Let us, for  
13 example, look at the wells that were drilled on both sides of the boundary, which of  
14 course would also have come with seismic research. We can start on the Ghanaian  
15 side. *These* are the wells, depicted in green, which cover the period from 1956 to  
16 2009 proximate to the customary equidistance boundary in areas now or previously  
17 claimed by Côte d'Ivoire. In the evidence before you, you will find not a single  
18 example of a protest about any of these wells, not a single example of Ghana drilling  
19 on the other side of the boundary.

20  
21 Now let us look on the other side of the boundary. We see again a perfect match on  
22 Côte d'Ivoire's side of the customary equidistance boundary (in purple). These wells  
23 were drilled in the period from 1973 to 2009, namely 36 years, and they would have  
24 come with related seismic activity; and you will see that not one of them crosses the  
25 line.

26  
27 If we now take a composite of everything that I have shown you – and everything in  
28 this plate is based on material that is before you and is not disputed between the  
29 Parties – you can see all the concessions cumulatively and all the wells in the area  
30 cumulatively. I should say that there are a lot more wells on both sides that are not  
31 proximate to the boundary. As you can see, every single concession and every  
32 single well authorized by both Parties, or in the area that became the territory or  
33 sovereign right areas of both Parties, from 1956 to 2009 completely respects the  
34 customary equidistance boundary.

35  
36 A picture tells a thousand words, Mr President. This picture shows extensive activity  
37 over time and area: concessions and wells; two countries, two national oil companies  
38 (GNPC and PETROCI), five decades, hundreds of authorizations, an even larger  
39 number of contracts, tens of thousands of square kilometres, and there is no  
40 evidence before you to attest to a single act of protest in respect of all this activity.  
41 There is literally nothing that I can try to explain away to you; nothing exists. If this is  
42 not the basis of tacit agreement between two States, with great respect to our  
43 friends, it is really difficult to see what would be a tacit agreement.

44  
45 In some cases, the same foreign oil companies acquired blocks from each State on  
46 either side of the customary boundary. For example, in 1975 Phillips acquired a  
47 concession on the Ghanaian side, bounded to the west by the customary  
48 equidistance boundary, and then in 1976 it acquired the Ivorian concession on the  
49 other side of the boundary, which had previously been granted to Esso, bounded to  
50 the east by the very same boundary. Frankly, it is very difficult to imagine that a large

1 international company like Phillips would have acquired such concessions if it was  
2 not satisfied about the absence of a boundary dispute. Would Dana have made its  
3 investments a quarter of a century later on either side of the line if it had not first  
4 checked about the nature of the settled boundary? Many of us in this room have  
5 extensive experience in advising oil companies, and we know that the very first thing  
6 they do before authorizing investments of this kind is to ask the question: is there a  
7 boundary dispute? The evidence before you shows that there was no boundary  
8 dispute<sup>44</sup> when any of these investments were made. The investments were  
9 premised on a settled, agreed customary equidistance boundary.

10  
11 Mr President, in this third and final part of my submission I will refer to some specific  
12 examples of individual wells so that we can explore the robust drilling activities that  
13 took place in a little more detail. Côte d'Ivoire's line of argument suggests that  
14 nothing much happened in the area they have put into dispute after 2009, but I hope  
15 that by now you will have seen that this is not what the evidence shows. Moreover,  
16 what they have said to you suggests – and I say this with respect – that their counsel  
17 are unfamiliar with how the oil industry works. Lead times are very long in that sector  
18 and preparatory activities are very extensive. For investments in this sector to take  
19 place, because of the sums of money involved, there has to be a very high degree of  
20 certainty and security required, including, where the activity takes place near an  
21 international boundary, a belief that there is a settled boundary, a belief that there is  
22 an absence of a boundary dispute. Everyone in this room, no doubt, has experience  
23 of the freezing effect on activity of a boundary dispute on oil exploration and  
24 exploitation.

25  
26 We also know that the activities that we are describing here are very closely  
27 interconnected. Once an investor has a concession, geophysical and other  
28 exploration activity, including seismic surveys, takes place. The process is linear:  
29 one step leads to the next, and the lead times for these steps can be very long – not  
30 days but years. The steps are clear: concession, geological and geophysical activity,  
31 seismic surveys, the drilling of wells, then development and exploitation.

32  
33 Against that background, let us look at various activities in relation to five wells, in  
34 areas newly claimed by Côte d'Ivoire only after 2009. As with the general picture, the  
35 more detailed account I now provide offers no evidence – nothing – of even a single  
36 act of protest by Côte d'Ivoire. These examples are but a snapshot of the total  
37 picture: in the evidence before you there is much on Ivorian knowledge,  
38 acquiescence and support, but, as I have said, not a single example of protest.

39  
40 Let us start in 1968, when Ghana granted a concession in the area that is now  
41 considered to be under dispute by Côte d'Ivoire.<sup>45</sup> There was no objection to the  
42 concession by Côte d'Ivoire that was granted in 1970. In 1970, the concessionaire,  
43 Volta Petroleum, became interested in an area known as Shallow Water Tano and  
44 began drilling at the western limit of the concession near the customary equidistance  
45 boundary. As set out in the Memorial, licences were granted for that drilling on the  
46 condition that at least one well would be drilled by the licensee.<sup>46</sup> Côte d'Ivoire did

---

<sup>44</sup> RG, Figure 2.5.

<sup>45</sup> MG, para. 3.16.

<sup>46</sup> MG, Vol. VIII, Annex 95.

1 not protest the grant of the licence in 1968, or the drilling under the licence,<sup>47</sup> which  
2 began in 1970.

3  
4 In the following decade, the 1980s, several wells were drilled as part of a concession  
5 granted to ARCO. One of these was known as TP-1. It is very close to the boundary.  
6 This was drilled in 1989, adjacent to the western boundary of the concession, right  
7 by the customary equidistance boundary. In its Counter-Memorial, Côte d'Ivoire  
8 argues that Ghanaian authorities did not inform Ivorian authorities on the work that  
9 was taking place in 1989, and so Côte d'Ivoire was somehow uncertain as to the  
10 process of the activities in the alleged area under dispute;<sup>48</sup> yet this information was  
11 publicized and widely available.

12  
13 In the following decade, the Western Tano block was awarded to Dana Petroleum in  
14 August 1996. Mr Tsikata has already taken you to this letter of November 1997.  
15 Ghana had requested the right to shoot seismic lines in Ivorian waters, on its side of  
16 the boundary, and Côte d'Ivoire granted permission (*Interpretation from French*) "To  
17 carry out seismic surveys in the Ivorian territorial waters near the maritime boundary  
18 between Ghana and Côte d'Ivoire."<sup>49</sup> (*Continued in English*) I will repeat those words  
19 in English for the avoidance of any doubt or mischaracterization: "in the Ivorian  
20 territorial waters near the maritime boundary between Ghana and Côte d'Ivoire."

21  
22 Please look carefully at who the author of that letter is. It is Côte d'Ivoire's Minister of  
23 Petroleum Resources, Rear Admiral Mr Lamine Fadika. Is this a protest by the good  
24 Rear Admiral? It is not. Is it the opposite of a protest? Indeed it is: it is explicit  
25 authorization premised on the existence of agreement between the Parties as to the  
26 location of their maritime boundary. That boundary, to avoid doubt, is the customary  
27 equidistance boundary. As you can see on the screen, the programme for the  
28 seismic data fully respected the line and foresaw precisely that it had to be crossed –  
29 and it was crossed.

30  
31 After the completion of these seismic studies, well WT-1X was drilled in 1999, also  
32 very close to the boundary. Did Côte d'Ivoire protest? It did not. This well led to the  
33 first heavy oil discovery, a matter that was widely publicized. Did Côte d'Ivoire  
34 protest when oil was discovered? It did not. Successive wells drilled, including  
35 WT-2X in 2002, (an appraisal well), the news of which was very widely publicized in  
36 oil and gas publications, as you can see on the screen, might, you would have  
37 thought, prompted a protest. It did not; there was no protest and no objection.

38  
39 Finally, we arrive at the 21<sup>st</sup> century, and even more recent activity on Ghana's side  
40 of the customary equidistance boundary. Exploration rights to the Shallow Water and  
41 Deepwater Tano blocks were awarded to Tullow in July 2006. This was very widely  
42 publicized.<sup>50</sup> The western limit of this concession falls right alongside the customary  
43 equidistance boundary. Did Côte d'Ivoire protest this? No, it did not. The following  
44 year, in April 2007, Côte d'Ivoire granted concessions to Tullow, further to the west  
45 of the boundary. That same year, the concessions on Ghana's side of the boundary

---

<sup>47</sup> MG, para. 4.38.

<sup>48</sup> CMCI, para. 5.14.

<sup>49</sup> MG, Annex 68.

<sup>50</sup> MG, para. 3.67.

1 led to the first significant oil discovery. Did Côte d'Ivoire protest the drilling activity  
2 that led to the discovery? No, it did not.

3  
4 Additional activities included the drilling of the Ebony-1 well in October 2008, and the  
5 resulting hydrocarbon discovery was very widely publicized in both local and  
6 international media, including the BBC.<sup>51</sup> Did Côte d'Ivoire protest any of the  
7 activities that led to these discoveries? It did not. No objection to this activity arose  
8 until the following year, after Côte d'Ivoire first changed its position during closed  
9 negotiations. Let us be clear, its apparent change of position was not made public. It  
10 was only on 26 September 2011 that Côte d'Ivoire wrote directly to Tullow, to  
11 express its objection. It is important to appreciate that at this time, in early 2009,  
12 Tullow was also a concessionaire on the Ivorian side of the boundary, yet somehow  
13 Côte d'Ivoire did not even feel the need to tell one of its own investors that it was  
14 now challenging the boundary.

15  
16 Mr President, this evidence is clear, and it concludes my submissions on the  
17 evidence that Côte d'Ivoire would prefer you ignore altogether. I do apologize for  
18 taking you to this level of detail, but we know that you understand the importance of  
19 the facts in a case such as this. Contrary to what you have been told, the evidence  
20 on the Parties' practice shows it to have been extensive and intense over five  
21 decades. These are not a few isolated acts. This is not activity that could by any  
22 stretch be described as vague. It is not evidence that is vague. Côte d'Ivoire had full  
23 knowledge of all of these facts and of the relationship of the activity that took place to  
24 the customary boundary. Côte d'Ivoire's failure to protest any of this, over five  
25 decades, was not mere inadvertence: it was choice, and it was a choice that was  
26 freely exercised and voluntarily expressed, a choice that offered support and  
27 agreement to the customary equidistance boundary. That exercise of choice was an  
28 exercise of sovereign will, and it allowed Côte d'Ivoire to encourage investors on its  
29 side of the boundary, investors who would not have come if they had believed there  
30 was a boundary dispute. There was no dispute until 2009, and by then, in our  
31 submission, Côte d'Ivoire's conduct reflected an express acceptance of the  
32 customary equidistance boundary.

33  
34 The evidence here before you is not just preponderant; it is totally overwhelming and  
35 it is entirely in one direction.

36  
37 That concludes my presentation. I would like to take the opportunity to thank  
38 Ms Singh, Ms Main-Klingst and Ms McDonald for their assistance over the weekend,  
39 and I thank you once again for your kind attention. I would ask that you invite  
40 Professor Klein to the bar.

41  
42 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

43 Thank you, Professor Sands, for this presentation. I now give the floor to Professor  
44 Pierre Klein. Professor Klein, you have the floor.

45  

---

<sup>51</sup> KOSMOS Energy, KOSMOS Energy Signs Agreement for Second Block Offshore Ghana (13 Dec. 2006), available at: [http://www.kosmosenergy.com/press/kosmos\\_PR\\_121306.pdf](http://www.kosmosenergy.com/press/kosmos_PR_121306.pdf); UK's Tullow uncovers oil in Ghana (18 June 2007), available at: <http://news.bbc.co.uk/2/hi/business/6764549.stm>; Ghana will be an African tiger (19 June 2007), available at: <http://news.bbc.co.uk/2/hi/africa/6766527.stm>.

1 **MR KLEIN:** Mr President, Members of the Special Chamber, we already knew that  
2 our esteemed opponents were uncomfortable with the facts of the present case. My  
3 colleagues Fui Tsikata and Philippe Sands have just reminded you, as Ghana had  
4 already done extensively in its written pleadings, how the version of history  
5 presented by the other Party, punctuated by alleged “longstanding protests” or the  
6 imposition of so-called “faits accompli”, is far removed from the real facts, as is  
7 highlighted by documents contemporary to those facts. I will not therefore dwell on  
8 this any further. However, the first round of oral pleadings of Côte d'Ivoire also  
9 showed us that our opponents' relationship with the law was not the most  
10 comfortable. Certain key legal issues have been carefully ignored by the other Party,  
11 such as the crucial issue of the critical date. Other issues have been addressed in a  
12 cursory manner, to say the least, such as the question of the status of PETROCI and  
13 the value of the maps in this dispute. On other points, our opponents have simply  
14 chosen to dodge the issue by refusing to engage in any discussion of the relevant  
15 case law. This oral statement will be devoted to these silences or shortcuts on the  
16 part of the other Party on points of law that nevertheless lie at the very heart of this  
17 case, regarding the notions of tacit agreement and estoppel.  
18

19 Before getting into the substance of the matter, however, I would quickly like to  
20 return to Côte d'Ivoire's argument that Ghana is “confusing” tacit agreement, *modus*  
21 *vivendi* and estoppel as the foundation for its claim. I fear that this “confusion” exists  
22 only in the minds of our opponents. However, just in case, I will repeat here that the  
23 central foundation of Ghana's argument is indeed tacit agreement, as regards both  
24 the method of delimitation and the line of the limit. Furthermore, Ghana claims the  
25 existence of a *modus vivendi* and estoppel, but in different contexts and for different  
26 reasons. On the one hand, the existence of a *modus vivendi* resulting from the joint  
27 practice of the Parties in relation to oil exploration and exploitation should be taken  
28 into account as a circumstance justifying the adjustment of the provisional  
29 equidistance line, if you were to consider that no tacit agreement existed in this case.  
30 On the other hand, this consistent practice also produces another legal effect  
31 because it establishes an obligation of non-contradiction for Côte d'Ivoire, which  
32 means that it cannot, to the detriment of Ghana, suddenly change the position that it  
33 has maintained for five decades regarding the course of the common maritime  
34 boundary – and this is, of course, the question of estoppel. Whatever our opponents  
35 might seem to think, there is, in truth, nothing surprising about the fact that the same  
36 conduct can be examined through the prism of different legal concepts, which can  
37 each be applied in the same factual context.  
38

39 Having made this clarification, we can now turn to the first of the debates avoided by  
40 Côte d'Ivoire, which relates to the critical date to be identified in order to determine  
41 when the present dispute arose. Counsel for Côte d'Ivoire said nothing about this  
42 during the first round of oral pleadings, so we need to go back to the Ivorian  
43 Rejoinder to find that the other Party seems to have set this date at 1988. Our  
44 opponents write that:

45  
46 [t]he difference in the Parties' positions as concerns the delimitation of their  
47 maritime boundary dates back to the first exchanges on the matter, that is,  
48 therefore, to 1988.  
49



1 The entire question is, of course, whether this "difference in positions" alleged by  
2 Côte d'Ivoire constitutes a dispute within the meaning of international law.

3  
4 Ghana does not think so, and it made that very clear in its Reply. It stated that the  
5 critical date that should be used for the purposes of this dispute was February 2009.  
6 That date was not set as a result of some arbitrary choice by Ghana, as our  
7 opponents might perhaps be tempted to have you believe. It is, far more simply, the  
8 result of applying to the facts in the case the very concept of dispute, which is long  
9 established in international case law and to which Côte d'Ivoire has not made the  
10 least reference. Obviously, then, going back to the "classics" is not a pointless  
11 exercise. A dispute, the Permanent Court of International Justice explained in the  
12 *Mavrommatis* case, is:

13  
14 a disagreement on a point of law or fact, a conflict of legal views or of interests  
15 between two persons.

16  
17 As the ICJ has very recently recalled, referring to the *South West Africa* case, for a  
18 dispute to exist, "[i]t must be shown that the claim of one party is positively opposed  
19 by the other."

20  
21 It was in February 2009, and only in February 2009, that such conflicting claims were  
22 expressed for the first time by the two Parties to the present proceedings. It was only  
23 then that the Parties acknowledged their disagreement on the question of their  
24 maritime boundary. It was only then that the claim of one Party was "positively  
25 opposed by the other", to use the words of the Court.

26  
27 That was in 2009 – not in 1988 and not in 1992.

28  
29 If I draw your attention specifically to this definition, Mr President, Members of the  
30 Special Chamber, it is not – or not only – because of my natural bent as a lawyer to  
31 characterize, define and label everything that I see or touch; it is because identifying  
32 the critical date has very specific consequences for a dispute like this.

33  
34 Before then, there was quite simply no dispute between the Parties. There was no  
35 dispute, and certainly no disputed area in which such and such an obligation to show  
36 restraint or to refrain from conducting activities, particularly in respect of the  
37 exploitation of the natural resources of the area, was incumbent upon either of the  
38 Parties. This absence of dispute is easily verified. Professor Sands has just shown  
39 you that none of the activities undertaken by Ghana on its side of the customary  
40 boundary following the equidistance line had been the subject of protests on the part  
41 of Côte d'Ivoire before 2009. After the critical date, the conduct of the Parties is to  
42 some extent neutralized, in so far as it can no longer be taken into consideration to  
43 strengthen the legal position of either Party. Protests by one of the Parties, for  
44 example, lose all legal significance from that time. The principle is well established in  
45 case law, which does, however, recognize one classic exception, which is where  
46 developments after the critical date confirm the situation existing before that date. As  
47 the arbitrators stated in the *Boundary Dispute concerning the Taba Area*, such  
48 developments may be taken into account, but only (*Continued in English*):  
49

1 to the extent that such conduct confirms the understanding reached of what  
2 the situation was on the critical date.

3  
4 (*Continued in French*) This is indeed the case in our dispute in respect of, for  
5 example, the submission made by Côte d'Ivoire to the Commission on the Limits of  
6 the Continental Shelf in May 2009 or the maps published by the authorities of that  
7 State until 2011, which continue to show the common maritime boundary following  
8 an equidistance line, thereby confirming the situation existing before the critical date.

9  
10 These clarifications regarding the concept of the critical date and the start of the  
11 present dispute may seem to be elementary, or even otiose. However, they do seem  
12 to be useful for the Chamber with a view to understanding, as precisely as possible,  
13 the relevance of the conduct of the Parties to the proceedings at the different stages  
14 of their mutual relations.

15  
16 I would now like to turn to Côte d'Ivoire's cursory treatment of two important  
17 questions when it comes to proving the existence of a tacit agreement between the  
18 Parties to these proceedings: the question of the status of PETROCI on the one  
19 hand and the weight to be attributed to the maps on the other.

20  
21 Throughout the proceedings Côte d'Ivoire has displayed a fierce determination to  
22 distance itself from its national oil company PETROCI. Having described it in their  
23 written submissions as a "private-law body", our opponents have continued to insist  
24 throughout the oral proceedings that it was not an emanation of the State. All  
25 PETROCI's conduct, and all documents published by PETROCI, are therefore in no  
26 way binding on the Ivorian State. Mr President, Members of the Special Chamber,  
27 there is a name for this syndrome; it is called "denial of reality". In 2010, PETROCI's  
28 stationary still identified it as a "State company" and still today – at least the day  
29 before yesterday; I confess that I have not checked again this morning – the  
30 PETROCI website presents it as a "State company" "governed by the Law of  
31 4 September 1997 on the definition and organization of State companies".

32  
33 In all commonly accepted definitions of the term, Mr President, a State company is  
34 an emanation of the State. That is the case with PETROCI, which still today is under  
35 the supervision of the Ivorian Ministry of Petroleum and Energy, as its website still  
36 confirms. These different documents are, of course, included in your Judges' folders.  
37 It is this company, PETROCI, which, I will reiterate, is identified in various oil  
38 contracts as

39  
40 the rights-holder of all rights for exploration and exploitation of hydrocarbons  
41 on all available areas of Côte d'Ivoire.

42  
43 How could PETROCI be in such a position if it were not an emanation of the Ivorian  
44 State? As such, its conduct, its positions and its publications can therefore be  
45 attributed to Côte d'Ivoire itself, and do indeed reflect the perception that the Ivorian  
46 State had of the maritime boundary formed, in this instance, by the equidistance line  
47 reproduced countless times in PETROCI documents. As I explained last week, this  
48 statement is fully valid even if it is recognized, as Ghana has always done, that  
49 PETROCI has no competence in respect of delimitation of the boundaries of Côte  
50 d'Ivoire.

1 As to the weight that should be attributed to the maps in the present dispute, our  
2 opponents once again contented themselves with a very brief response to the  
3 arguments put forward by Ghana on this point. From the point of view of the law,  
4 they have clung to the well-known ruling of the ICJ in the Burkina Faso/Mali frontier  
5 dispute, stating that maps “cannot in themselves alone be treated as evidence of a  
6 frontier”.

7  
8 In doing so, the other Party seeks, first, to treat the 62 maps presented by Ghana as  
9 a monolithic whole. Our opponents thus recall, in very general terms, the caution  
10 displayed by international courts and tribunals when dealing with maps. But they also  
11 fail to mention that international courts and tribunals rely on a number of  
12 characteristics permitting them to determine the probative value of cartographic  
13 material on a case-by-case basis. In *Burkina Faso/Mali* the Court stated that “the  
14 actual weight to be attributed to maps as evidence depends on a range of  
15 considerations”, considerations linked in particular to their reliability or their  
16 neutrality.

17  
18 The first distinction to be made in the cartographic material presented by Ghana is  
19 the distinction between the stand-alone maps and those accompanying another  
20 document, namely national legislation, a concession agreement, a report or inter-  
21 ministerial correspondence. Where they appear together with another document, the  
22 maps are there to supplement or illustrate the content of the main document. That is  
23 the case with 24 of the maps presented by Ghana. Those maps all corroborate the  
24 recognition by the two Parties of the equidistance line as the international boundary.  
25 My colleague Fui Tsikata presented some of the more striking examples this  
26 morning.

27  
28 Côte d'Ivoire obstinately refuses to recognize the fact that many of the maps  
29 presented by Ghana come from Ivorian sources and cannot therefore be considered  
30 to be “self-serving”. By maintaining such a position, the other Party is obviously  
31 seeking to evade the application of well-established case law, which accords  
32 particular weight to evidence – I am citing the ICJ –

33  
34           acknowledging facts or conduct unfavourable to the State represented by the  
35           person making them.

36  
37 More crucially, our opponents have remained silent throughout their oral pleadings  
38 on the fact that 22 of the maps presented by Ghana explicitly and unambiguously  
39 show a boundary line that clearly continues seaward beyond the limit of the oil  
40 concessions of the two Parties. It is therefore impossible to read into this silence  
41 anything other than agreement with Ghana’s analysis of those maps, as  
42 representations of the reality, as between the two Parties, of a maritime boundary  
43 whose existence is manifestly independent of the limits of the oil concessions.  
44 Mr President, Members of the Special Chamber, Ghana invites you to take note of  
45 this.

46  
47 The cartographic material presented by Ghana proves to be as broad as it is  
48 consistent. Not a single one of the maps shows the common maritime boundary  
49 other than following an equidistance line, and this owes nothing to any form of  
50 selectivity that might be displayed by Ghana. The other Party has not been able to

1 show you a single map – not a single map – depicting the maritime boundary any  
2 differently before 2011. Our opponents do not have much to say about this either.  
3 Yet all these factors – number, consistency, origin – bear considerable weight. It was  
4 undoubtedly in the *Beagle Channel* case that the arbitrators best highlighted that  
5 weight. The Arbitral Tribunal states (*Continued in English*):  
6

7 [W]here there is a definite preponderance on the one side – particularly if it is  
8 a very marked preponderance – and while of course every map must be  
9 assessed on its own merits – the cumulative impact of a large number of maps,  
10 relevant for the particular case, that tell the same story – especially where  
11 some of them emanate from the opposite Party, or from third countries, –  
12 cannot but be considerable, either as indications of general or at least  
13 widespread repute or belief, or else as confirmatory of conclusions reached,  
14 as in the present case, independently of the maps.  
15

16 (*Interpretation from French*) No doubt this conclusion is reinforced even further in our  
17 case because it is not just a question of preponderance, whether marked or not, but  
18 quite simply an absolute unanimity of representations of the maritime boundary on  
19 the maps.  
20

21 Mr President, as it stated in its Reply, Ghana fully subscribes to the principle that  
22 cartographic material must be treated with caution. It is clear that the production of  
23 maps may, for example, serve the expansionist ambitions of a State. However, for  
24 the reasons I have just outlined, this is plainly not the case here. The maps  
25 presented by Ghana, in particular the many which come from Ivorian sources, reflect  
26 and corroborate the wish of Côte d'Ivoire, and of Ghana, to treat the equidistance  
27 line as the maritime boundary of the two States. To recognize this is therefore in no  
28 way contrary to the relevant international jurisprudence. Quite the opposite; the  
29 consideration of the plentiful and highly consistent cartographic material in the  
30 present case would be fully in line with that jurisprudence.  
31

32 As you will recall, the bulk of my statements last week was given over to a detailed  
33 response to the arguments put forward by Côte d'Ivoire claiming that Ghana's  
34 position could find no support in international jurisprudence, whether with regard to  
35 the existence of a tacit agreement in the present case or a situation of estoppel.  
36 Sir Michael Wood paid me a fine compliment in this respect by stating that my  
37 discussion of case law pertaining to tacit agreement was delivered "in a truly  
38 common law manner".  
39

40 For all that, Sir Michael did not seem willing to engage in any kind of analysis of the  
41 relevant case law, whether in a common law manner or in any other. He merely  
42 observed in this respect that "[o]f course, the circumstances of each case turn on  
43 their own particular facts".  
44

45 Similarly, Professor Miron told the Chamber that she did not think it necessary to  
46 quibble  
47

48 over the greater or lesser similarities between our case and all the others in  
49 which international courts or tribunals rejected estoppel.  
50

1 Whether on the question of the tacit agreement or estoppel, we can therefore see  
2 Côte d'Ivoire's refusal to engage in a serious appraisal of how Ghana's position  
3 meets the criteria set out by international case law for the application of these two  
4 legal institutions, tacit agreement and estoppel, in our case. The only possible  
5 conclusion is that Côte d'Ivoire has realized the inanity of the criticisms it put forward  
6 on this subject in its written pleadings, and I would ask the Chamber, once again, to  
7 take note of this.

8  
9 There is, however, one point in case law pertaining to tacit agreement – just one –  
10 on which I wish to dwell briefly, if I may. International courts and tribunals have set a  
11 high threshold for the recognition of the existence of a tacit agreement in matters of  
12 maritime delimitation. This is a point on which, you will have noted, our esteemed  
13 opponents laid considerable emphasis a number of times at the end of last week. On  
14 this point, the Parties are certainly not in any disagreement. They both subscribe to  
15 the statement of the ICJ that “[e]vidence of a tacit legal agreement must be  
16 compelling.”

17  
18 But why does Ghana consider this to be the case here? How precisely would the  
19 evidence in this case be so compelling that it can be set apart from all previous  
20 cases where the assertion of the existence of a tacit agreement was rejected? In one  
21 respect essentially: their recognition of the existence of a common maritime  
22 boundary for the Parties, irrespective of the specific area dealt with by the texts and  
23 documents in question and their particular purpose.

24  
25 Côte d'Ivoire makes much of the fact that in this case Ghana merely invokes a  
26 simple practice, which is limited, moreover, to the oil sector. Nothing could be further  
27 from the truth. In fact, we are in a situation that is similar in every respect to that  
28 which the ICJ faced in *Peru v. Chile*. Dealing with the question of tacit agreement,  
29 the Court notes that the operative terms and purpose of the 1954 written agreement,  
30 which confirmed that tacit agreement, were “narrow and specific”.

31  
32 However, it observes that that is not the matter under consideration at this stage in  
33 its reasoning and its focus must solely be on “the existence of a maritime boundary.”

34  
35 In this respect, notes the Court – one final citation:

36  
37 the terms of the 1954 Special Maritime Frontier Zone Agreement ... are clear.  
38 They acknowledge in a binding international agreement that a maritime  
39 boundary already exists.

40  
41 Mr President, Members of the Special Chamber, is this not precisely what the Ivorian  
42 decrees, the maps published by the Ivorian authorities and the correspondence  
43 which they exchanged with their Ghanaian counterparts do? You have seen that  
44 these various documents recognize, without a doubt, that “a maritime boundary  
45 already exists” between the two States, to use the words of the Court. It is that  
46 boundary that serves as the basis, the point of reference, for drawing the limits of the  
47 maritime concessions and for the activities conducted in the maritime areas in  
48 question. This recognition is equally clear from the conduct of the Ghanaian  
49 authorities, as many examples have shown you. The case-file demonstrates very

1 clearly that the two Parties have recognized a maritime boundary whose existence is  
2 autonomous of the limits of their oil concessions.

3  
4 It is true that here there is no “international binding agreement” similar to the 1954  
5 agreement in the *Peru v. Chile* case, that is to say, a written agreement, but it would  
6 be manifestly unreasonable systematically to make recognition of the existence of a  
7 tacit agreement subject to its subsequent formalization in a written agreement. The  
8 Court did not require such confirmation in the form of a written agreement as a  
9 condition for recognition of a tacit agreement in its 2014 decision. In the view of  
10 Ghana, there is no reason why your Chamber should be more demanding in this  
11 respect.

12  
13 All the conditions are therefore met for your Special Chamber to recognize the  
14 existence of a tacit agreement between the Parties in the present case. A decision  
15 by you to that effect, which can be based on an accumulation of absolutely  
16 convergent evidence, would above all confirm, in matters of maritime delimitation,  
17 the significance of the agreement of the States and the paramount importance for  
18 the States of being able to rely on the stability of relations that they have peacefully  
19 developed with their neighbours over a long periods of time.

20  
21 My presentation brings an end to Ghana’s submissions this morning. Thank you,  
22 Mr President, Members of the Special Chamber, for your kind attention.

23  
24 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

25 Thank you, Professor Klein, for your presentation. With it we conclude the morning’s  
26 pleadings for Ghana in the second round. We will adjourn the session for a two-hour  
27 lunch break and resume at 3 o’clock to continue with the second round of Ghana’s  
28 oral pleadings. The session is adjourned.

29  
30  
(Lunch break)