

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



2017

Public sitting

held on Thursday, 16 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)

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**Verbatim Record**

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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

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*as Advisers.*

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The  
2 Chamber will resume its proceedings.

3  
4 The hearing of the Special Chamber this morning is given over to the second round  
5 of oral argument for Côte d'Ivoire. This morning's sitting will be the final sitting in  
6 these proceedings. With your indulgence, it will run until 1.20 p.m., with a half-hour  
7 break between 11.30 a.m. and noon. I would like to draw the attention of the  
8 delegation of Côte d'Ivoire to need to finish at 1.20 p.m. We are subject to  
9 translation-related and technical constraints. We will not be able to go beyond that  
10 time, otherwise we will have to hold an afternoon sitting. I do not know what Côte  
11 d'Ivoire's would prefer, but I wanted you to be aware of this.

12  
13 Secondly, I would also not want the oral statements to be delivered at such a speed  
14 that the interpreters cannot follow and understand you: that would be detrimental to  
15 the quality of these oral pleadings.

16  
17 Thank you. I give the floor to the Minister, Mr Kamara – I beg your pardon –  
18 Mr Adama Kamara.

19  
20 **MR KAMARA** (*Interpretation from French*): Thank you, Mr President. You were not  
21 mistaken.

22  
23 Before beginning my presentation, on behalf of the delegation for Côte d'Ivoire,  
24 I would like, in advance, to present apologies for Minister Thierry Tanoh, who has  
25 been delayed slightly. He will join us during the course of the oral pleadings.

26  
27 Thank you, Mr President, Members of the Special Chamber. The second round of  
28 oral pleadings of Côte d'Ivoire will focus on those aspects raised by Ghana on  
29 Monday on which there are still differences between the Parties. We do not expect to  
30 use all the time allocated to us, given that Ghana did not put forward very much that  
31 was new. We would like to assure you, with regard to the comments that you made  
32 at the beginning of this session regarding the timetable that you have indicated to us,  
33 that we will make a point of respecting that timetable while delivering our oral  
34 statements in such a way that the interpreters can properly translate the content of  
35 our pleadings.

36  
37 Mr President, Members of the Special Chamber, Ghana has attempted to paint a  
38 picture of uniform and consistent acceptance by the two Parties of a maritime  
39 boundary based on equidistance. That is a false picture. Yes, Mr President,  
40 distinguished Judges, it is a false picture.

41  
42 Ghana has failed to distinguish between, on the one hand, the limited legal effect that  
43 international law attributes to oil concessions and, on the other, agreement on an  
44 international maritime boundary. Furthermore, Ghana consciously took care to ignore  
45 – or to misrepresent – the many situations where one or both of the Parties acted in  
46 such a manner as to indicate clearly and unequivocally the absence of agreement on  
47 a maritime boundary. Sir Michael will recall a number of these examples, which show  
48 that the conduct of the Parties is wholly incompatible with the existence of a maritime  
49 boundary. Later on, Professor Alina Miron will look in detail at the question of the  
50 legal significance of oil concessions and activities.

1  
2 At this stage of the proceedings, I would like to make five general points.

3  
4 First, as Professor Miron will explain, Côte d'Ivoire protested on a number of  
5 occasions against the continuation of oil activities in the undelimited area, the  
6 disputed area. Côte d'Ivoire did not protest against any claim of a tacit agreement on  
7 the part of Ghana for the very simple and very good reason that Ghana never made  
8 such a claim before 2011,<sup>1</sup> when negotiations on delimitation were under way, and  
9 Côte d'Ivoire's position on the line was clear and well known. As Sir Michael will  
10 demonstrate, not only Côte d'Ivoire but also Ghana has always made a clear  
11 distinction in their conduct between matters relating to oil activities, on the one hand,  
12 on which Ghana now insistently seeks to rely, and the question of delimitation, on the  
13 other.

14  
15 Second, in the absence of tacit agreement, it will fall to the Special Chamber to  
16 determine the boundary line. Professor Alain Pellet will show that what is ultimately  
17 important is not the choice of method but the equity of the delimitation line finally  
18 adopted. Articles 74, paragraph 1, and 83, paragraph 1, of the Montego Bay  
19 Convention set out the fundamental rule:

20  
21 The delimitation of the exclusive economic zone [or of the continental shelf]  
22 between States with opposite or adjacent coasts shall be effected by  
23 agreement on the basis of international law, as referred to in article 38 of  
24 the Statute of the International Court of Justice, in order to achieve an  
25 equitable solution.

26  
27 I now come to my third point. By their conduct and their statements, both Côte  
28 d'Ivoire and Ghana have consistently and clearly acted as if there were no  
29 agreement on the delimitation of the boundary. Sir Michael Wood will come back to  
30 this point at greater length but I would, at this stage, like to touch briefly on the  
31 following aspects, without going into detail.

32  
33 First, some of the Ivorian legislation and a number of the contracts stipulate,  
34 expressly or implicitly, that the maritime boundary between the two States is not  
35 delimited. I am talking about the decrees of 1970<sup>2</sup> and 1975,<sup>3</sup> which contain a note  
36 clearly distinguishing matters of oil concessions from the question of the maritime  
37 boundary. Such notes were repeated in the model oil contracts adopted by Côte  
38 d'Ivoire in 1990<sup>4</sup> and 1993<sup>5</sup> and, for example, in the contracts signed with Tullow in

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<sup>1</sup> Ghana Boundary Commission, *Response to Côte d'Ivoire's proposals towards the 5<sup>th</sup> Côte d'Ivoire/Ghana maritime boundary delimitation meeting*, 31 August 2011, CMCI, Vol. III, Annex 39.

<sup>2</sup> Decree no. 70-618 granting an exploration licence to the companies ESSO, SHELL and ERAP, 14 October 1970, CMCI, Vol. IV, Annex 59.

<sup>3</sup> Decree no. °75-769 renewing hydrocarbon exploration licence no. 1, 29 October 1975, CMCI, Vol. IV, Annex 61.

<sup>4</sup> Standard production sharing contract drawn up by the Republic of Côte d'Ivoire, 1990, CMCI, Vol. IV, Annex 62.

<sup>5</sup> Standard hydrocarbon production sharing contract drawn up by the Republic of Côte d'Ivoire, 1993, CMCI, Vol. IV, Annex 64.

1 2004<sup>6</sup> and 2007<sup>7</sup> regarding the disputed area. Furthermore, the 1977 Law<sup>8</sup> is based,  
2 under article 8 thereof, on the applicable rules of delimitation. It thus prescribes that  
3 delimitation must be made by agreement in order to achieve an equitable result. Far  
4 from enjoying any kind of favour, the equidistance method should be used only “if  
5 necessary” – in the words used in article 8.  
6

7 Second, let me mention the negotiations on delimitation between the Parties,  
8 whether merely proposed or actually initiated. There was the proposal by Côte  
9 d’Ivoire in 1988<sup>9</sup> to extend the negotiations within the Joint Commission to the  
10 question of delimitation of the maritime boundary between the Parties, which Ghana  
11 initially rejected. There was also the negotiations on delimitation, a proposal which  
12 was enthusiastically welcomed by Côte d’Ivoire. There was a new appeal for  
13 negotiations which the technical teams of the two countries reiterated in 1997 for the  
14 attention of political decision-makers. Then there was Ghana’s repeated call to Côte  
15 d’Ivoire to start negotiations on delimitation in 2007. There was, in addition, the  
16 negotiations that finally took place between 2008 and 2014, despite Ghana’s  
17 manifest refusal to negotiate in good faith. Finally, there was Ghana’s sudden  
18 breaking off of negotiations and the recourse to arbitration, to which Côte d’Ivoire  
19 was summoned by surprise, when the negotiations were clearly not going the way  
20 Ghana wanted.  
21

22 Finally, we have the joint communiqués issued by the Presidents of the two States, in  
23 2009 and then in 2015, which confirm – if that were still necessary – that the  
24 maritime boundary clearly had not been delimited.  
25

26 For my fourth point, I would like to point out that Côte d’Ivoire has observed the  
27 conduct of restraint prescribed by international law in undelimited areas from the  
28 award of its first concessions. In the face of Ghana’s unilateralism, restraint and  
29 protests on the part of Côte d’Ivoire were the only possible conduct that was  
30 consistent with international law. Côte d’Ivoire has always applied the law in  
31 response to the *fait accompli* which Ghana is seeking in vain to impose upon it.  
32

33 Finally, my fifth point: given Ghana’s insistence on sowing confusion in the minds of  
34 the Members of the Special Chamber, we must insist once again on the distinction  
35 between oil activities and the question of delimitation of a maritime boundary. This  
36 distinction is well established both in international law and in the situation in the  
37 instant case. It is only Ghana’s insistence that requires us to revisit this question,  
38 which has been dealt with at length in our written pleadings.  
39

40 Mr President, Members of the Special Chamber, our second round of oral argument  
41 will be structured as follows.  
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<sup>6</sup> Standard hydrocarbon production sharing contract drawn up by the Republic of Côte d’Ivoire and Tullow, 7 May 2004, CMCI, Vol. IV, Annex 69.

<sup>7</sup> Standard hydrocarbon production sharing contract drawn up by the Republic of Côte d’Ivoire and Tullow, 5 April 2007, CMCI, Vol. IV, Annex 70.

<sup>8</sup> Law no. 77-926 concerning delimitation of maritime areas under the national jurisdiction of the Republic of Côte d’Ivoire, 17 November 1977, CMCI, Vol. III, Annex 2.

<sup>9</sup> Minutes of the 15<sup>th</sup> ordinary session of the Ivoir-Ghanaian Joint Boundary Redemarcation Commission, 18-20 July 1988, CMCI, Vol. III, Annex 12.



1 First, Sir Michael Wood will show that the second round of Ghana's oral argument  
2 confirms that Ghana has failed to meet the high threshold for the burden of proof  
3 which it must satisfy in order to establish the existence of a tacit agreement.

4  
5 He will be followed by Professor Miron, who will deal in greater detail with the issue  
6 of oil concessions and activities.

7  
8 Then Professor Pellet will explain that the choice of method is of secondary  
9 importance to the objective of achieving an equitable solution and that the  
10 delimitation line proposed by Côte d'Ivoire is the most suitable for achieving such a  
11 solution.

12  
13 Fourth, Mr Pitron will summarize Côte d'Ivoire's position in this case.

14  
15 Finally, the Agent of Côte d'Ivoire will appear once again to conclude our oral  
16 pleadings and to present the final submissions of Côte d'Ivoire.

17  
18 Mr President, Members of the Special Chamber, I would like to thank you for your  
19 kind attention and ask you to give the floor to Sir Michael Wood.

20  
21 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
22 Thank you, Mr Kamara. I give the floor to Sir Michael.

23  
24 **MR WOOD:** Mr President, Members of the Special Chamber, as Maître Kamara has  
25 just indicated, I shall address Ghana's continued insistence upon its "tacit  
26 agreement"/"customary equidistance boundary" argument.

27  
28 I shall begin with five basic propositions:

29  
30 (i) the notion of a customary equidistance boundary has no basis in international law.  
31 The use of this expression adds nothing to Ghana's tacit agreement argument.<sup>1</sup>  
32 Ghana now seems to accept this.<sup>2</sup>

33  
34 (ii) The onus of establishing a tacit agreement lies on the party asserting it. It is for  
35 Ghana to establish that a tacit agreement exists, not for Côte d'Ivoire to show that  
36 such an agreement does not exist. As Maître Kamara has just said, the burden is a  
37 heavy one.<sup>3</sup> As has recently been said, (*Interpretation from French*) "[t]he reality of  
38 the tacit agreement must be demonstrated in order to convince judicial bodies".<sup>4</sup>

39  
40 (*Continued in English*) In *Bangladesh/Myanmar*, ITLOS "share[d] the view of the ICJ  
41 that '[e]vidence of a tacit legal agreement must be compelling'"<sup>5</sup> and it also said that

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<sup>1</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 15, lines 22-30 (Mr Wood).

<sup>2</sup> ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 16, lines 4-17 (Mr Tsikata).

<sup>3</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 15, lines 38-39 (Mr Wood).

<sup>4</sup> P. Gautier, 'Conduite, accord tacite et délimitation maritime', in *Droit des frontières internationales – The Law of International Borders*, journées franco-allemandes, Société française pour le droit international (Pedone, 2016), at p. 155 and p. 160.

<sup>5</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 4, at p. 40, para. 117; quoting ICJ, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, at p. 735, para. 253.

1  
2 [i]n the view of the Tribunal, the delimitation of maritime areas is a sensitive  
3 issue. The Tribunal concurs with the statement of the ICJ that '[t]he  
4 establishment of a permanent maritime boundary is a matter of grave  
5 importance and agreement is not easily to be presumed.'<sup>6</sup>  
6

7 (iii) Ghana relies exclusively on conduct relating to petroleum. Such conduct cannot  
8 establish a tacit agreement on an all-purpose international maritime boundary  
9 between States. The Parties have distinguished between petroleum concessions, on  
10 the one hand, and an international maritime boundary, on the other. Petroleum  
11 conduct says nothing about any of the other sovereign rights, jurisdiction and duties  
12 of the coastal State in the exclusive economic zone, or over the continental shelf.<sup>7</sup>  
13

14 (iv) Ghana is very far from having established a tacit agreement on an all-purpose  
15 international maritime boundary, or a situation of estoppel. The material upon which it  
16 relies is not only equivocal, as we have shown; it is flatly contradicted by conduct of  
17 Côte d'Ivoire, and of Ghana itself.  
18

19 (v) We should not lose sight of a fundamental principle of modern international law, in  
20 particular of the law of the sea: the need to exercise restraint so as to maximize the  
21 chances of resolving disputes through peaceful means and avoiding conflict. This  
22 principle is reflected inter alia in articles 74, paragraph 3, and 83, paragraph 3, of  
23 UNCLOS:  
24

25 Pending agreement ... , the States concerned, in a spirit of understanding  
26 and cooperation, shall make every effort to enter into provisional  
27 arrangements of a practical nature ... . Such arrangements shall be without  
28 prejudice to the final delimitation.  
29

30 Côte d'Ivoire should not be penalized for its spirit of understanding and cooperation.  
31

32 Mr President, Members of the Special Chamber, I now turn to what Ghana said, or  
33 did not say, on Monday. Even though it devoted most of the morning to its supposed  
34 tacit agreement, Ghana failed to come back on a number of important points that we  
35 highlighted last week.  
36

37 They have still not found themselves able to mention the joint statements by the two  
38 Presidents in 2009 and 2015, which acknowledged the need for negotiations on a  
39 maritime boundary.<sup>8</sup>  
40

41 With respect to the submissions to the CLCS, they did not respond to the points we  
42 made concerning the procedures before the CLCS, including that the submissions of  
43 both Parties were expressly based upon the fact that there were overlapping claims  
44 and that the maritime boundary had not been delimited.<sup>9</sup>

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<sup>6</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, at p. 36, para. 95; quoting ICJ, *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007*, p. 659, at p. 735, para. 253.

<sup>7</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 18, line 44 (Mr Wood).

<sup>8</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 19-20, lines 35-10 (Mr Wood).

<sup>9</sup> ITLOS/PV.17/C23/6 (10 February 2017, afternoon), at p. 14, lines 1-2 (Mr Wood).

1  
2 They failed to acknowledge the express language included in Côte d'Ivoire's 1975  
3 Decree and in various concessions indicating that the coordinates did not reflect a  
4 maritime boundary.

5  
6 They did not respond to any of the points we made about Côte d'Ivoire's 1977 Law.<sup>10</sup>  
7

8 They said nothing about the 1988 Fishing and Oceanographic Agreement, other than  
9 to claim that it was not in force. Whether it is in force or not is not relevant. What  
10 matters, for our purposes, is that the text of the Agreement, as signed, clearly shows  
11 that the two States, Ghana as well as Côte d'Ivoire, negotiated on the basis that in  
12 1988 their newly-proclaimed exclusive economic zones were not delimited.<sup>11</sup>  
13

14 Ghana did not respond to what we said about the onus being on them to establish  
15 the existence of a tacit agreement. It is not for Côte d'Ivoire to show "constant  
16 opposition"<sup>12</sup> as they put it, to a maritime boundary; Côte d'Ivoire made its position  
17 clear on a number of occasions, as did Ghana. That is more than enough to show  
18 that Ghana's tacit agreement claim is baseless.

19  
20 Ghana did not respond to our point about its exclusive reliance on petroleum  
21 conduct, when its alleged boundary would cover all the rights and jurisdiction within  
22 the exclusive economic zones and in respect of the continental shelf.<sup>13</sup>  
23

24 Ghana said very little indeed about the proposals for negotiations on the maritime  
25 boundary in 1988, 1992 and 1997, and still less about the actual negotiations that  
26 took place over ten sessions between 2008 and 2014, negotiations which it itself  
27 initiated in 2007. Its reticence is understandable, since the proposals and  
28 negotiations clearly demonstrate the absence of agreement, tacit or otherwise, on a  
29 maritime boundary.  
30

31 Ghana has not told us why, on 15 December 2009, it lodged a declaration in  
32 accordance with article 298, paragraph 1, of UNCLOS, declaring that it "[did] not  
33 accept any of the procedures provided for in section 2 of Part XV of the Convention  
34 with respect to the categories of disputes referred to in paragraph 1(a) of article 298  
35 of the Convention" that is, disputes concerning the interpretation or application of  
36 articles 15, 74 and 83 of UNCLOS. Ghana thus ruled out any possibility that its  
37 delimitation dispute with Côte d'Ivoire might be submitted to a compulsory procedure  
38 entailing a binding decision under section 2 of Part XV of UNCLOS, only to reverse  
39 its position at the moment it commenced arbitration in September 2014. The 2009  
40 declaration shows, at the least, Ghana's concern that its position on delimitation  
41 might be held to be contrary to UNCLOS.  
42

43 Ghana has given no explanation of its letter to Tullow of October 2011 in which it  
44 stated:  
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<sup>10</sup> ITLOS/PV.17/C23/4 (9 February 2017), at pp. 26-27, lines 1-16 (Mr Wood).

<sup>11</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 18, lines 3-15 (Mr Wood).

<sup>12</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 15, lines 41-43 (Mr Wood), quoting  
ITLOS/PV.17/C23/1 (6 February 2017, morning), at p. 14, line 41, and p. 15, line 1 (Mr Sands).

<sup>13</sup> ITLOS/PV.17/C23/4 (9 February 2017), at pp. 18-19, lines 44-7 (Mr Wood).

1 As regards the maritime boundary, as you are aware, it has always been  
2 publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire  
3 have not yet delimited their maritime boundary. It is also publicly known that  
4 in the recent years the two Governments have met in an effort to negotiate  
5 their maritime boundary in accordance with international law. Those  
6 negotiations remain ongoing.<sup>14</sup>  
7

8 That was in October 2011. That letter clearly shows Ghana's understanding that the  
9 maritime boundary remained to be negotiated and indicates that Ghana understood  
10 the distinction between the petroleum concessions and an international maritime  
11 boundary.  
12

13 Mr President, these silences speak volumes. In addition, Ghana invents its own  
14 version of history. Ghana argues that the Parties have been in agreement for over  
15 five decades, since 1956 and 1957, even before their independence, on both the  
16 method of delimitation (its so-called "equidistance method") and the actual line (its  
17 so-called "customary equidistance line"). Ghana seeks to persuade you that the  
18 bilateral exchanges and negotiations were aimed only at determining the precise  
19 coordinates of an already agreed boundary and putting it into the form of a treaty.  
20 The evidence, particularly from 1988, 1992, 1997, 2007 and 2008-2014, shows that  
21 this is simply not true. During successive meetings between 2009 and 2014, Côte  
22 d'Ivoire put forward several delimitation proposals that differed from Ghana's claimed  
23 line. Yet in the negotiations, Ghana's dismissal of these proposals was not based on  
24 the alleged existence of an agreed boundary. Rather, Ghana presented its line as a  
25 "proposal" to serve as a basis for negotiation, the outcome of which would be subject  
26 to formal ratification by the Parties' respective parliaments.<sup>15</sup> Only later, in 2011, did  
27 Ghana begin to use the terms "customary equidistance boundary" and "tacit  
28 agreement".<sup>16</sup>  
29

30 The assertion that there is an agreed boundary, only the precise coordinates of  
31 which remained to be agreed, ignores the fact that Côte d'Ivoire protested about  
32 drillings that were within the disputed area but far away from Ghana's line and that  
33 Ghana heeded these protests. All this occurred, or started to occur, prior to 2009, the  
34 time when Ghana alleges the dispute crystallized. Such conduct has occurred also  
35 after 2009. Côte d'Ivoire's rejection of Ghana's 2008 proposal in its statement of  
36 February 2009 and its letters to the companies in September 2011 and July 2014<sup>17</sup>

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<sup>14</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 23, lines 8-24 (Mr Wood); Letter from the Ghana Ministry of Energy to Tullow, 19 October 2011, CMCI, Annex 78.

<sup>15</sup> Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45; Opening statement of Ghana, Maiden Meeting of the Côte d'Ivoire - Ghana Joint Commission on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17-18 July 2008, CMCI, Annex 28.

<sup>16</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 16, lines 30-32, and at p. 20, lines 18-23 (Mr Wood); Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, Annex 39; Government of Ghana and Government of Côte d'Ivoire, Minutes Côte d'Ivoire/Ghana Maritime Boundary Negotiation (Fifth Meeting) (2 November 2011), MG, Annex 53.

<sup>17</sup> ITLOS/PV.17/C23/4 (9 February 2017), at pp. 22-23, lines 22-20 (Mr Wood); Letter from Côte d'Ivoire Ministry of Mines, Petroleum, and Energy to General Directors and Representatives of Oil and Gas Companies (26 September 2011). MG, Vol. VI, Annex 71; Letter from D. Ibrahima, General

1 concerned activities across the whole of the disputed area, not just those close to  
2 Ghana's claimed line. It is impossible to reconcile such evidence with Ghana's claim  
3 that all the documents concerned demarcation, and used the word "delimitation" by  
4 mistake.

5  
6 On Monday, Professor Sands attempted to construe the concessions by retroactively  
7 assessing them against its claimed line that did not exist at the time, any more than it  
8 exists today.<sup>18</sup> He showed numerous sketch maps with the famous "customary  
9 equidistance line", as though that line existed before the concessions, as though that  
10 line existed from 1956 and 1957. Professor Miron will go into this in more detail.

11  
12 I would just recall that Côte d'Ivoire established its first offshore petroleum block in  
13 1970. Côte d'Ivoire drew this block so as not to overlap with the block established by  
14 Ghana two years earlier. Mr President, Members of the Special Chamber, this was  
15 an act of prudence and caution, an act of restraint, aimed at avoiding conflict with a  
16 neighbour. This is reflected in the minutes of a March 1992 meeting of the technical  
17 committee tasked with collecting and updating data on the delimitation of the  
18 maritime boundary between Ghana and Côte d'Ivoire (*Interpretation from French*):  
19 "[t]he line plotted by Esso Exploration on the oil map was a unilateral safety measure  
20 which does not engage the responsibility of the Ivorian Government."<sup>19</sup>

21  
22 (*Continued in English*) Mr President, Members of the Special Chamber, I shall now  
23 recall some of the many occasions where the conduct of one or both Parties clearly  
24 shows the absence of an agreed international maritime boundary. I shall limit myself  
25 to the petroleum laws and contracts, the 1977 law on maritime zones, the proposals  
26 and negotiations on maritime delimitation, the CLCS submissions, and the  
27 Presidential statements about which you heard from Maître Kamara.

28  
29 First, as you are already well aware, some of Côte d'Ivoire's contracts and legislative  
30 acts relating to petroleum exploration and exploitation contain provisions that clearly  
31 indicate that the issue of the undelimited boundary was a matter separate from the  
32 concessions. For instance, the terms used in the contract granting the concession  
33 and in Decree No. 70-618 of 14 October 1970 reflect Côte d'Ivoire's cautious  
34 approach: they make a distinction, when delineating the concession area, between  
35 14 points the coordinates of which were provided with certainty, on the one hand,  
36 and six points the coordinates of which were provided (*Interpretation from French*)  
37 "on an indicative basis" (*Continued in English*) on the other. Almost all the latter  
38 points were located on the western and eastern limits of the block, qualified  
39 respectively as the (*Interpretation from French*) "boundary line separating Côte  
40 d'Ivoire and Liberia" (*Continued in English*) and the (*Interpretation from French*)  
41 "boundary line separating Côte d'Ivoire from Ghana". (*Continued in English*) It will be

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Director of the Ministry of Petroleum and Energy of the Republic of Côte d'Ivoire, to Director, Tullow  
Côte d'Ivoire Ltd (30 July 2014). MG, Vol. VI, Annex 72.

<sup>18</sup> Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between  
the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between  
Both Countries (16-17 July 2008), MG, Annex 45; Opening statement of Ghana, Maiden Meeting of  
the Côte d'Ivoire - Ghana Joint Commission on the delimitation of the maritime boundary between  
Côte d'Ivoire and Ghana, 17-18 July 2008, CMCI, Annex 28.

<sup>19</sup> Report of the meetings of the Technical Committee responsible for gathering and updating data on  
the delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 16 and 18 March 1992,  
page 2, CMCI, Annex 14.

1 recalled, Mr President, that, as is still the case, the international maritime boundaries  
2 between Côte d'Ivoire and its neighbours had not been delimited. Such caution  
3 reflects the uncertainty and the lack of agreement over Côte d'Ivoire's maritime  
4 boundaries. Restraint commanded that the new concessions did not overlap with  
5 Ghana's existing concessions in order to avoid tension and possible conflict.

6  
7 The 1970 licence was renewed in 1975. Decree No. 75-769 of 29 October 1975,  
8 which granted the renewal, contained a more elaborate disclaimer, which read in our  
9 translation: "The coordinates of the reference points M, L and K separating Côte  
10 d'Ivoire from Ghana are provided on an indicative basis and should not in any case  
11 be considered as being the limits of national jurisdiction of Côte d'Ivoire."<sup>20</sup>

12  
13 Ghana has carefully avoided addressing the 1975 language, focusing on the 1970  
14 Decree. The reason for this deliberate omission is obvious: the disclaimer in the 1975  
15 Decree is clear evidence of Côte d'Ivoire's early position that its maritime boundary  
16 with Ghana had not been delimited. Moreover, between the grant of the concession  
17 in 1970 and its renewal in 1975 no drillings took place in the disputed area.

18  
19 In 1975, Côte d'Ivoire created a new block south of the first block and granted a  
20 concession south of the first block. It is telling that the contract granting this  
21 concession includes the same disclaimer as for the first block (*Interpretation from*  
22 *French*): "The coordinates of reference points K, Y, X and W are given on an  
23 indicative basis and should not in any case be considered as being the limits of  
24 national jurisdiction of Côte d'Ivoire."<sup>21</sup>

25  
26 (*Continued in English*) As confirmation of this practice, from 1990 onwards Côte  
27 d'Ivoire included a disclaimer in its model contract, reading (*Interpretation from*  
28 *French*): "[t]hese coordinates are given on an indicative basis and should not be  
29 considered as being the limits of the jurisdiction of Côte d'Ivoire."<sup>22</sup> (*Continued in*  
30 *English*) In the 1993 model contract this clause bears the mention (*Interpretation*  
31 *from French*): "To be added if the Block in question is located at the extreme west /  
32 east of Côte d'Ivoire."<sup>23</sup> (*Continued in English*) Such clause may be found, for  
33 example, in contracts that Côte d'Ivoire signed with Tullow in 2004 and again in  
34 2007.<sup>24</sup>

35  
36 Mr President, I now turn to Côte d'Ivoire's 1977 Law. This clearly contemplates  
37 maritime delimitation as a self-standing issue to be determined in accordance with  
38 the rules of international law, as opposed to a matter to follow and be based on  
39 petroleum activities. From 1977 onwards, Côte d'Ivoire manifested its intention to

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<sup>20</sup> Decree no. 75-769 on the renewal of oil exploration licence no. 1, 29 October 1975, CMCI, Annex 61.

<sup>21</sup> CMCI, at para. 2.106 and oil production sharing contract concluded between the Republic of Côte d'Ivoire and the companies Agip S.A., Getty Oil Company (Ivory Coast), Hispanica De Petroleos (Hispanoil) S.A., Philips Petroleum Company Ivory Coast, 14 January 1975, CMCI Annex 60.

<sup>22</sup> Standard oil production sharing contract drawn up by the Republic of Côte d'Ivoire, 1990, CMCI, Annex 62.

<sup>23</sup> Standard oil production sharing contract drawn up by the Republic of Côte d'Ivoire, 1993, CMCI, Annex 64.

<sup>24</sup> CMCI, para. 2.109; Oil production sharing contract drawn up between the Republic of Côte d'Ivoire and Tullow, 7 May 2004, CMCI, Annex 69; Oil production sharing contract drawn up between the Republic of Côte d'Ivoire and Tullow, 5 April 2007, CMCI, Annex 70.

1 proceed to the delimitation of its common maritime boundary with Ghana. As  
2 I mentioned last week, article 8 of this law provides for a delimitation by means of  
3 agreement, in line with international law. The Law is worded in general terms and the  
4 use of equidistance is only contemplated (*Interpretation from French*) “if necessary”.  
5 (*Continued in English*) Further, the law clearly states that delimitation is to be  
6 effected by means of agreement. Given the absence of any negotiated agreement at  
7 the time, the Law was – and still is – looking to the formal negotiation and agreement  
8 of future delimitations.

9  
10 The most important element of conduct pointing to the absence of a tacit agreement  
11 is that the Parties repeatedly proposed negotiations on the delimitation of an  
12 international maritime boundary separating the maritime zones to which each was  
13 entitled, and they eventually held such negotiations. In application of its 1977 Law,  
14 Côte d’Ivoire took active steps to delimit its maritime boundary by means of a  
15 negotiated agreement, starting with the 15<sup>th</sup> meeting of the Mixed Commission in July  
16 1988. By that time, as you will recall, the Mixed Commission had completed the  
17 demarcation of the land boundary, and Côte d’Ivoire proposed to initiate discussions  
18 on the delimitation of the maritime boundary and put forward its first proposal.

19  
20 Mr President, let me just clarify one matter here. Mr Tsikata suggested that, since the  
21 Minutes of the 1988 Mixed Commission referred to (*Interpretation from French*) “the  
22 maritime and lagoon boundary existing between the two countries”, (*Continued in*  
23 *English*) any proposals by Côte d’Ivoire would have been in the context of an  
24 acknowledgment of an existing boundary in the sea and in the lagoon.<sup>25</sup> Mr Tsikata  
25 failed to cite the whole sentence, which says that the purpose of the session included  
26 studying (*Interpretation from French*) “the possibility of delimiting the maritime and  
27 lagoon boundary between the two countries.”<sup>26</sup>

28  
29 (*Continued in English*) Moreover, Mr Tsikata failed to quote a statement that you see  
30 in the record of the meeting which distinguished between the lagoon boundary, which  
31 was already delimited, and the maritime boundary, which was not. We read there  
32 that Ghana said (*Interpretation from French*): “Following the statement of the Ivorian  
33 Party on the delimitation of the maritime boundary, the Ghanaian delegation took  
34 note of the inclusion of the item on the agenda and declared that it did not have a  
35 mandate discuss it.”

36  
37 (*Continued in English*) Then it continued (*Interpretation from French*): “And where the  
38 lagoon boundary is concerned, there is no delimitation problem; it is merely a matter  
39 of verifying the location of the markers.”

40  
41 (*Continued in English*) That is, we submit, a clear acknowledgement that the  
42 maritime boundary was undelimited.

43  
44 Moreover, Ghana’s Counsel pays much attention to the word “*existant*”, which  
45 appears in some of the documents before you, but that word does not bear the  
46 weight that they accord to it. Of course, in one sense there is always an existing  
47 maritime boundary, since the sovereign rights of adjacent coastal States are

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<sup>25</sup> ITLOS/PV.17/C23/7, p. 13, lines 38-44 (Mr Tsikata).

<sup>26</sup> Minutes of the 15th ordinary session of the Ivoirian-Ghanaian Joint Commission for the Redemarcation of the Boundary, 18-20 July 1988, CMCI, Annex 12.

1 exclusive.<sup>27</sup> This boundary lies somewhere in the undelimited maritime area  
2 contiguous to the coasts of the two States, an area in which both States have  
3 entitlement, but the actual boundary cannot be known with certainty until States  
4 reach agreement on maritime delimitation, or a court or tribunal decides the matter.  
5 As the ICJ and ITLOS recalled, “delimitation consists in resolving the overlapping  
6 claims by drawing a line of separation of the maritime areas concerned.”<sup>28</sup>  
7

8 In 1992, Ghana in its turn proposed that the Parties engage in delimitation  
9 negotiations. Ghana’s proposal made no reference to the Parties’ petroleum  
10 activities. Côte d’Ivoire welcomed Ghana’s proposal and recalled its own 1988  
11 proposal that had remained unanswered. Thus, by 1992 it was clear to Ghana that  
12 Côte d’Ivoire was seeking formal negotiations in order to delimit the Parties’ common  
13 maritime boundary.  
14

15 Mr President, on 2 December 1997 the Parties held a meeting of technical working  
16 teams, where it was agreed, according to the minutes, to “reactivat[e] the Ivorio-  
17 Ghanaian Commission on the border problems”.<sup>29</sup> Given the context, this was clearly  
18 a reference to delimitation negotiations.  
19

20 On Monday Mr Tsikata complained that Counsel for Côte d’Ivoire had said that the  
21 purpose of the talks proposed by Ghana in 2007 was “to seek to agree on the non-  
22 existent boundary” when, as he said, these words did not appear in Ghana’s Note  
23 proposing negotiations.<sup>30</sup> Counsel was not, of course, purporting to quote from the  
24 Note; they were simply stating its obvious meaning. The Note referred to articles 74  
25 and 83 of UNCLOS. The Note referred to the need to delimit the international  
26 maritime boundaries. Ghana’s intentions were set out very clearly in its opening  
27 statement at the first meeting of the Mixed Commission in July 2008. Again, after  
28 referring to articles 74 and 83, Ghana said that “the Ghana/Côte d’Ivoire maritime  
29 boundary must be delimited.”<sup>31</sup> Ghana proposed that “the boundary in existence  
30 which is used by the international petroleum companies in collaboration with  
31 PETROCI for Côte d’Ivoire and GNPC for Ghana should be formalized in a bilateral  
32 agreement and signed as a common maritime boundary.”<sup>32</sup>  
33

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<sup>27</sup> ITLOS/PV.17/C23/6 (10 February 2017, afternoon), at p. 21, lines 11-20 (Ms Miron); see also pleadings of Mr Pellet.

<sup>28</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61, at p. 89, para. 77. See also *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624, at pp. 674-675, para. 141; *Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment of 14 March 2012, ITLOS Reports 2012, at p. 105, para 397.

<sup>29</sup> Republic of Ghana and Republic of Côte d’Ivoire, Natural Gas Purchase and Sale between the Republic of Ghana and the Republic of Côte d’Ivoire, Minutes of the Meeting Held Between the Ghana and Côte d’Ivoire Technical Working Teams (2 December 1997), point 5, RG, Annex 114.

<sup>30</sup> ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 12, lines 26-40 (Mr Tsikata). What Maître Kamara said was: “The purpose of these bilateral talks thus set out by Ghana was clear: on the day talks opened, to seek to agree on the non-existent maritime boundary.” (ITLOS/PV.17/C23/4 (9 February 2017), at p. 11, lines 39-40).

<sup>31</sup> Opening statement of Ghana at the Maiden Meeting of the Côte d’Ivoire-Ghana Joint Commission on the Delimitation of the Maritime Boundary, 17 July 2008, CMCI, Annex 28.

<sup>32</sup> Government of Ghana and Government of Côte d’Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d’Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, annex 45.



1 That is a very explicit recognition by Ghana of the distinction between petroleum  
2 concessions and a maritime boundary. Ghana then gave arguments in support of its  
3 proposed line, arguments based on the law of maritime delimitation. Côte d'Ivoire  
4 responded to Ghana's proposal in advance of the second meeting, in 2009, with a  
5 proposal of its own. Thus, in 2008 Ghana clearly distinguished between the limits of  
6 concessions used by the companies and a common international maritime boundary  
7 negotiated between the two States.

8  
9 As Members of the Chamber will be well aware, between 2008 and 2014 the Parties  
10 negotiated on the delimitation of their common maritime boundary, at Ghana's  
11 initiative. Ghana's opening statement presented a proposal for a maritime boundary  
12 line, and acknowledged that the outcome of the negotiations would have to be  
13 ratified by the Parties' respective parliaments.<sup>33</sup> As we have seen, Côte d'Ivoire  
14 rejected Ghana's initial proposal.<sup>34</sup> In the course of the negotiations the Parties  
15 discussed extensively delimitation methods and geographical circumstances. Such  
16 discussions confirm that there was no previously agreed boundary leaving only the  
17 precise coordinates to be determined. Ghana did not reject Côte d'Ivoire's various  
18 proposals on that basis, but debated the matter in the familiar terms of the law of  
19 maritime delimitation. During this time, however, Ghana resumed and intensified its  
20 drilling activities, notwithstanding Côte d'Ivoire's repeated protests, as evidenced in  
21 its February 2009 statement, in other statements,<sup>35</sup> and in the letters it sent directly  
22 to the companies. Faced with a series of Ivorian proposals, Ghana by contrast  
23 adopted an inflexible position, compromising the essence and objective of the  
24 negotiations.

25  
26 I would recall what the ICJ said, in *North Sea* case, about good-faith negotiations:

27  
28 The parties are under an obligation to enter into negotiations with a view to  
29 arriving at an agreement, and not merely to go through a formal process of  
30 negotiation as a sort of prior condition for the automatic application of a  
31 certain method of delimitation in the absence of an agreement; they are  
32 under an obligation so to conduct themselves that the negotiations are  
33 meaningful, which will not be the case when either of them insists upon its  
34 own position without contemplating any modification of it.<sup>36</sup>

35  
36 The International Court could have been thinking of Ghana.

37  
38 The next element of conduct is this, and I can be very brief since we developed it in  
39 our written proceedings, and I recalled it last week.<sup>37</sup> The Parties' CLCS submissions

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<sup>33</sup> Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45; Opening statement of Ghana at the Maiden Meeting of the Côte d'Ivoire-Ghana Joint Commission on the Delimitation of the Maritime Boundary, 17 July 2008, CMCI, Annex 28.

<sup>34</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 20, lines 15-17 (Wood); CMCI, at para. 4.23; Communication from the Ivorian Party, 2nd meeting of the Côte d'Ivoire-Ghana Joint Commission on the Delimitation of the Maritime Boundary, 23 February 2009, CMCI, Annex 30; RC1, para. 4.71.

<sup>35</sup> CMCI, paras 2.71, 5.24; Minutes of the meeting for negotiating on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana [5th meeting], 2 November 2011, CMCI, Vol. III, Annex 40.

<sup>36</sup> *North Sea Continental Shelf*, Judgment, *I.C.J. Reports* 1969, p. 3, at p. 47, para. 85a).

<sup>37</sup> ITLOS/PV.17/C23/6 (10 February 2017, afternoon), at pp 12-13, lines 38-9 (Mr Wood).

1 have nothing to do with the delimitation of the international maritime boundary  
2 between the Parties. The CLCS is concerned with the delineation of the outer limits,  
3 not the delimitation of maritime boundaries between States. Nevertheless, the CLCS  
4 submissions showed the existence of a dispute and of overlapping claims. Ghana did  
5 not come back on this.  
6

7 As a final element of conduct indicating the absence of a tacit agreement, we have  
8 already seen the clear and unambiguous recognition of the absence of a delimitation  
9 from the highest level of State authority on both sides. The Presidents of the two  
10 States issued two joint statements, in November 2009 and again in May 2015,<sup>38</sup>  
11 confirming their aspiration to reach a negotiated solution on the issue of maritime  
12 delimitation. We have shown this before but, given Ghana's silence on the matter,  
13 I hope you will excuse us if we show it again. The relevant part of the first Joint  
14 Statement is on the screen. It states, and this is our translation, that

15  
16 the land boundary has been delimited whereas discussions aiming at the  
17 delimitation of the maritime boundary had been initiated by the two countries.  
18 The two leaders called upon the competent authorities of the two countries to  
19 proceed further with the discussions in order to reach a quick outcome.  
20

21 The second joint statement was issued on 11 May 2015. In its third paragraph it  
22 recalls, and again this is our translation, that "[t]he delimitation of the maritime  
23 boundary remains an objective of the Parties."  
24

25 Mr President, Members of the Special Chamber, these are the facts Ghana carefully  
26 avoids in its attempt to conflate the petroleum relations between the Parties and the  
27 issue of the delimitation of their common maritime boundary. The elements I have  
28 just recalled paint a very different picture. Côte d'Ivoire has never accepted that its  
29 maritime boundary was delimited by way of petroleum concessions, or that it could  
30 be delimited by any means other than agreement following negotiation, as provided  
31 for in UNCLOS.  
32

33 Mr President, Members of the Special Chamber, before concluding, I shall address a  
34 couple of miscellaneous points arising from Ghana's pleading on Monday, but I shall  
35 not attempt to be exhaustive.  
36

37 Professor Sands informed you in response to a question from Judge Wolfrum that  
38 the distance between the land boundary terminus and the southernmost edge of the  
39 oil concessions was 86.9 nautical miles.<sup>39</sup> That is correct, but it should be noted that,  
40 as you can now see on the screen and at tab 4, the actual petroleum activity within  
41 the disputed area extended only to 54.5 nautical miles, to a drill named PECAN 2A.  
42 This was the furthest drilling by Ghana from the baseline. Reference has been made  
43 in this connection to the *Peru v. Chile* case, where the ICJ found a tacit agreement  
44 out to 80 miles, the furthest extent of fishing activities. I would like to draw the

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<sup>38</sup> Joint communiqué issued after the official visit to Ghana of His Excellency Mr Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, Annex 34, at para. 8; Joint communiqué issued after the meeting between the President of the Republic of Côte d'Ivoire, the President of the Republic of Ghana and H.E. Mr Kofi Annan, Geneva, 11 May 2015, RCI, Annex 201 (also in Report of Côte d'Ivoire on the follow-up to the implementation of provisional measures, 25 May 2015, CMCI, Annex 52).

<sup>39</sup> ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 20, lines 19-23 (Mr Sands).

1 Special Chamber's attention to a fundamental difference between *Peru v. Chile* and  
2 the present case. In *Peru v. Chile* the Court had already found evidence of the  
3 existence of a tacit agreement, as a result of express language in a 1954 treaty,  
4 before it turned to the extent of the fishing activities as an aid to determining the  
5 content of that agreement, and in particular the length of the line in respect of which  
6 there was a tacit agreement. It would only be if you were to find, contrary to our  
7 submissions, that there is a tacit agreement that the extent of the oil concessions (or  
8 oil drilling) might be of interest.

9  
10 I move to another point. On Monday Counsel for Ghana returned to the question of a  
11 sketch map produced by a private company, CLS.<sup>40</sup> What they showed you is now  
12 on the screen. This is a privately produced map, apparently from the internet site of a  
13 private company. As I said last week, it has no probative weight. What is interesting,  
14 however, is the fact that the sketch also shows two other lines: between Côte d'Ivoire  
15 and Liberia in the west, and between Ghana and Togo, Benin and possibly Nigeria to  
16 the east. Ghana has thus shown you and claimed authority for a map which indicates  
17 an equidistance line between Ghana and its neighbours to the east.

18  
19 Mr President, our friends opposite have sought to introduce a "critical date".<sup>41</sup> In  
20 doing so, they invite you to discount developments after that date, unless, in the  
21 words of the *Taba* tribunal, "such conduct confirms the understanding reached of  
22 what the situation was on the critical date".<sup>42</sup> Professor Klein accused us of ignoring  
23 the point in the first round. Indeed, we did, since we did not see it as a matter that  
24 could assist the Chamber. I will explain why. It is hard to say when a dispute arises in  
25 the case of an undelimited international maritime boundary. In a sense, there is a  
26 dispute until there is an agreement. Ghana puts the date as February 2009, which  
27 they no doubt consider to be the most favourable date for them. Yet the date  
28 selected could equally well have been 1988, as we suggested in the Rejoinder,<sup>43</sup>  
29 1992, 2011, or 2014, when the case was submitted to arbitration. It is often no easy  
30 matter to determine the date on which a dispute comes into existence, but we would  
31 say that you do not need to do so in this case. In any event, the *Taba* test is hardly  
32 helpful in a case like ours, where there are opposing views as to what the situation  
33 was on any particular critical date. One thing is of interest, however: Ghana's claim of  
34 a critical date in February 2009 may be seen as an admission that there was no  
35 agreement, tacit or otherwise, on a delimitation line at that time.

36  
37 On Monday Mr Tsikata took us to task about the map at tab 1 of our Judges' folders  
38 from last week, which is entitled "Ivoirian delimitation proposal, 1988".<sup>44</sup> As he said,  
39 we did not refer to it last week. I should perhaps explain that the map was our  
40 representation of the line proposed by Côte d'Ivoire in 1988, which was the  
41 prolongation of the line joining BP 54 and 55. That line was referred to by Counsel for

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<sup>40</sup> ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 4, lines 29-47 (Mr Sands). See also ITLOS/PV.17/C23/2 (7 February 2017, morning), at p. 2-3, lines 41-4 (Mr Tsikata) and ITLOS/PV.17/C23/4 (9 February 2017), p. 18, lines 17-23 (Mr Wood).

<sup>41</sup> MG, para. 2.20; ITLOS/PV.17/C23/7 (13 February 2017, morning), p. 27, line 39-p. 29, line 14 (Mr Klein).

<sup>42</sup> *Case concerning the location of boundary markers in Taba between Egypt and Israel, Award of 29 September 1988*, RIAA Vol. XX, p. 1, at p. 33, para. 112.

<sup>43</sup> RCI, para. 4.10.

<sup>44</sup> ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 13, lines 4-33 (Mr Tsikata).

1 Côte d'Ivoire last week.<sup>45</sup> It is described in Ivoirian internal documents that we  
2 annexed to our Counter-Memorial.<sup>46</sup>

3  
4 Mr President, that concludes what I have to say. Unless I can be of further  
5 assistance, I would request that you call Professor Alina Miron to the podium.

6  
7 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Sir Michael Wood for his  
8 presentation and I give the floor to Professor Miron.

9  
10 **MS MIRON** (*Interpretation from French*): Thank you, Mr President.

11  
12 Mr President, Members of the Special Chamber, Sir Michael has just demonstrated  
13 that the position reiterated by the Parties has been that the boundary was to be  
14 delimited by way of agreement, the purpose of the negotiations being to find an  
15 equitable solution. In fact, for Ghana it was just about window dressing because, in  
16 parallel with the negotiations, it set out to create a situation of *fait accompli* in the  
17 disputed area.

18  
19 Ghana does not even seek to conceal the unilateral character of the boundary which  
20 it claims. It must be said that it would be hard pushed to do so, the coordinates in its  
21 final submissions being those of its oil concessions. They are the coordinates as they  
22 existed when the proceedings were brought, and not in 1957 or even in 2009. Ghana  
23 has pushed its devotion to its oil line as far as defining the turning points of its claim  
24 based not on coastal geography and possible base points, as is generally the case  
25 for a provisional equidistance line, but on points connecting the various concessions.

26  
27 What is certain is that our opponents are displaying boundless imagination to give  
28 some semblance of a legal basis to their unilateral claim. All possible  
29 characterizations are marshalled to come to the aid of Ghana. Its preference is for  
30 the tacit agreement but, if you were to reject it, you could nevertheless adopt the  
31 characterization of a historical or customary line. And if those two characterizations  
32 do not convince you, you could always make do with estoppel or *modus vivendi* or, at  
33 the very least, a relevant circumstance. As the poet said, "never mind the bottle, as  
34 long as you have the drunkenness."<sup>1</sup>

35  
36 The alpha and omega of Ghana's case thus lies in its oil practice in the disputed  
37 area. Otherwise, Ghana has no case: no evidence as regards conservation or  
38 exploitation of biological resources, and understandably, as Sir Michael recalled,  
39 since the relevant documents contradict Ghana's argument;<sup>2</sup> nothing either on  
40 practice in relation to scientific research; nothing on practice in relation to protection  
41 of the environment; nothing on policing activities or rescue at sea. The boundary line  
42 claimed by Ghana is the line of its current oil concessions, on which Côte d'Ivoire

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<sup>45</sup> ITLOS/PV.17/C23/4 (9 February 2017), at p. 9, line 26 (Mr Kamara).

<sup>46</sup> Report of the meetings of the National Boundary Redemarcation Commission, 12 and 19 March 1992, CMCI, Annex 13; Report of the meetings of the technical commission responsible for gathering and updating data on the delimitation of the maritime boundary between Ghana and Côte d'Ivoire, 16 and 18 March 1992, CMCI, Annex 14; Report of the National Boundary Redemarcation Commission, 27 March 1992, CMCI, Annex 19.

<sup>1</sup> Alfred de Musset, *La coupe et les lèvres, Premières poesies*, Charpentier, 1863 (pp. 205-214).

<sup>2</sup> ITLOS/PV.17/C23/4, p. 16, lines 30 - 32, p.16, line 38, to p. 17, line 38 (Mr Wood).

1 had, in a spirit of restraint, more or less aligned its own up to 2011. It is not a line of  
2 oil activities, since, as I was able to show during our first round,<sup>3</sup> Côte d'Ivoire has  
3 regularly opposed drilling which modifies the physical character of the disputed area.  
4

5 For Ghana, the relative alignment of concessions and seismic cooperation represent  
6 the basis for its claims, the sole source of its entitlement and proof of the existence of  
7 a tacit agreement. Sir Michael has done justice to this latter argument. He showed  
8 that the Parties have disassociated oil concessions and the boundary line. It remains  
9 for me to demonstrate that in law the alignment of oil concessions and authorizations  
10 for seismic surveys cannot in any circumstances constitute the basis for entitlement  
11 to maritime areas.  
12

13 I would like to refer to case law. There is only one possible conclusion that emerges  
14 from reading it, and it is patently obvious. International courts and arbitral tribunals  
15 have *systematically* – I repeat systematically – rejected the relevance of oil practice  
16 as such in determining a maritime boundary. It is consistent case law that oil practice  
17 which, depending on the case, may include concessions, seismic surveys,  
18 exploratory drilling and in some cases even exploitation and production of  
19 hydrocarbons, cannot constitute an agreement or a relevant circumstance.  
20

21 Oil practice can follow an agreement, be it express or tacit, reflect or support it, but it  
22 cannot constitute an agreement. In other words, it is not the maritime boundary that  
23 is aligned with the limit of the concessions but the reverse. Consequently, the party  
24 that invokes the agreement must first prove it before referring to concessions as  
25 confirmatory *effectivités*.  
26

27 Our written pleadings had devoted lengthy arguments to this consistent case law,<sup>4</sup>  
28 but on Monday Professor Klein criticized us for ignoring this in our first round.<sup>5</sup> This is  
29 a curious pleading technique that involves inviting one's opponent to insist on the  
30 strong points of its case; but since Ghana is prompting us to do so, we will take the  
31 opportunity with pleasure.  
32

33 The Judgment in *Tunisia v. Libya* in 1982, on which Ghana places all its hopes,<sup>6</sup> was  
34 also the first time the ICJ examined the question of the importance of oil concessions  
35 for the purposes of maritime delimitation. It enshrines the principle of lack of  
36 relevance, and its sole exception, that of concessions confirming a tacit *modus*  
37 *vivendi*.  
38

39 In that case, Libya claimed that “the direct northward line asserted as boundary of  
40 the Libyan petroleum zones”<sup>7</sup> was “highly relevant to the determination of the method  
41 of delimitation.”<sup>8</sup> Libya had aligned its oil concessions with those plotted previously  
42 by Tunisia, and the two States had respected this *de facto* line, both for their seismic  
43 exploration and for numerous drillings, without any protest whatsoever by the other

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<sup>3</sup> ITLOS/PV.17/C23/4, p. 34, lines 36 *et seq.* (Ms Miron).

<sup>4</sup> CMCI, paras 4.5 to 4.10, 4.35 to 4.48, 4.83 to 4.91, 5.2 to 5.56; DCI, paras 5.1 to 5.42.

<sup>5</sup> ITLOS/PV.17/C23/7, p. 30, lines 3 to 6 (Prof. Klein).

<sup>6</sup> ITLOS/PV.17/C23/2, p. 10, lines 44 *et seq.*, ITLOS/PV.17/C23/8, p.11, lines 21 *et seq.*

<sup>7</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982p. 83, para. 117.*

<sup>8</sup> *Ibid.*

1 Party.<sup>9</sup> In spite of this conduct, the Court nevertheless concluded that the line “had  
2 been found by the Court to be wanting in those respects necessary to ensure their  
3 opposability to the other Party.”<sup>10</sup>  
4

5 It is true that the Court did indeed delimit the first segment of the maritime boundary  
6 up to around 50 nautical miles following this line, but what Ghana fails to mention is  
7 that the reason why the Court opted for that delimitation method related to the fact  
8 that the *de facto* line confirmed a *modus vivendi* that was crystallized prior to the  
9 independence of both States.<sup>11</sup>  
10

11 The Court has already indicated how, in the relations between France and  
12 Italy during the period when these States were responsible for the external  
13 relations of present-day Tunisia and Libya, there came into existence a  
14 *modus vivendi* concerning the lateral delimitation of fisheries jurisdiction  
15 expressed in *de facto* respect for a line drawn from the land frontier at  
16 approximately 26° to the meridian.<sup>12</sup>  
17

18 Thus, the *modus vivendi* resulted not from the oil concessions themselves, but from  
19 a “delimitation line” between Tripolitania/Libya and Tunisia, a line that Italy had  
20 proposed in 1919 to put an end to the multiple fishing incidents; a line which France,  
21 far from contesting, respected scrupulously,<sup>13</sup> a line which Tunisia and Libya had  
22 themselves adopted as a *de facto* line after their independence, which in fact none of  
23 the States challenged in that case.<sup>14</sup> The interpretation that Ghana gives of this  
24 Judgment, claiming that the oil practice in itself constituted a *modus vivendi*<sup>15</sup> is quite  
25 simply incorrect.  
26

27 Is Ghana’s case similar to that of Libya, so that you can give it the benefit of the  
28 *modus vivendi*? The answer is not just “no”; it is “no” to the power of four. No,  
29 because Ghana should have demonstrated that France or the United Kingdom, as  
30 the colonial powers, had formulated any kind of boundary proposal applying between  
31 Côte d’Ivoire and the Gold Coast. Has Ghana adduced the slightest evidence to that  
32 effect? No. It merely presumes that in 1955 the *modus vivendi* or the tacit line  
33 already existed. On what does Ghana base that presumption? On nothing.  
34

35 The sketch map currently on screen, which Professor Sands proudly displayed on  
36 Monday, is a timely illustration of the absence of any grounds for Ghana’s argument.  
37

38 It is on this presumption, hanging in thin air, that Ghana most naturally applies the  
39 concessions then drawn unilaterally by the two States. Do those concessions refer to  
40 or confirm a positive act establishing the boundary? No. This is sufficient to pull the  
41 rug out from under Ghana’s *modus vivendi*.  
42

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<sup>9</sup> *Ibid*, pp. 35-36, para. 21.

<sup>10</sup> *Ibid*, p. 83, para. 117.

<sup>11</sup> *Ibid*.

<sup>12</sup> *Ibid*, pp. 84-85, para. 119.

<sup>13</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 70-71, paras 93-95.

<sup>14</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982* p. 71, para. 96.

<sup>15</sup> ITLOS/PV.17/C23/2, p. 11, lines 36 to 40; ITLOS/PV.17/C23/8, p. 11, line 31, to p. 12, line 16.

1 But let us delve deeper. What is the legal value of the two permits granted by the  
2 colonial powers in 1956 and 1957? It should be borne in mind that the only evidence  
3 for these permits is on screen, published in the *Bulletin of the American Association*  
4 *of Petroleum Geologists* in 1958.<sup>16</sup> Two sketch maps of poor quality published in a  
5 US scientific journal certainly cannot constitute original proof of a tacit agreement on  
6 the boundary.

7  
8 Now, even if, through some kind of wilful blindness, we ignore these countless  
9 original sins in the key evidence of Ghana, were there activities based on those  
10 permits that extended over time? No. Neither Ghana nor Côte d'Ivoire conducted  
11 drilling in the disputed area, and these two permits were rapidly abandoned in 1963  
12 and 1965.<sup>17</sup>

13  
14 So what is left of Ghana's *modus vivendi* argument? Nothing!

15  
16 Let us now turn to the second judgment of the ICJ pertaining to oil conduct, the *Gulf*  
17 *of Maine* Judgment. In that case, where Canada would seek to derive benefit from  
18 the coincidence of the US and Canadian oil concessions, , the Chamber of the I.C.J  
19 noted:

20  
21 even supposing that there was a *de facto* demarcation between the areas  
22 for which each of the Parties issued permits ... this cannot be recognized  
23 as a situation comparable to that on which the Court based its conclusions  
24 in the *Tunisia/Libya* case. It is true that the Court relied upon the fact of the  
25 division between the petroleum concessions issued by the two States  
26 concerned.

27  
28 However, the Court adds:

29  
30 it took special account of the conduct of the Powers formerly responsible  
31 for the external affairs of Tunisia ... and Tripolitania ..., which it found  
32 amounted to a *modus vivendi*, and which the two States continued to  
33 respect when, after becoming independent, they began to grant petroleum  
34 concessions.<sup>18</sup>

35  
36 The *Gulf of Maine* Judgment thus confirms that there cannot be a *modus vivendi*  
37 based on the alignment of oil concessions. That judgment does not therefore offer  
38 any support for Ghana's argument. Quite the opposite, it categorically contradicts it.

39  
40 I will not dwell on three other judicial and arbitral decisions from the same period  
41 which all rejected the argument that the oil concessions line could have any  
42 relevance for delimitation of the maritime boundary.

43  
44 The 1985 Judgment in *Libya v. Malta* rejects Malta's argument that the common line  
45 of the boundary concessions was "any pattern of conduct ... sufficiently unequivocal

---

<sup>16</sup> MG, Vol. VIII, Annex 90, pp. 1660-1662.

<sup>17</sup> CMCI, para. 2.83.

<sup>18</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984p. 310, para. 150.*

1 to constitute either acquiescence or any helpful indication of any view of either Party  
2 as to what would be equitable.”<sup>19</sup>

3  
4 The second case is *Guinea v. Guinea-Bissau*, where the arbitral tribunal decided not  
5 to take account of an oil concession granted by Portugal.<sup>20</sup>

6  
7 The third case, another arbitration, is the *Saint-Pierre-et-Miquelon* case, where  
8 likewise the tribunal did not give accord any importance to oil concessions granted by  
9 the Parties, especially since no drilling took place after reciprocal protests.<sup>21</sup>

10  
11 I will dwell just a little longer on the two awards in *Eritrea/Yemen*, which confirm the  
12 great reluctance of international judicial and arbitral bodies to take account of oil  
13 practice for the purposes of maritime delimitation. In its first decision on sovereignty  
14 over island formations, the tribunal had, *inter alia*, taken into account (*Continued in*  
15 *English*) “a pattern of Yemen’s offshore concessions, unopposed by Ethiopia and  
16 Eritrea, [which] taken together with the pattern of Ethiopian concessions, confirmed  
17 Yemen’s sovereign claims to the disputed islands”<sup>22</sup> and it even noted that “[t]hose  
18 contracts ... lend a measure of support to a median line between the opposite coasts  
19 of Eritrea and Yemen.”<sup>23</sup>

20  
21 (*Interpretation from French*) However, when it reached the second phase, maritime  
22 delimitation, the tribunal nevertheless held that this same median line, which Eritrea  
23 saw as a historic boundary, could not be made into a maritime boundary. The  
24 tribunal held (*Continued in English*) “that is not the same as saying that the maritime  
25 boundary now to be drawn ... should track Eritrea’s claimed ‘historic median line’.”<sup>24</sup>  
26 (*Interpretation from French*) The same evidence based on oil practice which the  
27 tribunal had accepted in determining sovereignty over islands was rejected for the  
28 delimitation of the maritime boundary.

29  
30 I now come to the 2002 *Cameroon v. Nigeria* Judgment, which is a fundamental  
31 decision with regard to the legal relevance, or rather lack of legal relevance, of oil  
32 practice. Nigeria relied on two circumstances – and I am quoting from its Counter-  
33 Memorial. (*Continued in English*) First, “the relevant licences ... mostly date back  
34 several decades”,<sup>25</sup> and the second circumstance is that “there has never been any  
35 protest from Cameroon at the granting or extension of these concessions, or at  
36 subsequent exploration, drilling or exploitation.”<sup>26</sup>

---

<sup>19</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I. C.J. Reports 1985p. 29, para. 25.

<sup>20</sup> *Delimitation of the Maritime Border between Guinea and Guinea-Bissau*, Award of 14 February 1985, RIAA, Vol. XIX, p. 174, para. 63.

<sup>21</sup> *Case concerning the delimitation of maritime areas between Canada and France*, Decision of 10 June 1992, RIAA, Vol. XXI, p. 295-296, paras 89-91.

<sup>22</sup> Award of 9 October 1998, *Territorial Sovereignty and Scope of the Dispute (Eritrea and Yemen)*, para. 390.

<sup>23</sup> *Ibid*, para. 438.

<sup>24</sup> Award of the Arbitral Tribunal in the Second Stage, Maritime Delimitation, December 17, 1999, para. 83.

<sup>25</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, Counter-Memorial of Nigeria, p. 564, para. 20.13.

<sup>26</sup> *Ibid*, p. 565, para. 20.15.



1 (*Interpretation from French*) Faced with these facts, which were not contested by the  
2 Parties, the Court nevertheless considered, in particularly clear and generally  
3 applicable terms, that:

4  
5 oil concessions and oil wells are not in themselves to be considered as  
6 relevant circumstances justifying the adjustment or shifting of the  
7 provisional delimitation line. Only if they are based on express or tacit  
8 agreement between the parties may they be taken into account. In the  
9 present case there is no agreement between the Parties regarding oil  
10 concessions. The Court is therefore of the opinion that the oil practice of  
11 the Parties is not a factor to be taken into account in the maritime  
12 delimitation.<sup>27</sup>

13  
14 Members of the Special Chamber, the *Cameroon v. Nigeria* Judgment confirms the  
15 same principle. Oil concessions may at most illustrate an agreement, but they do not  
16 in themselves constitute an agreement. Why then should the Chamber consider  
17 Ghana's case to be any more convincing than that of Nigeria?

18  
19 Has Ghana provided proof of a tacit agreement? No. On the contrary, as Sir Michael  
20 Wood has just shown, there is a whole series of evidence attesting to disagreement  
21 on the boundary.<sup>28</sup>

22  
23 Is Ghana's practice more longstanding than that of Nigeria? If you look at the  
24 concessions themselves, it is more or less the same length of time. On the other  
25 hand, its drilling of wells is much more recent and, in the case of those which are still  
26 in operation, they all date from after 2009, a date which Ghana claims to be "critical"  
27 for our case.

28  
29 Is Ghana's practice more intensive than that of Nigeria? Certainly not, because up  
30 until 2009 only three wells had been drilled – and abandoned – by Ghana, whereas  
31 Nigeria reported several dozen wells in production together with the pipelines  
32 connecting them. If Nigeria's practice could not be "a factor to be taken into account  
33 in the maritime delimitation",<sup>29</sup> that applies all the more to Ghana's practice in the  
34 instant case.

35  
36 Lastly, I come to the most recent arbitral award which has certain similarities with the  
37 case before you. I will leave aside all the others where the *Cameroon v. Nigeria*  
38 principle has been confirmed.<sup>30</sup> In this most recent award, *Guyana v. Suriname* in  
39 2007, Guyana claimed to its advantage the alignment of oil concessions on either  
40 side of a "historical equidistance line" which had been there for more than 50 years

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<sup>27</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002pp. 447-448, para. 304.*

<sup>28</sup> ITLOS/PV.17/C23/8, p. 9, lines 27 *et seq.*

<sup>29</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002, pp. 447-448, para. 304.*

<sup>30</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, Award, 11 April 2006, RIAA, Vol. XVII, para. 364; Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009, pp. 125-126, paras 197-198.*

1 and had not been contested by Suriname.<sup>31</sup> This is exactly Ghana's argument in the  
2 present case.

3  
4 Having provided a detailed analysis of all the relevant previous case law, the Tribunal  
5 noted the (*Continues in English*) "dictum that oil wells are not in themselves to be  
6 considered as relevant circumstances unless based on express or tacit agreement  
7 between the parties"<sup>32</sup> and insisted upon "the marked reluctance of international  
8 courts and tribunals to accord significance to the oil practice of the parties in the  
9 determination of the delimitation line."<sup>33</sup>

10  
11 The conclusion was obvious: "The Tribunal takes the view that the oil practice of the  
12 Parties cannot be taken into account in the delimitation of the maritime boundary in  
13 this case."<sup>34</sup>

14  
15 (*Interpretation from French*) Certain common features emerge from the disputes  
16 concerning the oil practice of the parties.

17  
18 First, States plot and grant oil concessions even though the boundary is not  
19 delimited.

20  
21 Second, it is not unusual for the respective concessions of the two States to be  
22 aligned along a certain equidistance line.

23  
24 Third, performance of concession contracts often entails seismic surveys, and less  
25 often invasive drilling activities, because they always give rise to protests from the  
26 other State concerned.

27  
28 Fourth and last, courts and tribunals are extremely reluctant, and even refuse, to take  
29 into consideration oil practice, however intensive, for the purposes of delimiting the  
30 maritime boundary.

31  
32 On Monday Mr Reichler asked, emphatically and eloquently, whether the decrees, oil  
33 concession maps or authorizations for seismic surveys meant nothing in the present  
34 case.<sup>35</sup> I have the impression that the case law provides a definitive answer, which  
35 my esteemed friend will not like, because they do indeed mean nothing for the  
36 purposes of the maritime delimitation with which we are concerned.

37  
38 On the other hand, Ghana's invasive unilateral activities in the disputed area, carried  
39 out despite Côte d'Ivoire's protests, do engage its responsibility; and this is the point  
40 that I want to look quickly at now.

41  
42 Mr President, Members of the Special Chamber, on Monday the Agent for Ghana  
43 encouraged you (*Continued in English*) "to look at how [oil] operations came about,  
44 and what their existence tells you about the Parties' ... shared intentions as to the

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<sup>31</sup> *Guyana c. Suriname*, Counter-Memorial of Guyana, para. 9.46.

<sup>32</sup> Award of 17 September 2007, *Guyana v. Suriname*, RIAA, Vol. XXX, p. 108, para. 389.

<sup>33</sup> *Ibid.*, para. 390.

<sup>34</sup> *Ibid.*

<sup>35</sup> ITLOS/PV.17/C23/8, p. 10, lines 10 *et seq.*

1 location of the boundary.”<sup>36</sup> (*Interpretation from French*) This is exactly what Côte  
2 d’Ivoire wants.

3  
4 For the delimitation of the maritime boundary, Côte d’Ivoire has favoured bilateral  
5 dialogue with its neighbour. It has also showed restraint in the maritime boundary  
6 area. It has not encroached on the concessions that were unilaterally granted by  
7 Ghana,<sup>37</sup> and it has shared information from seismic surveys.<sup>38</sup> It has not engaged in  
8 invasive activities and, even though it has protested strongly against the drilling  
9 operations of its neighbour,<sup>39</sup> Côte d’Ivoire has always refrained from taking any  
10 coercive measures to bring them to an end. Our opponents have, on several  
11 occasions, chided Côte d’Ivoire because it has “never once attempted, in all those  
12 years, to extend its oil activity and interests eastwards”<sup>40</sup> of the line claimed by  
13 Ghana.

14  
15 Mr President, it seems that these admonishments are incitements to internationally  
16 wrongful acts.

17  
18 Conversely, Ghana’s attitude has been that of *fait accompli*, and we maintain that  
19 characterization without any hesitation, despite the rather offended protests from our  
20 opponents.<sup>41</sup> The picture of this *fait accompli* has emerged gradually, culminating in  
21 2016 when the TEN field went into production.

22  
23 In 1988 this area was not drilled at all.

24  
25 In 1989 Ghana began the first drilling without any prior notification to Côte d’Ivoire.

26  
27 In 1999 and 2002 two wells were drilled by Ghana at the height of the Ivorian civil  
28 war. On Monday Professor Sands stated that Côte d’Ivoire had not lodged any  
29 specific protest against them,<sup>42</sup> forgetting that Côte d’Ivoire had, from 1992,  
30 expressed its general opposition to invasive activities in the maritime area to be  
31 delimited<sup>43</sup> and also forgetting that Ghana had failed to inform us of those drilling  
32 operations in a deposit overlapping the provisional equidistance line. Moreover, that  
33 field is now abandoned.

34  
35 But Ghana reoffended in 2009 by authorizing Tullow to drill in another overlapping  
36 field, TEN, which is far from being abandoned, as it started production last August.<sup>44</sup>  
37 I will pass over Côte d’Ivoire’s reaffirmation of its opposition to the drilling which it  
38 reiterated in 2007, 2009 and 2011.<sup>45</sup> Even though during these proceedings Ghana

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<sup>36</sup> ITLOS/PV.17/C23/8, p. 27, line 47 (Ms Akuffo).

<sup>37</sup> ITLOS/PV.17/C23/4, p.12, lines 10 *et seq.* (Mr Wood).

<sup>38</sup> DCI, Vol I, para. 6.30 *et seq.*; see also ITLOS/PV.17/C23/4, p.33, lines 27 *et seq.* (Ms Miron).

<sup>39</sup> ITLOS/PV.17/C23/4, p. 34, lines 31 *et seq.* (Ms Miron); ITLOS/PV.17/C23/4, p.33, lines 20 *et seq.*

<sup>40</sup> ITLOS/PV.17/C23/8, 13/02/2017 afternoon, p. 28, lines 14 (Mr Alexander). See also  
ITLOS/PV.17/C23/8, 13/02/2017, p. 12, lines 28-29 (Mr Reichler); ITLOS/PV.17/C23/1, 06/02/2017  
morning, p. 12, line 43, to p. 13, line 3 (Mr Sands).

<sup>41</sup> ITLOS/PV.17/C23/8, p. 27, line 15 (Ms Akuffo).

<sup>42</sup> ITLOS/PV.17/C23/7, p. 19, lines 16-25 (Mr Sands).

<sup>43</sup> ITLOS/PV.17/C23/4, p.33, lines 43 *et seq.* (Ms Miron).

<sup>44</sup> DCI, Vol I, para. 6.51.

<sup>45</sup> ITLOS/PV.17/C23/4, p. 18, lines 9-11; p. 22, lines 20-23; p. 36, lines 28-30; p. 36, line 35, to p. 37,  
line 11; p. 39, lines 22-26; ITLOS/PV.17/C23/6, p. 23, lines 30-35; p. 25, lines 4-6; p. 36, lines 43-46.

1 continues to ignore our protests,<sup>46</sup> as it did during the negotiations, they have been  
2 recorded in the case file on the basis of which you will be required to assess the  
3 attitude of the Parties.

4  
5 Thus, in 2017 Ghana drilled no fewer than 35 wells, running up to a distance of  
6 50 nautical miles from the coast.

7  
8 Mr President, as is well known, *effectivités* are like a good wine; they improve over  
9 time. So we can understand why Ghana wants to age its *effectivités*, if possible by  
10 half a century, because it makes it a round and significant figure. But a Beaujolais  
11 Nouveau, even poured into the old wineskins of a Romanée-Conti, does not become  
12 a great vintage.

13  
14 The same goes for Ghana's invasive operations, which Ghana is trying to present as  
15 a continuation of the concessions which it has granted since 1957. However, the  
16 concession contracts currently in force date from

- 17  
18 - 2006 for the Deepwater Tano/Cape Three Points block granted to HESS for an  
19 initial period of three years;<sup>47</sup>  
20  
21 - 2013 for the Wawa block, awarded to Tullow for an initial period of seven years;<sup>48</sup>  
22  
23 - 2013 for the TEN block, awarded to Tullow again, for a period of 30 years;<sup>49</sup>  
24  
25 - 2013 for the South Deepwater Tano block, awarded to AGM for an initial period of  
26 three years;<sup>50</sup> and  
27  
28 - from 2014 for the Expanded Shallow Water Tano block, awarded to CAMAC for  
29 an initial period of three years.<sup>51</sup>  
30

31 Three of these blocks were redundant up until then, and in some cases for many  
32 years.

33  
34 As I said last week, Tullow was not a party to the proceedings.<sup>52</sup> Even so, its  
35 interests are certainly well represented by Ghana's Counsel.<sup>53</sup> I will simply note that  
36 even though the initial concession contract dates from 2006,<sup>54</sup> it was renegotiated in  
37 2013, to become a production contract; and, as we have pointed out a number of

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<sup>46</sup> ITLOS/PV.17/C23/7, p. 15, lines 39-49; p. 17, lines 1-41; p. 18, lines 1-8; 37-38; p. 19, lines 1-31; p. 23, lines 5-19; p. 24, lines 33-38; p. 25, lines 22-45; p. 26, lines 24-27; ITLOS/PV.17/C23/8, p. 23, lines 5-8; p. 26, lines 5-8.

<sup>47</sup> CMCI, Vol. IV, Annex 83, p. 13.

<sup>48</sup> CMCI, Vol. IV, Annex 83, p. 5.

<sup>49</sup> MG, Vol. IV, Annex 18, p. 60.

<sup>50</sup> CMCI, Vol. IV, Annex 83, pp. 20-21, also published in the press: see *inter alia* <http://www.aceplive.com/wp-content/uploads/2013/12/ACEP-Advisory-Notes-to-Parliament-on-Contracts.pdf>.

<sup>51</sup> CMCI, Vol. IV, Annex 83, pp. 2-3.

<sup>52</sup> ITLOS/PV.17/C23/4, page 33, lines 42-44 (Ms Miron).

<sup>53</sup> ITLOS/PV.17/C23/8, p. 23, lines 18-42; p. 24, lines 1-16.

<sup>54</sup> MG, Vol. II, Annex 18 (Mr Alexander 2-2).

1 times,<sup>55</sup> Tullow committed most of the production costs after the formal notice from  
2 Côte d'Ivoire.

3  
4 Members of the Special Chamber, Ghana has beseeched you not to call into  
5 question the stability of the boundary,<sup>56</sup> even though it has not been delimited. In  
6 fact, it is the stability of its contractual relations with oil companies that Ghana is  
7 trying to protect.

8  
9 So what legal conclusion should you draw from the history of these operations? That  
10 Ghana should be rewarded for its unilateral activities in the disputed area by  
11 awarding it the mantle of a legal entitlement? Should you not instead remind States  
12 in general, and Ghana in particular, that a disputed maritime area is not *mare nullius*,  
13 and certainly not a conquered sea? Our strong conviction is that the Chamber will  
14 characterize these activities for what they are: internationally wrongful acts  
15 committed by Ghana.

16  
17 By way of conclusion, let me make a few brief comments on the grounds for  
18 engagement of Ghana's responsibility.

19  
20 In respect of sovereign rights, our opponents continue to decry the absence of  
21 precedent, even though, during the first round, I analysed a number of decisions by  
22 the ICJ, and at least one arbitral award, which all confirm the principle of  
23 responsibility for unilateral acts in a disputed area.<sup>57</sup> However, if there is a gap in the  
24 case law, *quod non*, you have the opportunity to fill it.

25  
26 In respect of the violation of paragraph 3 of article 83, Ghana's drilling in the disputed  
27 area must be characterized as such; and I would point out that it is not necessary for  
28 drilling to have taken place in an area which you declare to be Ivorian. In *Guyana v.*  
29 *Suriname*, Guyana's responsibility was engaged for drilling just one well, even  
30 though it was located in an area which the tribunal ultimately declared to be  
31 Guyanese.

32  
33 In respect of the violation of provisional measures, the actual principle of  
34 responsibility is not disputed by our opponents.<sup>58</sup> The fact that drilling took place after  
35 25 April 2015 is also not contested by Ghana. It falls to you to draw your conclusions,  
36 but a declaration of a violation, by way of satisfaction, is certainly not  
37 disproportionate or unreasonable, as Ghana claims.<sup>59</sup> In fact, Ghana's repeated  
38 claim that Côte d'Ivoire should provide compensation for damage resulting from the  
39 suspension of its drilling activities<sup>60</sup> is not only devoid of any legal foundation but also  
40 extremely regrettable. It effectively says that your Order prescribing provisional  
41 measures is the source of a wrongful act, which is an untenable position because  
42 article 290 of the Convention confers on you this ancillary power not only to

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<sup>55</sup> ITLOS/PV.17/C23/4, p. 33, line 44, to p. 34, line 2.

<sup>56</sup> ITLOS/PV.17/C23/1, p. 6, lines 42-44; p. 10, lines 41-44; p. 16, lines 11-14; ITLOS/PV.17/C23/2, p. 20, lines 13-16; ITLOS/PV.17/C23/7, p. 8, lines 24-25; p. 9, lines 41-44; ITLOS/PV.17/C23/8, p. 24, lines 18-21; p. 27, lines 37-39.

<sup>57</sup> ITLOS/PV.17/C23/6, p. 25, line 50, to p. 26, line 6; p. 26, lines 11-30 (Ms Miron).

<sup>58</sup> ITLOS/PV.17/C23/8, p. 18, lines 27-40 (Mr Alexander).

<sup>59</sup> ITLOS/PV.17/C23/8, p. 22, lines 17-22 (Mr Alexander).

<sup>60</sup> ITLOS/PV.17/C23/8, p. 22, lines 11-22 (Mr Alexander).

1 safeguard the rights in dispute but also, and above all, to maintain the integrity of the  
2 judicial decision on the merits.<sup>61</sup>.

3  
4 Mr President, Members of the Special Chamber, it just leaves me to reiterate what an  
5 honour it has been to appear before you and to thank you for your kind attention.

6  
7 I would ask you, Mr President, to give the floor to Professor Alain Pellet, probably  
8 after the break.

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

11 Thank you very much, Professor Miron, for being on time and sparing me the  
12 onerous task of interrupting you. The sitting will now adjourn for a 30-minute break  
13 and we will resume with Professor Pellet.

14  
15 (Break)

16  
17 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): We  
18 will resume our hearing. Professor Alain Pellet has the floor.

19  
20 **MR PELLET** (*Interpretation from French*): Thank you very much.

21  
22 Mr President, distinguished Members of the Special Chamber, our opponents do not  
23 like this sketch map – the one that you will see on the screen in just a second – but it  
24 does reflect extremely well the reality of the case. It establishes the general direction  
25 of the coasts of the two States; and the inversion of this direction on the section  
26 Abidjan to Cape Three Points. It shows that these coasts are practically equal in  
27 length and consist of a concavity on the Ivorian side and a convexity on the  
28 Ghanaian side. They compensate one another, so to speak: the Ghanaian  
29 protuberance is equivalent to the Ivorian concavity.

30  
31 This situation of macro-geographical equality should be kept in mind when drawing  
32 the course of the maritime boundary between the two States.

33  
34 Our opponents did not like the second sketch map either, but it is particularly  
35 eloquent. This establishes the reality and significance of the cutoff flowing from the  
36 Ghanaian line on Côte d'Ivoire's entitlement to maritime spaces. This cutoff disrupts  
37 the near equality between the Parties that geography establishes. In other words,  
38 nature is being called into question here: where nature created a situation of equality,  
39 the Ghanaian line would impose an artificial inequality, creating a cut-off effect which  
40 you can see in this sketch map very clearly.

41  
42 This is not the case with the line that we think is an equitable line, namely the  
43 168.7 degree azimuth. That line shares out equally the maritime areas over which  
44 the two States have entitlements: not only have you got geographical equality; you  
45 have got legal equality.

46  

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<sup>61</sup> *LaGrand (Germany v. United States of America)*, Judgment, I C.J. Reports 2001, p. 466, at pp. 502-503, para. 102.

1 This has important legal implications: it shows that the line defended by Ghana (with,  
2 one has to say, somewhat less conviction this week than in the first round) does not  
3 correspond to the mother of all rules, namely that an equitable solution be reached.  
4 Let me point out that our opponents are in agreement on this ultimate objective.  
5 According to the words of the Agent of Ghana herself: (*Continued in English*) “In  
6 finding an answer to these questions, you will of course be guided by the need to  
7 arrive at an equitable solution that will do justice to the Parties in accordance with  
8 law.”<sup>1</sup>

9  
10 (*Interpretation from French*) The method does not matter, does it, provided you get  
11 this result? If you do not achieve the result, the line is not consistent with the law  
12 governing maritime delimitation; but it has to be; and what we propose is, whether  
13 you draw a bisector of the angle formed by the general direction of the coasts of the  
14 Parties or whether you apply the method of equidistance/relevant circumstances.

15  
16 It is because, whatever the other side thinks, you cannot have one without the other:  
17 let us have equidistance but let us not deny the necessity of taking into account  
18 those circumstances that are at the source of the inequity of the provisional  
19 equidistance line. You could draw that line taking equity considerations into account:  
20 *inter alia* the choice of base points or the inequity of the equidistance line may lead  
21 one to abandon the three-stage method in favour of the angle bisector, or another  
22 method.

23  
24 The *Bay of Bengal* case (*Bangladesh/Myanmar*) is a good example of the first of  
25 these techniques. I quote the Tribunal, and this is the citation:

26  
27 Concerning the question whether St. Martin’s Island could serve as the  
28 source of a base point, the Tribunal is of the view that, because it is located  
29 immediately in front of the mainland on Myanmar’s side of the Parties’ land  
30 boundary terminus in the Naaf River, the selection of a base point on St.  
31 Martin’s Island would result in a line that blocks the seaward projection from  
32 Myanmar’s coast. In the view of the Tribunal, this would result in an  
33 unwarranted distortion of the delimitation line, and amount to “a judicial  
34 refashioning of geography”<sup>2</sup> ... For this reason, the Tribunal excludes St.  
35 Martin’s Island as the source of any base point.<sup>3</sup>

36  
37 Also, take the *Libya v. Malta* case. The ICJ says that “The equitableness of an  
38 equidistance line depends on whether the precaution is taken of eliminating the  
39 disproportionate effect of certain ‘islets, rocks and minor coastal projections’.”<sup>4</sup> In  
40 consequence of that, the ICJ ruled that “it [is] equitable not to take account of Filfla in  
41 the calculation of the provisional median line between Malta and Libya.”<sup>5</sup>

42  
43 Once again, in the *Black Sea* case, the ICJ avoids putting a base point on Serpents  
44 Island. Why? It is because it “cannot be taken to form part of Ukraine’s coastal

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<sup>1</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 25, lines 22-24 (Ms Afua Akuffo).

<sup>2</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 110, para. 149.

<sup>3</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, para. 265.

<sup>4</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I. C.J. Reports 1985, p. 48, para. 64.

<sup>5</sup> *Ibid.*

1 configuration.”<sup>6</sup> Then, having made that choice, the Court can find that there is “no  
2 reason to adjust the provisional equidistance line” because the line that the Court has  
3 drawn avoids all cutoff by permitting “the adjacent coasts of the Parties to produce  
4 their effects in terms of maritime entitlements in a reasonable and mutually balanced  
5 way”.<sup>7</sup>

6  
7 It is also to avoid an inequitable situation that the ICJ in a number of cases set aside  
8 recourse to equidistance in favour of the angle bisector method. Thus, in the *North*  
9 *Sea* case, the Court ruled that, “if the equidistance method is used ... an inequity  
10 would be created”.<sup>8</sup>

11  
12 In the *Gulf of Maine* case, a Chamber of the ICJ was of the opinion that it is  
13 necessary to “renounce the idea of employing the technical method of equidistance”,  
14 and considered that “preference must be given to a method which, *while inspired by*  
15 *the same considerations*, avoids the difficulties of application pointed out above and  
16 is at the same time more suited to the production of the desired result.”<sup>9</sup> In that  
17 particular case it was the angle bisector method, and in the case of *Two Guineas* the  
18 arbitral tribunal set aside the two equidistance lines proposed by the Parties in favour  
19 of an angle bisector line.<sup>10</sup>

20  
21 The other possibility is, of course, to draw the line to start with, if it is possible and  
22 expedient. You draw a provisional equidistance line, and then you modify it to take  
23 into account the relevant circumstances that such a modification requires in order to  
24 come up with an equitable solution.

25  
26 All this, Mr President, is to say that there are three possibilities.

- 27  
28 - Where possible, you can draw *ex ante* an equidistance line taking certain  
29 particular circumstances into account so that that line would be immediately  
30 equitable. This first branch of the alternative is not very realistic in our particular  
31 case; but it does exist in law.  
32  
33 - Similarly, you could take into account circumstances that might exclude the initial  
34 use of a strict equidistance line and set this line aside in favour of an angle  
35 bisector line. That is what we think is the most appropriate solution in this case.  
36  
37 - It is also permissible to retain a provisional equidistance line and, subsequently,  
38 to adjust it as the second phase of the three-stage method.

39  
40 But you cannot do what Ghana does, namely to deny the existence of the  
41 circumstances and to come up, at the end of the day, with an unfair solution.  
42

---

<sup>6</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 110, para. 149.

<sup>7</sup> *Ibid.*, p. 127, para. 201.

<sup>8</sup> *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 50, para. 91.

<sup>9</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984*, I.C.J. Reports 1984, p. 332, para. 212.

<sup>10</sup> *Delimitation of the Maritime Border between Guinea and Guinea-Bissau, Award of 14 February 1985*, RIAA, Vol. XIX, p. 187, para. 103.



1 In favour of these remarks, if you allow me, Mr President, I will dwell on a few more  
2 specific aspects which our friends on the other side re-visited on Monday, and other  
3 aspects that they prudently did not re-visit: useful coasts; the different, but associated  
4 question of base points (not without relevance to the instability of the relevant coasts  
5 either); I shall also dwell at somewhat greater length on the circumstances that  
6 should lead you to set aside any kind of "strict" equidistance line and those which  
7 you must not and cannot take into consideration. I will also say a few words on the  
8 regional context, to conclude with the final choice of the equitable line that you  
9 should decide on, without letting yourselves being intimidated by the apocalyptic  
10 implications with which our friends on the other side threaten you.

11  
12 It sounds like quite a long programme, Mr President, but let me reassure you that I  
13 can go through it quite swiftly.

14  
15 To start with, useful coasts: it is not necessary to quibble about the question of the  
16 coasts that have to be taken into consideration in order to construct the provisional  
17 equidistance line: as Mr Reichler has pointed out, the Parties agree on this point in  
18 many respects.<sup>11</sup> And I note that he underlines, rightly, I believe, that, although there  
19 is persistent disagreement, it (*Continued in English*) "turns out to be of very little, if  
20 any, consequence".<sup>12</sup>

21  
22 (*Interpretation from French*) We agree that whether or not you include in these  
23 coasts the segment of the Ivorian coast between the boundary with Liberia and  
24 Sassandra, it probably has no impact on the test of disproportionality – although one  
25 has to point out that whatever our opponents say, the relevant coast of Côte d'Ivoire  
26 is four and a half times longer than that of Ghana. On the other hand, this is in any  
27 case not without importance as concerns delimitation by the bisector method.

28  
29 Let me recall that, by definition, a bisector line is: "The line formed by bisecting the  
30 angle formed by the linear approximations of coastlines."<sup>13</sup> As such, it is of cardinal  
31 importance to determine the general direction of the coasts, which will be taken into  
32 account in determining the two angles which they form. Like the  
33 equidistance/relevant circumstances method, the angle bisector method "seeks to  
34 approximate the relevant coastal relationships, but does so on the basis of the  
35 macro-geography of a coastline as represented by a line drawn between two points  
36 on the coast."<sup>14</sup> These lines have to reflect the general direction of the coasts and  
37 have to be sufficiently long "to reflect a coastal front more than 200 nautical miles out  
38 to sea."<sup>15</sup>

39  
40 The ICJ considered that it was not the case of a segment of some 100 kilometres,  
41 although this was (in *Nicaragua v. Honduras*) a delimitation not extending beyond  
42 200 nautical miles but only a little further than 100 nautical miles.<sup>16</sup> This disqualifies  
43 the coasts of respectively 119 and 19 kilometres on which Maître Reichler insisted. I

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<sup>11</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 1, lines 32-40.

<sup>12</sup> *Ibid.*, p. 2, lines 1-2.

<sup>13</sup> *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007), p. 746, para. 287.

<sup>14</sup> *Ibid.*, p. 747, para. 289.

<sup>15</sup> *Ibid.*, p. 749, para. 296.

<sup>16</sup> *Ibid.*

1 know that it was to draw an equidistance line, but it also implied that there was there  
2 a straight segment that could have been used to construct an angle bisector. It is not  
3 the case. The case law I have just described dictates – and hardly leaves any other  
4 choice - that the useful coasts of the Parties for drawing a bisector line consist of  
5 straight lines linking their land boundary terminus to that of their respective borders  
6 between Liberia and Togo. Furthermore, the segment on which Maître Reichler relies  
7 runs in the opposite direction to that of the general direction of the Parties’ coasts.

8  
9 Furthermore, if you return to the three-stage method, the relevant coasts are not  
10 without interest because you have to determine the necessary base points in order to  
11 establish a provisional equidistance line. Even if it is not absolutely unavoidable, the  
12 tendency is to confer this more and more to science – the science that Paul Reichler  
13 likes so much – to determine them. In this particular case, the two Parties used the  
14 Caris Lots software. These points do not coincide because Ghana refers to charts  
15 from 1837-1846, whereas Côte d'Ivoire bases itself on modern and more accurate  
16 charts. I am not going to go into that.<sup>17</sup>

17  
18 However, let me come back to the location of these base points – whether those  
19 retained by Côte d'Ivoire or by Ghana.

20  
21 Professor Sands asserts that (*Continued in English*) : “We, Côte d'Ivoire, assert that  
22 there are too few base points and that these base points are too close together. All  
23 you [Judges] have to do is look at the case law; look at *Cameroon v. Nigeria* to note  
24 that this once again is inaccurate.”<sup>18</sup>

25  
26 (*Interpretation from French*) I referred to *Cameroon v. Nigeria* with some degree of  
27 curiosity because I could not remember that the circumstances were in any way  
28 comparable; and they absolutely are not! In its 2002 Judgment, the ICJ explained  
29 that, “the limitation on the length of the equidistance line is unavoidable, whatever the  
30 base points used on account of the presence of third States”<sup>19</sup> and that

31  
32 [g]iven the configuration of the coastlines and the limited area within which  
33 the Court has jurisdiction to effect the delimitation, no other base point [it  
34 had retained two on either side of the estuaries of the Akwayafé River and  
35 the Cross River] was necessary for the Court in order to undertake this  
36 operation.<sup>20</sup>

37  
38 In our case there is no limited area and no third States that would limit the extension  
39 of the delimitation that the Special Chamber has to operate. So you are pretty much  
40 more in a *Nicaragua v. Honduras* configuration, where a very small number of base  
41 points, closely located the ones to the others – two separated by 176 metres on the  
42 Ivorian coast,

43  
44 would assume a considerable dominance in constructing an equidistance  
45 line, especially as it travels out from the coast. Given the close proximity of

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<sup>17</sup> CMCI, paras 6.14-6.15 and 7.10-7.15; ITLOS/PV.17/C23/5, 10/02/2017, p. 28, in particular lines 7-12 (Ms Miron).

<sup>18</sup> ITLOS/PV.17/C23/7, 13/02/2017, p. 2, lines 21-24.

<sup>19</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 443, para. 292.

<sup>20</sup> *Ibid.*

1           these base points to each other, any variation or error in situating them  
2           would become disproportionately magnified in the resulting equidistance  
3           line (*Nicaragua v. Honduras*).<sup>21</sup>  
4

5           Here, an error is all the more likely because Ghana is basing itself on old charts of  
6           doubtful reliability, which led it to place all its base points out at sea – and that,  
7           despite being somewhat less capricious than the estuary of the Coco River, the  
8           relevant coast is nonetheless hardly a stable one.<sup>22</sup> You certainly cannot say, as  
9           Paul Reichler said – sententious for once, that (*Continued in English*) “the  
10          equidistance line takes into account, and therefore represents, the whole 631  
11          kilometres of relevant coast, not just the distance between the base points” because  
12          “base points C-3 and G-7, which control the equidistance line beyond 200 nautical  
13          miles, are located 19 and 119 kilometres from the LBT respectively.”<sup>23</sup>  
14

15          (*Interpretation from French*) It is quite strange, is it not? These points are situated on  
16          a segment of the boundary in a north-west/south-easterly direction, whereas the  
17          general direction of the coasts of the two States runs south-west/north-east.  
18          Furthermore, they only come into play at 220 and 225 nautical miles from the  
19          baselines for points G7 and C3, respectively.  
20

21          Let me underscore another oddity, Mr President. On the illustration that is meant to  
22          show the Ghanaian equidistance line, Mr Reichler curiously put two base points  
23          about 100 kilometres to the west of Abidjan. These two points are not of any  
24          relevance in our case because they could only have an effect on the course of the  
25          equidistance line beyond 290 nautical miles, in other words well beyond the outer  
26          limit of the continental shelf of Ghana, upheld by the CLCS. As for Cape Three  
27          Points, if it were accepted as a base point, even basing yourselves on the  
28          anachronistic coastline that Ghana likes so much, it would only influence the  
29          equidistance line as of approximately 270 nautical miles from the coasts, once again  
30          well beyond the delineation fixed by the CLCS. As all the other charts furnished by  
31          Ghana indicate, all the base points that could serve to draw the provisional  
32          equidistance line are situated on a coastal segment not exceeding 13 kilometres.  
33          Even if this strange chart is a Freudian slip, this confirms that Ghana’s appetite for  
34          areas over which it has no entitlement decidedly knows no bounds.  
35

36          There you go, Mr President: I think that that pleads very favourably in favour of the  
37          168.7 degree azimuth angle bisector line.  
38

39          Moreover, angle bisector or corrected equidistance, what is important is that the  
40          single line that you have to draw, Mr President, distinguished Members of the Special  
41          Chamber, constitutes an equitable solution; and that can only be if it takes into  
42          consideration all the particular circumstances of the case.  
43

44          The first is, of course, the encroachment that would result from an inequitable line,  
45          the line indeed that Ghana wishes you to adopt.  
46

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<sup>21</sup> *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 742, para. 277.

<sup>22</sup> CMCI, paras 1.20-1.27; ITLOS/PV.17/C23/5, 10/02/2017, pp. 4-7 and p. 18, lines 8-30 (Mr Pitron).

<sup>23</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 3, lines 26-28 and 22-24 (Mr Reichler).

1 We are aware that, (*Continued in English*) “[i]n adjacent States, the equidistance line  
2 will almost always produce a cut off.”<sup>24</sup>

3  
4 (*Interpretation from French*) However, Mr President, there is cutoff and cutoff,  
5 (*empiètement et empiètement*). Consistent with settled case law, imbued with  
6 wisdom, encroachment is only to be tolerated if it is “reasonable and balanced”, as  
7 my esteemed opponent pointed out<sup>25</sup> when he quoted me – and he is in good  
8 company because this is no less than the most authoritative case law of this  
9 Tribunal<sup>26</sup> and of the ICJ.<sup>27</sup> “Reasonable”: that is pretty subjective! All you have to do  
10 is have a quick glance at the sketch map projected now (you know it well, but it is  
11 very eloquent) to note that the encroachment resulting from the Ghanaian line (in  
12 red) has nothing balanced about it. This coast is subject to virtually no cutoff. Maybe  
13 there is an infinitesimal bit of cutoff between Axim and Cape Three Points. However,  
14 the cutoff of the projection of the Ivorian coast is regrettably spectacular. You can  
15 see this – it is the huge triangle in dotted lines. As I pointed out on Friday last, this  
16 represents an area of 33,585 square kilometres.<sup>28</sup>

17  
18 It is not an enclavement – that is for sure – but it does constitute, nonetheless, a  
19 considerable cutoff, and that has to be corrected first of all because it is not  
20 balanced; and, secondly, it predominantly concerns Abidjan, about whose  
21 importance as a major commercial and fishing port I have spoken.<sup>29</sup>

22  
23 Curiously – as I can scarcely imagine that he would do so out of perfidy –  
24 Mr Reichler also suggested a minute compensation in favour of Côte d'Ivoire.  
25 Perhaps he was trying to suggest that some kind of *Peru v. Chile* situation could be  
26 an acceptable compromise;<sup>30</sup> but that is not the case. Why? It is for a number of  
27 reasons that I am going to tell you about.

28  
29 Firstly, we are not here to negotiate but to obtain a judgment based on applicable  
30 principles and rules of law; secondly, because, as Sir Michael explained, we are  
31 absolutely not in a *Peru v. Chile* situation in which a written agreement had confirmed  
32 a tacit agreement far more compelling than that invented by our colleagues on the  
33 other side; and finally, because, in any event, Ghana's wrongful activities – let me  
34 insist on that – in the disputed area do not extend beyond 54.5 nautical miles from  
35 the coast, and certainly not to the 87-odd nautical miles as the response of Professor  
36 Sands to a question posed by Judge Wolfrum might have led Judge Wolfrum to  
37 think.

38  
39 The quasi-subliminal solution suggested almost as an over-discreet aside by  
40 Mr Reichler quite simply cannot be taken seriously, Mr President. It would be the  
41 meridian that Côte d'Ivoire suggested some time ago as a compromise. I could

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<sup>24</sup> *Ibid.*, p. 4, lines 12-13.

<sup>25</sup> *Ibid.*, p. 4, line 16.

<sup>26</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 326.

<sup>27</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 703, para. 215.

<sup>28</sup> ITLOS/PV.15/C23/6, 10/02/2017, p. 1, line 37 (Mr Pellet).

<sup>29</sup> *Ibid.*, pp. 2, lines 40-47.

<sup>30</sup> CMCI, paras 2.56 and 2.65.

1 possibly have understood Ghana trying to dangle some bait before you; but this  
2 pitiful shift in position? Really, no! This being the case, the 168.7 degree azimuth,  
3 which we consider the line best corresponding to an equitable solution and which is  
4 the only legally justifiable solution, has the merit of limiting the cutoff of the Côte  
5 d'Ivoire entitlement whilst only creating an encroachment on Ghana which is both  
6 "reasonable and balanced, especially if you take into account the modest length of its  
7 relevant coastline of 121 kilometres and the absence of any significant port on this  
8 segment.

9  
10 A few words now, Mr President, if I may, on the Jomoro Peninsula. Mr Reichler says  
11 that we have got it all wrong in law as well as in fact.

12  
13 In law, they say that I have basically misunderstood the 1977 award in the  
14 *Anglo-French Continental Shelf* case.<sup>31</sup> Maybe I have misunderstood it, but in any  
15 case I have read it carefully, and this is what it says:

16  
17       The further projection westwards of the Scilly Isles, when superadded to  
18 the greater projection of the Cornish mainland westwards beyond Finistère,  
19 is of much the same nature for present purposes and has much the same  
20 tendency to distortion of the same equidistance line, as the projection of an  
21 exceptionally long *promontory, which is generally recognized to be one of*  
22 *the potential forms of "special circumstance".*<sup>32</sup>

23  
24 A promontory, which is the equivalent of a peninsula, is "one of the possible types of  
25 special circumstance" – one that we would call today a "relevant" circumstance. As  
26 for *Libya v. Malta*, which my opponent quoted from with relish – they read into it  
27 things which the Judgment never says. Yes, "landmass has never been regarded as  
28 a basis of entitlement to continental shelf rights",<sup>33</sup> but this is not what it is about. If it  
29 is "the land which dominates the sea", it goes without saying that peculiar  
30 geographical configurations, whether they be called "anomalies", "accidents" or  
31 "unusual features", may have an effect on maritime delimitation; and, like islands,  
32 they require that a correction be made to the equidistance line if they lead to blatant  
33 distortions of that equidistance line.

34  
35 On the screen you can see the coast as our Ghanaian friends depict it. And now they  
36 are turning red and, very wittily, the cartographers of the other side make it nose dive  
37 into the sea (Cyrano's nose, I suppose!) That only goes to show that it is a peninsula.  
38 Moreover, Mr Reichler says:

39  
40       *(Continued in English)*

41       But there is a peninsula along this coast – and it is on the other side of the  
42 LBT. This is a peninsula, but it is Côte d'Ivoire's peninsula, not Ghana's.  
43 We have heard a lot about Ghana's base points being located along the  
44 so-called Jomoro Peninsula. What you did not hear from the other side is  
45 that Côte d'Ivoire's base points are located on this same stretch of coast.  
46 Thus, the coastline in this area treats both States equally, and allows them  
47 both to enjoy their respective seaward projections, on either side of the

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<sup>31</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 6, lines 14-42 and p. 7, lines 1-5 (Mr Reichler).

<sup>32</sup> *Case concerning the delimitation of continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, RIAA, Vol. XVIII, p. 252, para. 244.

<sup>33</sup> *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I. C.J. Reports 1985, p. 41, para. 49.

1 equidistance line, without any cut-off out to 200 nautical miles and  
2 beyond.<sup>34</sup>

3  
4 (*Interpretation from French*) Let me make two comments on these assertions.

5  
6 First, if the Ivorian strip of land can be called a peninsula, I do not see why the same  
7 should not go for the Jomoro Peninsula.

8  
9 I do not think it is correct to say that they are both in the same position in terms of  
10 maritime delimitation. All things being equal, the Jomoro Peninsula is in the same  
11 situation as Saint Martin's Island relative to Myanmar: nobody ever disputed that it  
12 belonged to Bangladesh; but the Tribunal underlined that it "lies in front of  
13 Myanmar's mainland coast".<sup>35</sup> In fact, the protrusion, which is an accident of history,  
14 of the boundary,<sup>36</sup> means that the Jomoro peninsula faces the Ivorian landmass.

15  
16 I know, Mr President, that in *Bangladesh/Myanmar* ITLOS did not consider Saint  
17 Martin's Island as being a special circumstance, and it was a question of delimiting  
18 the territorial sea; but when we are drawing a single delimitation line over and  
19 beyond territorial seas, the Tribunal refused to establish

20  
21 a base point on St. Martin's Island [which] would result in a line that blocks  
22 the seaward projection from Myanmar's coast. In the view of the Tribunal,  
23 this would result in an unwarranted distortion of the delimitation line, and  
24 amount to "a judicial refashioning of geography".<sup>37</sup>

25  
26 Again, quoting from the Tribunal, "[i]t depends on the particular circumstances of  
27 each case."<sup>38</sup>

28  
29 What is certain is that the Jomoro Peninsula, which also faces the territorial land  
30 mass of Côte d'Ivoire, is an anomaly entailing major distortions to the equidistance  
31 line if you place the base points along its southerly coast and if you draw the  
32 provisional equidistance line starting from those points.<sup>39</sup> The Special Chamber may,  
33 and I believe should, refrain from positioning base points, but then the Tribunal does  
34 need to adopt a delimitation method which is not the three-stage one, which brings  
35 us back to the bisector method. If not, the Chamber should in any case correct the  
36 distortions inevitably caused by the concentration of base points on the shores of that  
37 peninsula.

38  
39 The last circumstance you should consider when drawing the single delimitation line  
40 is that there is another type of concentration: the concentration of hydrocarbon  
41 resources in the eastern part of the Tano Basin. I will just make a few comments in  
42 response to what our opponents said, factual and then legal comments.

43  

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<sup>34</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 7, lines 27-34 (Mr Reichler).

<sup>35</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 149.

<sup>36</sup> ITLOS/PV.17/C23/6, 10/02/2017, p. 6, lines 27-32 (Mr Pellet).

<sup>37</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 84, para. 265.

<sup>38</sup> *Ibid.*, p. 52, para. 147.

<sup>39</sup> ITLOS/PV.15/C23/6, 10/02/2017, p. 6, lines 38-46 (Mr Pellet).

1 Factual first of all: Professor Sands stated that (*Continued in English*) “almost the  
2 entirety of the Tano-Ivorian Basin lies directly south of Côte d'Ivoire’s mainland, in  
3 Ivorian waters”,<sup>40</sup> (*Interpretation from French*) which is really rather odd because he  
4 states that, and then immediately recommends that you read an academic article  
5 produced in annex 191 of our Rejoinder. In the second paragraph of that article,  
6 which is indeed extremely interesting, one reads this (*Continued in English*): “The  
7 Tano Basin is located in the south-eastern part of *Ghana* ... The portion of the basin  
8 which has proven to be of high hydrocarbons potential is located about 60 km  
9 offshore *Ghana* with water depth ranging from 1,200 km to 1,500 km.”<sup>41</sup>

10  
11 (*Interpretation from French*) Furthermore the part of the basin we are interested in is  
12 called *West Tano* – not *East Tano*. I would add that it is not correct either that the  
13 Tano Basin is situated to the south of Côte d'Ivoire, nor that Côte d'Ivoire can brag –  
14 at least, not for the time being – of being a major hydrocarbons producer. In any  
15 case, that is not relevant. The particular circumstance which we are invoking  
16 concerns the *disputed area*, where we find vast reserves of hydrocarbons because of  
17 the geomorphology, which is extremely specific in the continental shelf at that  
18 particular location.

19  
20 Even though this is not at all relevant, Mr President, I cannot resist the temptation of  
21 showing you once again the overheads which Philippe Sands showed on Monday  
22 morning. The first one shows the global production – nothing to do with our area – of  
23 Côte d'Ivoire. Then, there is one on Ghanaian production. Something is wrong here.  
24 You get the impression that Côte d'Ivoire produces far more oil than Ghana does.  
25 Well, Côte d'Ivoire does produce a bit, and has done for some time, but Ghana has  
26 caught up and overtaken Côte d'Ivoire (in a pretty short space of time, enough for  
27 Ghana to create a *fait accompli* which it now wants you to take as a basis for  
28 concluding there is a tacit agreement, and which it has pretended to negotiate whilst  
29 excluding any recourse to the courts). You will note the rather ... dubious method  
30 used by our opponents, no doubt to give credence to the idea that Côte d'Ivoire is a  
31 bigger producer of oil than Ghana. This is quite wrong, as is clearly shown if you  
32 compare the two sketch maps and put them on the same scale, which Professor  
33 Sands felt was not necessary.

34  
35 Furthermore, these sketch maps highlight the spectacular increase in Ghanaian  
36 production since 2011, subsequent to the coming on stream of the Jubilee field,  
37 which is right there in the Tano Basin, less than 3 kilometres from the disputed area.  
38 This confirms, if it were necessary, the exceptional concentration of hydrocarbons in  
39 this area. Exploiting a single adjacent field has meant that Ghana has been able to  
40 increase its production tenfold, and, more generally speaking, Ghana has granted  
41 virtually all of its concessions in the Tano Basin in the disputed area or next to it.

42  
43 A few words now about applicable law, this time in response to Maître Reichler. First  
44 of all, let me reassure him that I have no intention of pleading for equity – *ex aequo*  
45 *et bono*. It is not a question of claiming a share of the oil or gas appertaining to  
46 Ghana, even though the two States will have to negotiate if, as is likely, the boundary  
47 line decided upon by the Chamber passes through certain deposits. Our esteemed

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<sup>40</sup> ITLOS/PV.17/C23/7, 13/02/2017, p. 6, lines 26-28.

<sup>41</sup> RCDI, Annex 191, Joel Teye Teteh, "The Cretaceous Play of Tano Basin, Ghana", *International Journal of Applied Science and Technology*, February 2016, p. 1.

1 friends on the other side put the problem the other way round. It is not a question of  
2 sharing resources belonging to Ghana, as they seem to think, but it is a matter of  
3 determining to whom these resources belong, not based on economic considerations  
4 – and we are perfectly aware of the fact that they are hardly taken into account when  
5 it comes to maritime delimitation matters – but because of the very specific  
6 geomorphology of the continental shelf in the disputed area.

7  
8 Last Chance Saloon argument: Me Reichler invokes the absence of any precedent.  
9 This calls for a number of comments.

10  
11 International law, first of all, is not all precedent; there is nothing to stop case law  
12 from developing further, and your judgment can contribute to that.

13  
14 My esteemed opponent also construes the ICJ decision in the *Jan Mayen* case in a  
15 very narrow and pretty selective way. Even if it is true that the Court took into  
16 account traditional fisheries rights in the disputed area, it was to give Denmark the  
17 possibility of "equitable access to the capelin stock" – it is not oil but it is a natural  
18 resource – and therefore adjusted, to the advantage of that country, the median line  
19 which it had originally drawn.

20  
21 Thirdly – and this is in a number of cases I referred to in my second oral pleading last  
22 week<sup>42</sup> – international courts have accepted the possibility of taking into account  
23 seabed resources. In its Judgment of 1993 in *Jan Mayen*, the ICJ did take account of  
24 its own case law in this matter. I refer you now to paragraph 72 of the Judgment of  
25 the Court, which I will not quote to save time. At the end of that paragraph, the Court  
26 states: "[t]hose resources are the essential objective envisaged by States when they  
27 put forward claims to sea-bed areas containing them."<sup>43 44</sup>

28  
29 Côte d'Ivoire and Ghana are pursuing the same objective here. Where Côte d'Ivoire  
30 is concerned, we tried to negotiate with our neighbour and friend, but now we have  
31 come before the Special Chamber to negotiate. Ghana, however, preferred to try to  
32 present the situation as being a *fait accompli*, which they are trying to pass off as a  
33 tacit agreement or, failing that, as a *modus vivendi*, which it claims should lead you to  
34 adjust the equidistance line, which it now acknowledges does not coincide with the  
35 purported customary equidistance line, whilst minimizing the size of the gap.<sup>45</sup>

36  
37 In fact, Mr President, this purported *modus vivendi* should no more influence your  
38 decision than the potential losses which Ghana claims are terrible, and which Ghana  
39 or its co-contractors may suffer from if you were to decide in favour of Côte d'Ivoire.

40  
41 I shall only mention the purported *modus vivendi* as a reminder. Alina Miron  
42 demonstrated most persuasively and with great conviction, first of all, that you cannot

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<sup>42</sup> ITLOS/PV.17/C23/6, 10/02/2017, p. 7, line 47, to p. 8, line 1, and p. 8, lines 1-19 (Mr Pellet).

<sup>43</sup> The Court refers to "I.C.J. Reports 1985, p. 41, para. 50".

<sup>44</sup> *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993*, p. 70, para. 72. See also: *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 706, para. 223.

<sup>45</sup> ITLOS/PV.17/C23/2, 07/02/2017, pp. 26-27, lines 42-43 and 1-3 (Mr Sands) and sketch map 2-12; *ibid.*, p. 31, lines 34-44 (Mr Reichler) and sketch maps 2-4 and 2-5 reproduced at Tab 6 of the Judges' folder; ITLOS/PV.17/C23/8, 13/02/2017, p. 16, lines 9-17 (Mr Reichler) and sketch map 3-26.



1 talk about a *modus vivendi* here; secondly, that even if there were a *modus vivendi*, it  
2 would not be of a nature to entail any adjustment to the maritime boundary between  
3 the Parties, and that therefore it is not and cannot be considered a relevant  
4 circumstance pursuant to the second phase of the three-stage method. It is an  
5 autonomous delimitation method, which is impossible to distinguish from a tacit  
6 agreement.<sup>46</sup> I would add that Ghana is particularly ill-advised to claim that the line of  
7 its oil concessions was considered by Côte d'Ivoire as being an equitable solution.<sup>47</sup>  
8 This line, which is in no way equitable, merely reflects the *fait accompli* in the area, a  
9 *fait accompli* against which Côte d'Ivoire has filed abundant protests and against  
10 which we continue to protest.

11  
12 Similarly, the purported catastrophic consequences of a judgment which would lead  
13 to a delimitation which would jeopardize a number of the imprudently but deliberately  
14 granted concessions granted by Ghana to a number of oil companies should not  
15 intimidate you, Members of the Special Chamber, clearly, and should not influence in  
16 any way the course of the maritime boundary on which it is incumbent upon you to  
17 decide.

18  
19 In this respect, I have the impression that the Ghanaian Party at the start of the week  
20 toned it down a bit compared with the thunderous imprecations from Professor Klein  
21 during the first round of oral pleadings.<sup>48</sup> It is not a question of apocalyptic losses any  
22 more, or a sudden slump in Ghanaian GDP. Our friends on the other side are still,  
23 however, warning you against “mayhem”,<sup>49</sup> which according to them would be the  
24 result of any calling into question of the purported customary oil line. They have  
25 moved the spotlight a little bit: they are now focusing on the risk of jeopardizing  
26 contracts concluded with those oil companies which have been the beneficiaries of  
27 their imprudence. I quote, for example, from Professor Sands (*Continued in English*):

28  
29 If the Special Chamber departs from the existing maritime boundary, the  
30 consequences will be very significant indeed. The concessions that have  
31 been granted by Ghana will be undermined, and issues may arise under  
32 the contracts that underpin them and which have been entered into in  
33 consequence of them.<sup>50</sup>

34  
35 (*Interpretation from French*) The Agent for Ghana underlined that the end result  
36 would be “chaotic, complicated and confusing”.<sup>51</sup>

37  
38 I do not know, Mr President, whether these consequences will be quite so dramatic,  
39 but, in any case, Ghana can only blame itself for having awarded these concessions  
40 and for having encouraged the exploitation of its hydrocarbon resources in the  
41 disputed area, despite Côte d'Ivoire's protests and warnings, and having closed the

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<sup>46</sup> ITLOS/PV.15/C23/6, 10/02/2017, p. 9, lines 39-44 (Mr Pellet).

<sup>47</sup> ITLOS/PV.17/C23/3, 07/02/2017, p. 3, lines 29-32 (Mr Reichler); ITLOS/PV.17/C23/8, 13/02/2017, p. 13, lines 34-39 (Mr Reichler).

<sup>48</sup> See ITLOS/PV.17/C23/3 (unchecked), pp. 12, lines 8-19 and p. 12, lines 37-41, p. 14, lines 13-16, p. 18, lines 21-25 (Mr Klein); see in reply: ITLOS/PV.17/C23/6, 10/02/2017, p. 8, lines 31-38 (Mr Pellet).

<sup>49</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 23, line 30 (Mr Alexander).

<sup>50</sup> ITLOS/PV.17/C23/7, 13/02/2017, p. 8, lines 20-24 (Mr Sands); see also: ITLOS/PV.17/C23/8, 13/02/2017, p. 23, lines 25-28 ; see also *ibid.*, p. 22, lines 18-20 and p. 23, lines 36-43 (Mr Alexander).

<sup>51</sup> *Ibid.*, p. 26, lines 42 and 43.

1 door on any possible settlement in the courts during that crucial period 2009-2014. In  
2 any case, these considerations have nothing whatsoever to do with the delimitation  
3 upon which you are required to decide. This is clearly not a circumstance which can  
4 have any effect on the line of the boundary.

5  
6 Mr President, Ghana's counsel has been particularly discreet about the regional  
7 context: two rather surreptitious mentions and that is it, in five hours of pleadings last  
8 Monday. They just dismissed with a wave of the hand<sup>52</sup> the relevance of this issue.  
9 This is a very disdainful attitude, so we do not have much to add to what we have  
10 already said during the first round of oral pleadings,<sup>53</sup> namely that even if this is not a  
11 relevant circumstance, strictly speaking, which would lead you to modify the  
12 equidistance line, although after all – anyway, this does plead in favour of the  
13 bisector method. I sense that our colleagues on the other side have avoided the  
14 discussion on the bisector method,<sup>54</sup> and that is largely because they did not want to  
15 tackle this problem where equity is aligned with the law.

16  
17 Mr President, in his first intervention last Monday, Professor Sands enthusiastically  
18 quoted, almost with exultation,<sup>55</sup> from a passage of the *Barbados v. Trinidad and*  
19 *Tobago* award, which I myself referred to, to recall the margin of discretion which you  
20 enjoy when it comes to maritime delimitation.<sup>56</sup> I share his positive opinion on this  
21 passage, even if I proclaim it with more of a British stiff upper lip than he did. This is  
22 what the arbitrators said in that excellent award of 2006 (*Continued in English*):

23  
24       There will rarely, if ever, be a single line that is uniquely equitable. The  
25       Tribunal must exercise its judgment in order to decide upon a line that is,  
26       in its view, both equitable and as practically satisfactory as possible, while  
27       at the same time in keeping with the requirement of achieving a stable legal  
28       outcome. Certainty, equity and stability are thus integral parts of the  
29       process of delimitation.<sup>57</sup>

30  
31 (*Interpretation from French*) But you should not mix everything up, Mr President. The  
32 triple motto which Professor Sands gets excited about – certainty, equity and stability  
33 – is a feature of the approach adopted by the Tribunal, where they have to rely on  
34 finding an equitable solution; they have to be clear without leaving room for  
35 contradictory interpretations, and they have to ensure that the situations which result  
36 from these decisions are stable. It is clear that, in the name of stability – for that is  
37 what I suspect my opponent was thinking of in particular – you cannot be expected to  
38 reward the *fait accompli* which Ghana has created.

39  
40 To decide on the delimitation which the Parties have asked you to proceed to,  
41 Members of the Special Chamber, you have to use your powers of discretion, without  
42 restricting yourselves to being schoolmasters, applying mathematical or geometrical  
43 formulae. You have to take objective considerations as a basis, and then decide on

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<sup>52</sup> ITLOS/PV.17/C23/8, 13/02/2017, p. 1, line 42, and p. 2, lines 24-30 (Mr Reichler).

<sup>53</sup> ITLOS/PV.17/C23/5, 10/02/2017, pp. 1-3, p. 19, lines 27-35, pp. 19-22 (Mr Pitron).

<sup>54</sup> See ITLOS/PV.17/C23/7, 13/02/2017, p. 2, line 7, to p. 3, line 4 and 1-32 (Mr Sands).

<sup>55</sup> ITLOS/PV.17/C23/7, 13/02/2017, p. 5, lines 18-30 (Mr Sands).

<sup>56</sup> ITLOS/PV.15/C23/5, 10/02/2017, p. 8, line 47, to p. 9, line 9 (Mr Pellet).

<sup>57</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, Award of 11 April 2006*, RIAA, Vol. XXVII, p. 215, para. 244.

1 an approach based on a proven method, taking into account all the parameters, all  
2 the specific circumstances, in a situation which is far less banal than our Ghanaian  
3 friends would have you believe.

4  
5 The 2006 award so relished by Professor Sands recalls this: in any given situation,  
6 several lines may seem to respond to the requirement of an equitable solution. We  
7 are convinced of this, and we want to arrive at a reasonable understanding, so that  
8 both States can exploit without further delay the hydrocarbon resources in the  
9 disputed area which appertains to them. Côte d'Ivoire has proposed during these  
10 negotiations, which it did not know at that time were notional, a number of alternative  
11 lines: in 1988 the extension seawards of the last segment of the land boundary going  
12 from BP 54 to BP 55; in 2009 a meridian constituted by the median between the  
13 meridian starting from BP 55 and that starting from the last point on the land  
14 boundary before the turning point at 90 degrees towards the lagoon, in other words,  
15 a meridian which neutralizes the Jomoro Peninsula; in 2010 a meridian passing to  
16 the LBT, in other words starting from that point, in other words, BP 55.

17  
18 During negotiations in 2011, Côte d'Ivoire proposed an initial bisector based on the  
19 data it had at that time; then in 2014, thanks to the new information it had received, it  
20 proposed a second bisector, the one with which you are familiar, Members of the  
21 Special Chamber, which corresponds to the 168.7 degree azimuth line.

22  
23 Having said that, Mr President, it is one thing to make proposals during diplomatic  
24 negotiations, during which parties may take into account all sorts of circumstances,  
25 including the wish to conclude swiftly or the wish to give an advantage to the other  
26 party for whatever reason, but it is not the same as a situation where a court such as  
27 yours has to draw a line in compliance with generally applicable legal principles.

28  
29 We believe that the line we are asking you to agree on meets that requirement  
30 because it acknowledges reasonably and in a balanced way the respective  
31 entitlements of both Parties. It takes into account all the particular circumstances.  
32 The line is drawn according to the rules of the art and accommodates the interests of  
33 the other States in the region. As we underlined, the simplest, most objective, and  
34 most effective method for drawing this line is the bisector method. I remind you of a  
35 point I insisted upon last week. It is just one variant of the three-stage method  
36 commonly called the equidistance/relevant circumstances method. Both give you  
37 guarantees of objectivity by including the use of geometry and by taking into account  
38 all the specific circumstances. The first is merely a question of determining what the  
39 relevant coasts are, and the second, at the second stage, where you can adapt the  
40 line to take into account relevant circumstances. Both of them, it seems to us, lead to  
41 the same line of the maritime boundary between Côte d'Ivoire and Ghana, and this is  
42 the equitable solution which Côte d'Ivoire asks you to decide upon, Mr President and  
43 Members of the Special Chamber.

44  
45 Thank you very much for your attention to my pleadings, prepared with the  
46 assistance of Ms Tessa Barsac. I would ask you, Mr President, to give the floor now  
47 to Me Pitron.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
2 Thank you, Professor Pellet, for your intervention. I give the floor without further ado  
3 to Me Pitron.

4  
5 **MR PITRON** (*Interpretation from French*): Thank you, Mr President.

6  
7 Mr President, distinguished Judges, after all these numerous hours of debate you  
8 have all the elements that you need to form your decision. We do not need to revisit  
9 them; it would be a waste of time.

10  
11 Now that you will be deliberating shortly, I would just like to stick to the fundamentals  
12 of this case and why you were seized in the first place.

13  
14 What actually have the Parties requested of you? To resolve the dispute concerning  
15 the delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the  
16 Atlantic Ocean.<sup>1</sup>

17  
18 What tools do you have today to respond to this question?

19  
20 The simplest would have been to have a boundary accepted by both States.  
21 Unfortunately for you and for Ghana, that is not the case. As you have heard  
22 throughout the hearings, in unequivocal fashion, *inter alia* this morning by Me  
23 Kamara, Côte d'Ivoire has recalled a number of times – 1970, 1975, 1988, 1992,  
24 1997 and 2008 all the way through to 2014 – that its maritime boundary with its  
25 neighbour remained undelimited. The two Parties negotiated for at least ten years to  
26 try to achieve this, without success. Sir Michael recalled in excellent fashion this  
27 morning why the repeated stance of Côte d'Ivoire prohibited the existence of such an  
28 agreement.

29  
30 How could, moreover, a Court bind a State by a boundary agreement to which that  
31 State never consented, even more so when that State had repeatedly made it clearly  
32 known that it disagreed with its neighbour?

33  
34 The second tool at your disposal, which might have facilitated your task, resides in  
35 the reference to the line of oil blocks to come, as Ghana repeats *ad nauseam*, to its  
36 customary equidistance boundary.<sup>2</sup>

37  
38 However, it has been recalled at length to you that no legal value can be accorded to  
39 a line of oil blocks. Professor Miron set out this morning in definitive fashion that  
40 never have judges taken into account the existence of such a line in the process of  
41 delimiting a maritime boundary between two States.

42  
43 On this particular point Ghana continues to repeat that the allegedly passive conduct  
44 of Côte d'Ivoire (*Continued in English*) "during five decades"<sup>3</sup> (*Interpretation from*  
45 *French*) would constitute flagrant proof of its acceptance of a *fait accompli*.

46  

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<sup>1</sup> Special agreement and notification of 3 December 2014.

<sup>2</sup> See *inter alia* ITLOS/PV.17/C23/1, p. 6, line 40.

<sup>3</sup> See *inter alia* ITLOS/PV.17/C23/1, p. 7, line 8.

1 But, Mr President, distinguished Judges, let me put a question to you: what could  
2 Côte d'Ivoire's conduct be when confronted with its neighbour's hegemonic position?  
3 Go to war?

4  
5 Does not the Montego Bay Convention oblige parties to negotiate where they  
6 disagree on the delimitation of a maritime boundary? What else was Côte d'Ivoire  
7 doing in 1988, when it proposed to its neighbour a meeting to determine the maritime  
8 boundary between the two States, then within the framework of ten or so meetings  
9 held by the Joint Commission on the Delimitation of the Maritime Boundary?

10  
11 Côte d'Ivoire practised what any responsible State would practise in a conflictual  
12 situation in order to avoid exacerbating the situation, all the while preserving its  
13 rights: negotiate, negotiate, negotiate. Should Ghana be rewarded today for having  
14 refused to adopt a constructive attitude in the negotiations by relying on a *de facto*  
15 situation, created by Ghana for its own advantage, and thus sanction Côte d'Ivoire  
16 for having systematically sought an agreement by refusing the use of force?

17  
18 At this stage, Mr President, distinguished Members of the Special Chamber, I think  
19 you will be at a bit of a loss, because you have to note that none of the arguments  
20 raised by Ghana can be upheld, and that Ghana has made both you and us waste a  
21 great deal of time trying to demonstrate what cannot be demonstrated.

22  
23 Côte d'Ivoire for its part has done the work, the work for which the two States seized  
24 you, namely, to put before you evidence: the evidence which will enable you to  
25 delimit a maritime boundary with its neighbour. Côte d'Ivoire relied on methods in  
26 force and took into consideration, both in the choice of its methods and for the course  
27 of the boundary, the decisive geographical circumstances in the case. The disputed  
28 area claimed by the two Parties is a kind of lozenge, which you can see on the  
29 screen, of about 32,000 square kilometres. Côte d'Ivoire claims sovereign rights  
30 falling to it, to the west of the 168.7 degree azimuth line, which constitutes the only  
31 appropriate line of delimitation between the two Parties. This area, moreover, is the  
32 area of whose existence the Chamber took note in April 2015 in its Order prescribing  
33 provisional measures. Any reduction of this area by any form of artifice with which  
34 Ghana tempts you by taking into account not the 168.7 degree azimuth line but the  
35 provisional equidistance line identified by Côte d'Ivoire, which you can now see on  
36 the screen and what Ghana calls "the area in dispute",<sup>4</sup> is out of the question.

37  
38 The reality – and that has been our analysis throughout the case, I mean Côte  
39 d'Ivoire's entire team – is that Ghana is paying today for the mistaken choices it  
40 thought it had to make in this case. Ghana started off with some maximalist line  
41 which it claimed, namely they wanted to have ratified, at whatever cost, this line of  
42 petroleum blocks, to artificially validate that line *a posteriori* by recourse to the  
43 equidistance/relevant circumstances method, giving its reasoning some semblance  
44 of legal rigour. The logical demonstration of its position would have required an  
45 inverse approach: first of all, verify the existence of circumstances consistent with the  
46 line of oil blocks but, as is the rule, any kind of extreme position, tainted in its

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<sup>4</sup> ITLOS/PV.17/C23/1, page 8, lines 41-44; page 16, lines 30-46 ; ITLOS/PV.17/C23/2, page 26, lines 38-43, page 27, lines 1-7.

1 premises, inevitably leads to contradiction and shows perforce the erroneous  
2 character of the demonstration.

3  
4 Let me just give you three examples, among many others, of the insurmountable  
5 inconsistencies confronting Ghana today because of the position that it has adopted.

6  
7 The first of these contradictions relates to the subject of the dispute itself. What did  
8 Ghana ask you to start with and then jointly Côte d'Ivoire and Ghana subsequently?  
9 Let me cite, by reference to the special agreement of 3 December 2014 signed by  
10 both Parties in the presence of President Golitsyn, what they wanted to do: "to  
11 submit to a special chamber of the International Tribunal for the Law of the Sea the  
12 dispute concerning the delimitation of their maritime boundary in the Atlantic  
13 Ocean."<sup>5</sup> I read it out: "delimit" the boundary between Ghana and Côte d'Ivoire.

14  
15 How can Ghana contradict itself to the point that it asks you today via its Agent<sup>6</sup> to  
16 "declare the existence of a boundary which the Parties have themselves long agreed  
17 and delimited in practice and in consequence"? If this is not a true denial, it is at the  
18 very least a flagrant inconsistency. Is it possible to find oneself in a more awkward  
19 position?

20  
21 The second of these contradictions is that Ghana is forced to systematically reject – I  
22 would even say systemically reject – all delimitation propositions made by Côte  
23 d'Ivoire and all Côte d'Ivoire's arguments in support of its propositions.

24  
25 Indeed, how could Ghana accept a single one of Côte d'Ivoire's arguments, because  
26 that would be tantamount to calling into question the only boundary which it wants,  
27 namely that of its oil blocks? Thus, Ghana adopts an unchanging position, sticking to  
28 a restrictive, if not to say over-narrow, approach to the case law – what I would call a  
29 sort of self-righteous refusal to move, and that leads to conflicts when you are blind  
30 to reality.

31  
32 What about the tiny segment of coasts used for the construction of the provisional  
33 equidistance line? A banality, according to Ghana,<sup>7</sup> even if there is no precedent at  
34 all which deals with a comparable situation.

35  
36 The fact that the segment in question runs in a contrary direction to the coasts of the  
37 two States? Well, that is unimportant according to Ghana,<sup>8</sup> it does not matter,  
38 despite the cutoff which results offshore of Abidjan.

39  
40 What about the Jomoro peninsula? No partial effect, according to Ghana,<sup>9</sup> despite its  
41 small area and decisive character for the course of the provisional equidistance line.

42  
43 How about the instability of the coasts? Not proven, according to Ghana, but nothing  
44 from its expert on the scientific demonstration presented by Côte d'Ivoire.

45  

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<sup>5</sup> Special agreement and notification of 3 December 2014.

<sup>6</sup> ITLOS/PV.17/C23/1, p. 6, lines 36 to 39.

<sup>7</sup> ITLOS/PV.17/C23/8, p. 2, line 25.

<sup>8</sup> ITLOS/PV.17/C23/8, p. 5, line 21.

<sup>9</sup> ITLOS/PV.17/C23/8, p. 6, lines 4 to 12.

1 The exceptional concentration of hydrocarbons in the disputed area? Of no  
2 significance, according to Ghana,<sup>10</sup> given the oil deposits off Côte d'Ivoire's coasts;  
3 and of Mr Pellet's excellent scientific demonstration, nothing on the scientific  
4 demonstration presented by Côte d'Ivoire.

5  
6 How about the deleterious effects of a provisional equidistance line claimed by  
7 Ghana with respect to its eastern neighbours? Not a word, but no challenge to the  
8 encroachments of the strict equidistance line officially claimed by Ghana on its  
9 neighbour Togo, which you can see *here* in blue, which limits in drastic fashion  
10 Togo's access to the high seas, nor any mention of its neighbour, Benin – which you  
11 can see in orange – to the extent of giving a common boundary to Ghana and  
12 Nigeria, separated with two States in between.

13  
14 In other words, it would be the (*Continued in English*) "customary equidistance  
15 boundary"<sup>11</sup> (*Interpretation from French*) or nothing. How can one accept that, in the  
16 absence of an established boundary between the Parties, none of these  
17 circumstances, taken in isolation or with stronger reason considered as a whole, has  
18 any impact on the delimitation of a boundary whose inequitable nature has been  
19 demonstrated countless times by the projection of this map before you, and one that  
20 speaks volumes. How to reassure the sub-region, notably Benin and Togo, in the  
21 face of Ghana's hegemonic aims?

22  
23 The third and final contradiction that Ghana is compelled to display owing to the  
24 flaws of its original decisions: instrumentalize the proceedings, and here I am  
25 referring to the use of article 298 of the Montego Bay Convention.

26  
27 I will be brief. Let us just recall a few facts. On 11 and 12 February 2009, a ministerial  
28 meeting is held in Abuja with the member states of ECOWAS, to which Côte d'Ivoire  
29 and Ghana belong, and concerned with the outer limits of the continental shelf,  
30 where it is decided that "the maritime boundaries of opposing adjacent States will be  
31 the subject of discussions in a spirit of co-operation to arrive at a final decision."<sup>12</sup>

32  
33 On 23 February, nine days later, as part of the second negotiation meeting with  
34 Ghana, the Ivorian side solicits the suspension of unilateral activities by Ghana.<sup>13</sup>

35  
36 At the same time, in March, Ghana discovers a significant oil deposit in the TEN  
37 zone,<sup>14</sup> and in December of the same year it invokes article 298 of the Convention  
38 that excludes recourse to an international court to settle the dispute between the two  
39 States on their boundary.<sup>15</sup>

40

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<sup>10</sup> ITLOS/PV.17/C23/8, p. 9, lines 1 *et seq.*

<sup>11</sup> ITLOS/PV.17/C23/8, p. 29, line 12.

<sup>12</sup> Document available online:

[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/preliminary/ben\\_2009\\_annex\\_ii.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/ben_2009_annex_ii.pdf).

<sup>13</sup> Communication from the Ivorian Party, 2<sup>nd</sup> meeting of the Côte d'Ivoire - Ghana Joint Commission on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, Vol. III, Annex 30.

<sup>14</sup> DCI, para. 4.44.

<sup>15</sup> Ghana, Declaration under article 298 of UNCLOS, 16 December 2009, CMCI, Annex 35.

1 Thus, the same year, 2009, will have seen both a reiteration of Côte d'Ivoire's  
2 position on its boundary in line with that of States of the region, discovery of oil in the  
3 disputed area, and Ghana raising the article 298 protective shield.

4  
5 As shown on the next slide, no fewer than 30 wells – that is between five and seven  
6 a year – are drilled in the disputed area by Ghana over the next five years,<sup>16</sup> as  
7 shown on the subsequent slides. The virgin area of 1985, 30 years later, became an  
8 area comprising no fewer than 34 wells – the small black dots – all drilled by Ghana  
9 specifically as of 2009.

10  
11 Mr President, in the interests of time, I will now adopt the oratorical technique of one  
12 of Ghana's counsel by relying on the proven and objective facts that I have just cited.

13  
14 We can readily imagine Ghana, having begun difficult negotiations with Côte d'Ivoire  
15 as part of the delimitation of the maritime boundary, discovering that the Tano basin  
16 is rich in oil. Let us not use big words. Justice, good faith and – let us be even more  
17 general – equity would certainly have led Ghana to inform its neighbour of these  
18 discoveries and put in place a joint exploitation agreement awaiting delimitation of  
19 the boundary between the Parties. Who knows? As is often the case, maybe each  
20 Party would have been satisfied with a beneficial agreement allowing each to exploit  
21 the oil in the non-delimited area. Assisted by counsel, we can readily imagine Ghana  
22 reviewing the possibilities open to it to unilaterally exploit the area concerned. What  
23 better than to protect itself by having recourse to article 298? Was it in Accra,  
24 Washington or London? Five years later, the wells are drilled, production is about to  
25 come on stream, oil companies, duly warned by Côte d'Ivoire for several years now,  
26 are worried about continuing in such uncertain exploration and extraction conditions.  
27 The fact is sufficiently accomplished to the benefit of Ghana to abandon the  
28 protection of article 298 and within 48 hours file an arbitration compromise.

29  
30 The obverse side of the coin is that recourse to legal proceedings now compels  
31 Ghana to pay the price for its extreme positions.

32  
33 It quotes in its pleadings (*Continued in English*) “the considerable scale of the  
34 damages [Ghana] would suffer if Côte d'Ivoire's change of position were to be  
35 accepted.”<sup>17</sup>

36  
37 (*Interpretation from French*) To be even more specific, the damages would be  
38 threefold: damage inflicted on its economy, which was discussed during the  
39 provisional measures phase;<sup>18</sup> and two additional types of damage, which are  
40 complementary: on the one hand, the risk of being sued by the oil operators who,  
41 misled as to the sovereignty of Ghana's rights in the area, might claim significant  
42 compensation for damages;<sup>19</sup> and, on the other, the risk of having to negotiate with  
43 Côte d'Ivoire the practical arrangements that will stem from your decision were you to  
44 adopt any line other than that which they claim.<sup>20</sup>

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<sup>16</sup> DCI, para. 4.44.

<sup>17</sup> ITLOS/PV.17/C23/3, page 16, lines 17-22.

<sup>18</sup> Provisional measures, Written Statement of Ghana, paras 48 *et seq.*

<sup>19</sup> ITLOS/PV.17/C23/8, page 22, lines 17 to 20, page 23, lines 22 to 34.

<sup>20</sup> ITLOS/PV.17/C23/8, page 24, lines 10 to 16.



1 Therein lies an additional contradiction that Ghana is facing. It was Ghana and  
2 Ghana alone that decided to grant concessions in a non-delimited area and therefore  
3 did not belong to it. It was Ghana and Ghana alone that included in the contracts the  
4 misleading mention according to which the concessions granted were within the  
5 Ghana's jurisdiction, and I cite (*Continued in English*) "all of the said area is within  
6 the jurisdiction of Ghana".<sup>21</sup>

7  
8 (*Interpretation from French*) It was Ghana and Ghana alone that ignored Côte  
9 d'Ivoire's protests and began to grant oil exploration and exploitation permits. It was  
10 Ghana and Ghana alone that exacerbated the damage by continuing to grant a  
11 number of these permits in spite of its neighbour's protests. It was Ghana and Ghana  
12 alone that deliberately protected itself from all legal interference by maintaining its  
13 declaration pursuant to article 298, thereby blocking the swift resolution of a  
14 crystalized dispute.

15  
16 Thus, Ghana blames Côte d'Ivoire for its own failings and asks it to bear the  
17 consequences. There is no need for me to go on any longer in my demonstration of  
18 that which, out of contradiction, becomes inconsistency, if not to recall this cardinal  
19 principle: that every party must unilaterally limit the risks that it takes within a dispute.

20  
21 Mr President, as to the apocalyptic consequences of changing the line that  
22 opportunistically allowed Ghana to secure its access to oil in the area, they would  
23 prompt a wry smile from any oil and gas specialist. Is it necessary to recall the  
24 countless agreements reached between two States competing on an oilfield located  
25 in a non-delimited maritime boundary area? Those agreements that international  
26 courts strongly encourage. It is firmly established by case law that possible practical  
27 difficulties (assuming, as Ghana does, that co-operation with its neighbour  
28 constitutes a difficulty in the exploitation of an overlapping deposit) to which  
29 delimitation of the exploitation of resources could lead could not, in any case, be  
30 viewed as something that prevents a court from exercising its powers in the matter.  
31 The ICJ recalled the opposite in the *North Sea* case<sup>22</sup>, which, in the interests of time,  
32 I will not quote.

33  
34 I could go on like this, reeling off the litany of inconsistencies that Ghana is up  
35 against owing to the totally arbitrary nature of the boundary line with Côte d'Ivoire  
36 that it unilaterally set to its advantage with the sole aim of preserving its interests to  
37 the detriment of law and equity.

38  
39 I will stop there because I know that we have been heard, Mr President, Judges, and  
40 I would ask you to kindly give the floor to Minister Toungara, Agent for the Republic  
41 of Côte d'Ivoire.

42  
43 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
44 Thank you, Mr Pitron, for your presentation.

45  
46 Before giving the floor to the Agent of Côte d'Ivoire, I would like to mention that  
47 paragraph 2 of article 75 of the Rules of the Tribunal provides that at the conclusion

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<sup>21</sup> MG, Vol. III, Annexes 17 and 18.

<sup>22</sup> *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 52, para. 99.

1 of the last statement made by a Party at the hearing, its Agent, without recapitulation  
2 of the arguments, shall read that Party's final submissions. A copy of the written text  
3 of these, signed by the Agent, shall be communicated to the Tribunal and transmitted  
4 to the other Party.

5  
6 I now invite the Agent of Côte d'Ivoire, Minister Adama Toungara, to give his  
7 statement and to read the final submissions of Côte d'Ivoire.

8  
9 **MR TOUNGARA** (*Interpretation from French*): Thank you, Mr President.

10  
11 Mr President, Members of the Special Chamber, Côte d'Ivoire is renowned for  
12 scrupulously keeping its word, for stubbornly seeking peace through dialogue, and  
13 for its aversion to conflict. This political choice was first made by President Félix  
14 Houphouët-Boigny who made Côte d'Ivoire "a friend to all and an enemy to none".<sup>1</sup>

15  
16 This was also the choice made by his successors, in particular His Excellency  
17 Alassane Ouattara.

18  
19 Côte d'Ivoire has conducted itself in this way at all times vis-à-vis Ghana, its  
20 neighbour and brother, in respect of the delimitation of their common maritime  
21 boundary.

22  
23 It is in this spirit that Côte d'Ivoire entered into a series of discussions and  
24 negotiations, marked by meetings and commitments made at the level of the Heads  
25 of State of the two countries.

26  
27 In my previous position as Minister for Mines, Petroleum and Energy, I was an eye  
28 witness to ten rounds of negotiations, conducted unsuccessfully, between the two  
29 States.

30  
31 I assisted President Alassane Ouattara when, on 11 May 2015 in Geneva, he met his  
32 Ghanaian counterpart, John Dramani Mahama, in the presence of Mr Kofi Annan, the  
33 former Secretary-General of the United Nations.

34  
35 At that summit the two Heads of State, true to their mutual vision of regional  
36 integration, publicly stated their wish to reach an agreement on the delimitation of a  
37 boundary which was still under discussion and said that the delimitation of the  
38 maritime boundary remained an aim to be achieved.

39  
40 At the end of his official visit to Côte d'Ivoire on 1-2 June 2016, John Dramani  
41 Mahama, the Ghanaian President, reaffirmed that position.

42  
43 Mr President, Members of the Special Chamber, Côte d'Ivoire and Ghana have  
44 pleaded before your esteemed Chamber.

45  
46 It is clear, after these pleadings, that there has never been a formal, informal or tacit  
47 agreement between Côte d'Ivoire and Ghana on the limit of their common maritime

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<sup>1</sup> Speech of 22 December 2012 by His Excellency Monsieur Alassane OUATTARA to the Diplomatic Corps accredited to Côte d'Ivoire, available online: <http://www.diplomatie.gouv.ci/eco.php?num=2>.

1 boundary; that Côte d'Ivoire has never agreed a customary equidistance line with  
2 Ghana; and that there has never been any silent acceptance by Côte d'Ivoire of the  
3 oil or other activities undertaken by Ghana in the disputed area.

4  
5 That is why, in 2014, we joined with Ghana to ask you to make the delimitation.

6  
7 Côte d'Ivoire has confidence that your justice will strengthen peace and stability  
8 between our two States.

9  
10 Mr President, Members of the Special Chamber, 15 countries in our sub-region have  
11 created an economic and political group called the Economic Community of West  
12 African States (ECOWAS). This organization has meant that we have been able to  
13 provide peace, stability and economic development for the people in the sub-region.

14  
15 We are convinced that the decision you will take, in accordance with the law, will be  
16 an equitable solution which will not only contribute to the development of  
17 international law but will set a precedent for the sub-region and help to strengthen  
18 peace, fraternity and good neighbourliness.

19  
20 I would like to express our deep gratitude to you, Mr President, and the Members of  
21 the Special Chamber for listening to us with patience and kind attention. I would like  
22 to thank the Registrar and the Registry staff, whose high level of efficiency we have  
23 greatly appreciated. Thanks, too, to the interpreters who have translated the  
24 presentations of each side so outstandingly. I would also like to say to the Agent for  
25 Ghana and her delegation how much we appreciate the cordial atmosphere between  
26 the two teams, which reflects the relationship between our two countries.

27  
28 I would like to wish the Ghanaian delegation a safe journey home at Accra.

29  
30 Mr President, Members of the Special Chamber, I shall now read the final  
31 submissions of the Republic of Côte d'Ivoire:

32  
33 On the basis of the facts and law set forth in its written submissions and during the  
34 oral pleadings, the Republic of Côte d'Ivoire requests the Special Chamber to reject  
35 all Ghana's requests and claims, and:

- 36  
37 (1) to declare and adjudge that the sole maritime boundary between Ghana and  
38 Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55  
39 and extends to the outer limit of the Ivorian continental shelf;  
40  
41 (2) to declare and adjudge that the activities undertaken unilaterally by Ghana in  
42 the Ivorian maritime area constitute a violation of:  
43  
44 (i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf, as  
45 delimited by this Chamber;  
46  
47 (ii) the obligation to negotiate in good faith, pursuant to article 83,  
48 paragraph 1, of UNCLOS and customary law;  
49

1 (iii) the obligation not to jeopardize or hamper the conclusion of an agreement,  
2 as provided for by article 83, paragraph 3, of UNCLOS; and  
3

4 (3) to declare and adjudge that Ghana has violated the provisional measures  
5 prescribed by this Chamber by its Order of 25 April 2015;  
6

7 (4) and consequently:  
8

9 (a) to invite the Parties to carry out negotiations in order to reach agreement  
10 on the terms of the reparation due to Côte d'Ivoire, and  
11

12 (b) to state that, if they fail to reach an agreement within a period of six (6)  
13 months as from the date of the Judgment to be delivered by the Special  
14 Chamber, said Chamber will determine those terms of reparation on the  
15 basis of additional written documents dealing with this subject alone.  
16

17 Thank you.  
18

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

20 Thank you, Minister Toungara.  
21

22 With your presentation we have reached the end of the hearing in the *Ghana/Côte*  
23 *d'Ivoire* case.  
24

25 I would now like to give the floor to the Registrar, who will give you some information  
26 about documentation.  
27

28 **THE REGISTRAR** (*Interpretation from French*): Thank you, Mr President.  
29

30 In accordance with article 86, paragraph 4, of the Rules of the Tribunal, the Parties  
31 may, under the supervision of the Tribunal, correct the transcripts of speeches and  
32 statements made on their behalf, but in no case may such corrections affect the  
33 meaning and scope thereof. I would point out that these corrections must be made to  
34 the checked version of the transcripts in the official language used by the Party in  
35 question. The Parties are invited to submit their corrections to the Registry as soon  
36 as possible and by Friday, 24 February at 6 p.m., Hamburg time, at the latest.  
37

38 Thank you, Mr President.  
39

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

41 Ladies and gentlemen, on behalf of the Chamber, I would now like to express our  
42 appreciation for the quality of the presentations made by the representatives of  
43 Ghana and of Côte d'Ivoire.  
44

45 I would also like to thank the Agents of both Parties for the exemplary spirit of  
46 cooperation they have demonstrated. Thanks to you, our proceedings have been  
47 conducted with calm, gravity and respect. Thank you.  
48

49 I would also like to thank the support staff, the translators and the interpreters, who  
50 have given their time in order to allow us to go beyond the regular time.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

The Special Chamber will now withdraw for its deliberations. The judgment in this case will probably be delivered at the end of September. “Around the end of September”, I will say, so that we are not tied to a specific date. The Agents of the Parties will be informed in good time of the date on which the Judgment in this case will be delivered.

In addition, I would ask the Agents to remain at the disposal of the Special Chamber in order to provide any assistance and information that it may need in its deliberations prior to the delivery of its final decision.

The hearing is now closed.

*(The sitting closed at 1.25 p.m.)*