

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)

Verbatim Record

Uncorrected

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

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

Ghana is represented by:

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

as Agent;

Mrs Helen Ziwu, Solicitor-General,

as Co-Agent;

and

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

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

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

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

Ms Anjolie Singh, New Delhi, India,

Mr Fui S. Tsikata, Reindorf Chambers, Accra,

as Counsel and Advocates;

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

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

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

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

Ms Vivienne Gadzekpo, Ministry of Petroleum,

Mr Godfred Dame, Adviser to the Attorney-General,

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

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

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

as Counsel;

Mr Kwame Mfodwo, Maritime Boundaries Secretariat,

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

Ms Adwoa Wiafe, Ghana National Petroleum Corporation, Accra,

as Legal Advisers;

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

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

as Advisers;

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

as Technical Advisers;

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

as Assistants.

Côte d'Ivoire is represented by:

Mr Adama Toungara, Minister, Head of Delegation,

as Agent;

Dr Ibrahima Diaby, Director-General of PETROCI,

as Co-Agent;

and

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

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

as Counsel;

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

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

Ms Nanssi Félicité Tezai, Assistant to the Agent,

as Advisers.

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

2 Please be seated. The 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 At this stage of the proceedings, I would like to make five general points.

2
3 First, as Professor Miron will explain, Côte d'Ivoire protested on a number of
4 occasions against the continuation of oil activities in the undelimited area, the
5 disputed area. Côte d'Ivoire did not protest against any claim of a tacit agreement on
6 the part of Ghana for the very simple and very good reason that Ghana never made
7 such a claim before 2011, when negotiations on delimitation were under way, and
8 Côte d'Ivoire's position on the line was clear and well known. As Sir Michael will
9 demonstrate, not only Côte d'Ivoire but also Ghana has always made a clear
10 distinction in their conduct between matters relating to oil activities, on the one hand,
11 on which Ghana now insistently seeks to rely, and the question of delimitation, on the
12 other.

13
14 Second, in the absence of tacit agreement, it will fall to the Special Chamber to
15 determine the boundary line. Professor Alain Pellet will show that what is ultimately
16 important is not the choice of method but the equity of the delimitation line finally
17 adopted. Articles 74, paragraph 1, and 83, paragraph 1, of the Montego Bay
18 Convention set out the fundamental rule:

19
20 The delimitation of the exclusive economic zone [or of the continental shelf]
21 between States with opposite or adjacent coasts shall be effected by
22 agreement on the basis of international law, as referred to in article 38 of the
23 Statute of the International Court of Justice, in order to achieve an equitable
24 solution.

25
26 I now come to my third point. By their conduct and their statements, both Côte
27 d'Ivoire and Ghana have consistently and clearly acted as if there were no
28 agreement on the delimitation of the boundary. Sir Michael Wood will come back to
29 this point at greater length but I would, at this stage, like to touch briefly on the
30 following aspects, without going into detail.

31
32 First, some of the Ivorian legislation and a number of the contracts stipulate,
33 expressly or implicitly, that the maritime boundary between the two States is not
34 delimited. I am talking about the decrees of 1970 and 1975, which contain a note
35 clearly distinguishing matters of oil concessions from the question of the maritime
36 boundary. Such notes were repeated in the model oil contracts adopted by Côte
37 d'Ivoire in 1990 and 1993 and, for example, in the contracts signed with Tullow in
38 2004 and 2007 regarding the disputed area. Furthermore, the 1977 Law is based,
39 under article 8 thereof, on the applicable rules of delimitation. It thus prescribes that
40 delimitation must be made by agreement in order to achieve an equitable result. Far
41 from enjoying any kind of favour, the equidistance method should be used only "if
42 necessary" – in the words used in article 8.

43
44 Second, let me mention the negotiations on delimitation between the Parties, whether
45 merely proposed or actually initiated. There was the proposal by Côte d'Ivoire in
46 1988 to extend the negotiations within the Joint Commission to the question of
47 delimitation of the maritime boundary between the Parties, which Ghana initially
48 rejected. There was also the negotiations on delimitation, a proposal which was
49 enthusiastically welcomed by Côte d'Ivoire. There was a new appeal for negotiations
50 which the technical teams of the two countries reiterated in 1997 for the attention of

1 political decision-makers. Then there was Ghana's repeated call to Côte d'Ivoire to
2 start negotiations on delimitation in 2007. There was, in addition, the negotiations
3 that finally took place between 2008 and 2014, despite Ghana's manifest refusal to
4 negotiate in good faith. Finally, there was Ghana's sudden breaking off of
5 negotiations and the recourse to arbitration, to which Côte d'Ivoire was summoned
6 by surprise, when the negotiations were clearly not going the way Ghana wanted.
7

8 Finally, we have the joint communiqués issued by the Presidents of the two States, in
9 2009 and then in 2015, which confirm – if that were still necessary – that the
10 maritime boundary clearly had not been delimited.
11

12 For my fourth point, I would like to point out that Côte d'Ivoire has observed the
13 conduct of restraint prescribed by international law in undelimited areas from the
14 award of its first concessions. In the face of Ghana's unilateralism, restraint and
15 protests on the part of Côte d'Ivoire were the only possible conduct that was
16 consistent with international law. Côte d'Ivoire has always applied the law in
17 response to the *fait accompli* which Ghana is seeking in vain to impose upon it.
18

19 Finally, my fifth point: given Ghana's insistence on sowing confusion in the minds of
20 the Members of the Special Chamber, we must insist once again on the distinction
21 between oil activities and the question of delimitation of a maritime boundary. This
22 distinction is well established both in international law and in the situation in the
23 instant case. It is only Ghana's insistence that requires us to revisit this question,
24 which has been dealt with at length in our written pleadings.
25

26 Mr President, Members of the Special Chamber, our second round of oral argument
27 will be structured as follows.
28

29 First, Sir Michael Wood will show that the second round of Ghana's oral argument
30 confirms that Ghana has failed to meet the high threshold for the burden of proof
31 which it must satisfy in order to establish the existence of a tacit agreement.
32

33 He will be followed by Professor Miron, who will deal in greater detail with the issue
34 of oil concessions and activities.
35

36 Then Professor Pellet will explain that the choice of method is of secondary
37 importance to the objective of achieving an equitable solution and that the
38 delimitation line proposed by Côte d'Ivoire is the most suitable for achieving such a
39 solution.
40

41 Fourth, Mr Pitron will summarize Côte d'Ivoire's position in this case.
42

43 Finally, the Agent of Côte d'Ivoire will appear once again to conclude our oral
44 pleadings and to present the final submissions of Côte d'Ivoire.
45

46 Mr President, Members of the Special Chamber, I would like to thank you for your
47 kind attention and ask you to give the floor to Sir Michael Wood.
48

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

1 **MR WOOD:** Mr President, Members of the Special Chamber, as Maître Kamara has
2 just indicated, I shall address Ghana’s continued insistence upon its “tacit
3 agreement”/”customary equidistance boundary” argument.
4

5 I shall begin with five basic propositions: (i) the notion of a customary equidistance
6 boundary has no basis in international law. The use of this expression adds nothing
7 to Ghana’s tacit agreement argument.¹ Ghana now seems to accept this.²
8

9 (ii) The onus of establishing a tacit agreement lies on the party asserting it. It is for
10 Ghana to establish that a tacit agreement exists, not for Côte d’Ivoire to show that
11 such an agreement does not exist. As Maître Kamara has just said, the burden is a
12 heavy one.³ As has recently been said, (*Interpretation from French*) “[t]he reality of
13 the tacit agreement must be demonstrated in order to convince judicial bodies”.⁴
14

15 (*Continued in English*) In *Bangladesh v. Myanmar*, ITLOS “share[d] the view of the
16 ICJ that ‘[e]vidence of a tacit legal agreement must be compelling’”⁵ and it also said
17 that
18

19 [i]n the view of the Tribunal, the delimitation of maritime areas is a sensitive
20 issue. The Tribunal concurs with the statement of the ICJ that ‘[t]he
21 establishment of a permanent maritime boundary is a matter of grave
22 importance and agreement is not easily to be presumed.’⁶
23

24 (iii) Ghana relies exclusively on conduct relating to petroleum. Such conduct cannot
25 establish a tacit agreement on an all-purpose international maritime boundary
26 between States. The Parties have distinguished between petroleum concessions, on
27 the one hand, and an international maritime boundary on the other. Petroleum
28 conduct says nothing about any of the other sovereign rights, jurisdiction and duties
29 of the coastal State in the exclusive economic zone, or over the continental shelf.⁷
30

31 (iv) Ghana is very far from having established a tacit agreement on an all-purpose
32 international maritime boundary, or a situation of estoppel. The conduct upon which it
33 relies is not only equivocal, as we have shown; it is flatly contradicted by conduct of
34 Côte d’Ivoire, and of Ghana itself.
35

36 (v) We should not lose sight of a fundamental principle of modern international law, in
37 particular of the law of the sea: the need to exercise restraint so as to maximize the

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

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

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

⁴ 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.

⁵ *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.

⁶ *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.

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

1 chances of resolving disputes through peaceful means and avoiding conflict. This
2 principle is reflected inter alia in articles 74, paragraph 3, and 83, paragraph 3, of
3 UNCLOS:

4
5 Pending agreement ... , the States concerned, in a spirit of understanding and
6 cooperation, shall make every effort to enter into provisional arrangements of
7 a practical nature Such arrangements shall be without prejudice to the
8 final delimitation.
9

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

11
12 Mr President, Members of the Special Chamber, I now turn to what Ghana said, or
13 did not say, on Monday. Even though it devoted most of the morning to its supposed
14 tacit agreement, Ghana failed to come back on a number of important points that we
15 highlighted last week.

16
17 They have still not found themselves able to mention the joint statements by the two
18 Presidents in 2009 and 2015, which acknowledged the need for negotiations on a
19 maritime boundary.⁸

20
21 With respect to the submissions to the CLCS, they did not respond to the points we
22 made concerning the procedures before the CLCS, including that the submissions of
23 both Parties were expressly based upon the fact that there were overlapping claims
24 and that the maritime boundary had not been delimited.⁹

25
26 They failed to acknowledge the express language included in the 1975 Decree and in
27 various concessions indicating that the coordinates did not reflect a maritime
28 boundary.

29
30 They did not respond to any of the points we made about Côte d'Ivoire's 1977 Law.¹⁰

31
32 They said nothing about the 1988 Fishing and Oceanographic Agreement, other than
33 to claim that it was not in force. Whether it is in force or not is not relevant. What
34 matters, for our purposes, is that the text of the Agreement, as signed, clearly shows
35 that the two States, Ghana as well as Côte d'Ivoire, negotiated on the basis that in
36 1988 their newly-proclaimed exclusive economic zones were not delimited.¹¹

37
38 Ghana did not respond to what we said about the onus being on them to establish
39 the existence of a tacit agreement. It is not for Côte d'Ivoire to show "constant
40 opposition"¹² as they put it, to a maritime boundary; Côte d'Ivoire made its position
41 clear on a number of occasions, as did Ghana. That is more than enough to show
42 that Ghana's tacit agreement claim is baseless.
43

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

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

¹⁰ ITLOS/PV.17/C23/4 (9 February 2017), at p. 26-27, lines 1-16 (Wood).

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

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

1 Ghana did not respond to our point about its exclusive reliance on petroleum
2 conduct, when its alleged boundary would cover all the rights and jurisdiction within
3 the exclusive economic zones and in respect of the continental shelf.¹³
4

5 Ghana said very little indeed about the proposals for negotiations on the maritime
6 boundary in 1988, 1992 and 1997, and still less about the actual negotiations that
7 took place over ten sessions between 2008 and 2014, negotiations which it itself
8 initiated in 2007. Its reticence is understandable, since the proposals and
9 negotiations clearly demonstrate the absence of an agreement, tacit or otherwise, on
10 a maritime boundary.

11
12 Ghana has not told us why, on 15 December 2009, it lodged a declaration in
13 accordance with article 298, paragraph 1, of UNCLOS, declaring that it

14
15 [did] not accept any of the procedures provided for in section 2 of Part XV of
16 the Convention with respect to the categories of disputes referred to in
17 paragraph 1(a) of article 298 of the Convention
18

19 that is, disputes concerning the interpretation or application of articles 15, 74 and 83
20 of UNCLOS. Ghana thus ruled out any possibility that its delimitation dispute with
21 Côte d'Ivoire might be submitted to a compulsory procedure entailing a binding
22 decision under section 2 of Part XV of UNCLOS, only to reverse its position at the
23 moment it commenced arbitration in September 2014. The 2009 declaration shows,
24 at the least, Ghana's concern that its position on delimitation might be held to be
25 contrary to UNCLOS.
26

27 Ghana has given no explanation of its letter to Tullow of October 2011 in which it
28 stated:

29
30 As regards the maritime boundary, as you are aware, it has always been
31 publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire
32 have not yet delimited their maritime boundary. It is also publicly known that in
33 the recent years the two Governments have met in an effort to negotiate their
34 maritime boundary in accordance with international law. Those negotiations
35 remain ongoing.¹⁴
36

37 That was in October 2011. That letter clearly shows Ghana's understanding that the
38 maritime boundary remained to be negotiated and indicates that Ghana understood
39 the distinction between the petroleum concessions and an international maritime
40 boundary.
41

42 Mr President, these silences speak volumes. In addition, Ghana invents its own
43 version of history. Ghana argues that the Parties have been in agreement for over
44 five decades, since 1956 and 1957, even before their independence, on both the
45 method of delimitation (its so-called "equidistance method") and the actual line (its
46 so-called "customary equidistance line"). Ghana seeks to persuade you that the
47 bilateral exchanges and negotiations were aimed only at determining the precise

¹³ ITLOS/PV.17/C23/4 (9 February 2017), at p. 18-19, lines 44-7 (Wood).

¹⁴ ITLOS/PV.17/C23/4 (9 February 2017), at p. 23, lines 8-24 (Wood); Courrier du Ministère de l'énergie du Ghana à Tullow, 19 octobre 2011, CMCI, Annex 78.

1 coordinates of an already agreed boundary and putting it into the form of a treaty.
2 The evidence, particularly from 1988, 1992, 1997, 2007 and 2008-2014, shows that
3 this is simply not true. During successive meetings between 2009 and 2014, Côte
4 d'Ivoire put forward several delimitation proposals that differed from Ghana's claimed
5 line. Yet in the negotiations, Ghana's dismissal of these proposals was not based on
6 the alleged existence of an agreed boundary. Rather, Ghana presented its line as a
7 "proposal" to serve as a basis for negotiation, the outcome of which would be subject
8 to formal ratification by the Parties' respective parliaments.¹⁵ Only later, in 2011, did
9 Ghana begin to use the terms "customary equidistance boundary" and "tacit
10 agreement".¹⁶

11
12 The assertion that there is an agreed boundary only the precise coordinates of which
13 remained to be agreed, ignores the fact that Côte d'Ivoire protested about drillings
14 that were within the disputed area but far away from Ghana's line and that Ghana
15 heeded these protests. All this occurred, or started to occur, prior to 2009, the time
16 when Ghana alleges the dispute crystallized. Such conduct occurred also since
17 2009. Côte d'Ivoire's rejection of Ghana's 2008 proposal in its statement of February
18 2009 and its letters to the companies in September 2011 and July 2014¹⁷ concerned
19 activities across the whole of the disputed area, not just those close to Ghana's
20 claimed line. It is impossible to reconcile such evidence with Ghana's claim that all
21 the documents concerned demarcation, and used the word "delimitation" by mistake.
22

23 On Monday, Professor Sands attempted to construe the concessions by retroactively
24 assessing them against its claimed line that did not exist at the time, any more than it
25 exists today.¹⁸ He showed numerous sketch maps with the famous "customary
26 equidistance line", as though that line existed before the concessions, as though that
27 line existed from 1956 and 1957. Professor Miron will go into this in more detail.
28

29 I would just recall that Côte d'Ivoire established its first offshore petroleum block in
30 1970. Côte d'Ivoire drew this block so as not to overlap with the block established by
31 Ghana two years earlier. Mr President, Members of the Special Chamber, this was
32 an act of prudence and caution, an act of restraint, aimed at avoiding conflict with a
33 neighbour. This is reflected in the minutes of a March 1992 meeting of the technical
34 committee tasked with collecting and updating data on the delimitation of the
35 maritime boundary between Ghana and Côte d'Ivoire (*Interpretation from French*):

¹⁵ Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45; Discours d'ouverture du Ghana, 1ère réunion de la Commission mixte ivoiro ghanéenne sur la délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 17-18 juillet 2008, CMCI, Annexe 28.

¹⁶ ITLOS/PV.17/C23/4 (9 February 2017), at p. 16, lines 30-32, and at p. 20, lines 18-23 (Wood); Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 août 2011, CMCI, Annex 39; 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.

¹⁷ ITLOS/PV.17/C23/4 (9 February 2017), at p. 22-23, lines 22-20 (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 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.

¹⁸ ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 3-4, lines 48-16, and p. 17-20, lines 22-9; see also ITLOS/PV.17/C23/1 (6 February 2017, morning), at p. 9, lines 5-6 (Klein).

1 [t]he boundary drawn by Esso Exploration on the oil map constituted a
2 unilateral security act for which the Ivorian Government assumed no
3 responsibility.¹⁹
4

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

11
12 First, as you are already well aware, some of Côte d'Ivoire's contracts and legislative
13 acts relating to petroleum exploration and exploitation contain provisions that clearly
14 indicate that the issue of the undelimited boundary was a matter separate from the
15 concessions. For instance, the terms used in the contract granting the concession
16 and in Decree No. 70-618 of 14 October 1970 reflect Côte d'Ivoire's cautious
17 approach: they make a distinction, when delineating the concession area, between
18 14 points the coordinates of which were provided with certainty, on the one hand,
19 and six points the coordinates of which were provided (*Interpretation from French*)
20 "by way of indication" (*Continued in English*) on the other. Almost all the latter points
21 were located on the western and eastern limits of the block, qualified respectively as
22 the (*Interpretation from French*) "border line separating the Ivory Coast and Liberia"
23 (*Continued in English*) and the (*Interpretation from French*) "the border line
24 separating the Ivory Coast from Ghana". (*Continued in English*) It will be recalled,
25 Mr President, that, as is still the case, the international maritime boundaries between
26 Côte d'Ivoire and its neighbours had not been delimited. Such caution reflects the
27 uncertainty and the lack of agreement over Côte d'Ivoire's maritime boundaries.
28 Restraint commanded that the new concessions did not overlap with Ghana's
29 existing concessions in order to avoid tension and possible conflict.

30
31 The 1970 licence was renewed in 1975. Decree No. 75-769 of 29 October 1975,
32 which granted the renewal, contained a more elaborate disclaimer, which read in our
33 translation:

34
35 The coordinates of the reference points M, L and K separating Côte d'Ivoire
36 from Ghana are provided on an indicative basis and should not in any case be
37 considered as being the limits of national jurisdiction of Côte d'Ivoire.²⁰
38

39 Ghana has carefully avoided addressing the 1975 language, focusing on the 1970
40 Decree. The reason for this deliberate omission is obvious: the disclaimer in the 1975
41 Decree is clear evidence of Côte d'Ivoire's early position that its maritime boundary
42 with Ghana had not been delimited. Moreover, between the grant of the concession
43 in 1970 and its renewal in 1975 no drillings took place in the disputed area.
44

¹⁹ Compte-rendu des réunions du Comité technique chargé du recueil et de l'actualisation des données sur la délimitation de la frontière maritime entre le Ghana et la Côte d'Ivoire, 16 et 18 mars 1992, page 2, CMCI annexe 14 (emphasis added).

²⁰ Décret n°75-769 portant renouvellement du permis de recherches d'hydrocarbures n°1, 29 octobre 1975, CMCI, Annex 61.

1 In 1975, Côte d'Ivoire created a new block south of the first block and granted a
2 concession south of the first block. It is telling that the contract granting this
3 concession includes the same disclaimer as for the first block (*Interpretation from*
4 *French*):

5
6 The coordinates of reference points M, L and K separating Côte d'Ivoire and
7 Ghana are given by way of indication and cannot in any case be considered
8 as being the national jurisdiction boundaries of Côte d'Ivoire.²¹
9

10 (*Continued in English*) As confirmation of this practice, from 1990 onwards Côte
11 d'Ivoire included a disclaimer clause in its model contract, reading (*Interpretation*
12 *from French*): “[t]hese coordinates are indicative and cannot be regarded as the limits
13 of the national jurisdiction of Côte d'Ivoire.”²² (*Continued in English*) In the 1993
14 model contract this clause bears the mention (*Interpretation from French*): “To be
15 added if the Block in question is located at the outer margin in the west or the East
16 Boundary of Côte d'Ivoire.”²³ (*Continued in English*) Such clause may be found, for
17 example, in contracts that Côte d'Ivoire signed with Tullow in 2004 and again in
18 2007.²⁴
19

20 Mr President, I now turn to Côte d'Ivoire's 1977 law. This clearly contemplates
21 maritime delimitation as a self-standing issue to be determined in accordance with
22 the rules of international law, as opposed to a matter to follow and be based on
23 petroleum activities. From 1977 onwards, Côte d'Ivoire manifested its intention to
24 proceed to the delimitation of its common maritime boundary with Ghana. As
25 I mentioned last week, article 8 of this law provides for a delimitation by means of
26 agreement, in line with international law. The law is worded in general terms and the
27 use of equidistance and relevant circumstances is only contemplated (*Interpretation*
28 *from French*) “if necessary”. (*Continued in English*) Further, the law clearly states that
29 delimitation is to be effected by means of agreement. Given the absence of any
30 negotiated agreement at the time, the law was – and still is – looking to the formal
31 negotiation and agreement of future delimitations.
32

33 The most important element of conduct pointing to the absence of a tacit agreement
34 is that the Parties repeatedly proposed negotiations on the delimitation of an
35 international maritime boundary separating the maritime zones to which each was
36 entitled, and they eventually held such negotiations. In application of its 1977 law,
37 Côte d'Ivoire took active steps to delimit its maritime boundary by means of a
38 negotiated agreement, starting with the 15th meeting of the Mixed Commission in July
39 1988. By that time, as you will recall, the Mixed Commission had completed the
40 demarcation of the land boundary, and Côte d'Ivoire proposed to initiate discussions
41 on the delimitation of the maritime boundary and put forward its first proposal.

²¹ CMCI, at para. 2.106 and Contrat de partage de production d'hydrocarbures conclu entre la République de Côte d'Ivoire et les sociétés Agip S.A., Getty Oil Company (Ivory Coast), Hispanica De Petroleos (Hispanoil) S.A., Philips Petroleum Company Ivory Coast, 14 janvier 1975, CMCI Annex 60.

²² Contrat-type de partage de production établi par la République de Côte d'Ivoire, 1990, CMCI, annexe 62.

²³ Contrat-type de partage de production d'hydrocarbures établi par la République de Côte d'Ivoire, 1993, CMCI, annexe 64.

²⁴ CMCI, para. 2.109; Contrat de partage de production d'hydrocarbures contre entre la République de Côte d'Ivoire et Tullow, 7 mai 2004, CMCI, annexe 69; Contrat de partage de production d'hydrocarbures contre entre la République de Côte d'Ivoire et Tullow, 5 avril 2007, CMCI, annexe 70.

1 Mr President, let me just clarify one matter here. Mr Tsikata suggested that, since the
2 Minutes of the 1988 Mixed Commission referred to (*Interpretation from French*) “the
3 maritime and lagoon boundary existing between the two countries”, (*Continued in*
4 *English*) any proposals by Côte d’Ivoire would have been in the context of an
5 acknowledgment of an existing boundary in the sea and in the lagoon.²⁵ Mr Tsikata
6 failed to cite the whole sentence, which says that the purpose of the session included
7 studying (*Interpretation from French*) “the possibility of delimiting the maritime and
8 lagoon boundary between the two countries.”²⁶

9
10 (*Continued in English*) Moreover, Mr Tsikata failed to quote a statement that you see
11 in the record of the meeting which distinguished between the lagoon boundary, which
12 was already delimited, and the maritime boundary, which was not. We read there
13 that Ghana said (*Interpretation from French*):

14
15 Following the Ivorian delegation’s statement regarding delimitation of the
16 maritime boundary, the Ghanaian delegation took note of the inclusion of the
17 item in the agenda and said that it was not empowered to discuss it.

18
19 (*Continued in English*) Then it continued (*Interpretation from French*):

20
21 Delimitation of the lagoon boundary presented no difficulty; it was merely
22 necessary to verify the location of the buoys.

23
24 (*Continued in English*) That is, we submit, a clear acknowledgement that the
25 maritime boundary was undelimited.

26
27 Moreover, Ghana’s Counsel pays much attention to the word “*existant*”, which
28 appears in some of the documents before you, but this word does not bear the
29 weight that they accord to it. Of course, in one sense there is always an existing
30 maritime boundary, since the sovereign rights of adjacent coastal States are
31 exclusive.²⁷ This boundary lies somewhere in the undelimited maritime area
32 contiguous to the coasts of two States, an area in which both States have
33 entitlement, but the actual boundary cannot be known with certainty until States
34 reach agreement on maritime delimitation, or a court or tribunal decides the matter.
35 As the ICJ and ITLOS recalled, “delimitation consists in resolving the overlapping
36 claims by drawing a line of separation of the maritime areas concerned.”²⁸

37
38 In 1992, Ghana in its turn proposed that the Parties engage in delimitation
39 negotiations. Ghana’s proposal made no reference to the Parties’ petroleum
40 activities. Côte d’Ivoire welcomed Ghana’s proposal and recalled its own 1988
41 proposal that had remained unanswered. Thus, by 1992 it was clear to Ghana that

²⁵ C23/7, p. 13, lines 38-44 (Tsikata).

²⁶ Procès-verbal de la 15^{ème} session ordinaire de la Commission mixte de réajournement de la frontière ivoiroghanéenne, 18-20 juillet 1988, CMCI, annexe 12.

²⁷ ITLOS/PV.17/C23/6 (10 February 2017, afternoon), at p. 21, lines 11-20 (Miron); see also at p. 3-4, lines 49-1 (Pitron).

²⁸ ICJ, *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 p. 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.

1 Côte d'Ivoire was seeking formal negotiations in order to delimit the Parties' common
2 maritime boundary.

3
4 Mr President, on 2 December 1997 the Parties held a meeting of technical working
5 teams, where it was agreed, according to the minutes, to "reactivat[e] the Ivorio-
6 Ghanaian Commission on the border problems".²⁹ Given the context, this was clearly
7 a reference to delimitation negotiations.

8
9 On Monday Mr Tsikata complained that Counsel for Côte d'Ivoire had said that the
10 purpose of the talks proposed by Ghana in 2007 was "to seek to agree on the non-
11 existent boundary" when, as he said, these words did not appear in Ghana's Note
12 proposing negotiations.³⁰ Counsel was not, of course, purporting to quote from the
13 letter; they were simply stating its obvious meaning. The Note referred to articles 74
14 and 83 of UNCLOS. The Note referred to the need to delimit the international
15 maritime boundaries. Ghana's intentions were set out very clearly in its opening
16 statement at the first meeting of the Mixed Commission in July 2008. Again, after
17 referring to articles 74 and 83, Ghana said that "the Ghana/Côte d'Ivoire maritime
18 boundary must be delimited."³¹ Ghana proposed that

19
20 the boundary in existence which is used by the international petroleum
21 companies in collaboration with PETROCI for Côte d'Ivoire and GNPC for
22 Ghana should be formalized in a bilateral agreement and signed as a common
23 maritime boundary.³²

24
25 That is a very explicit recognition by Ghana of the distinction between petroleum
26 concessions and a maritime boundary. Ghana then gave arguments in support of its
27 proposed line, arguments based on the law of maritime delimitation. Côte d'Ivoire
28 responded to Ghana's proposal in advance of the second meeting, in 2009, with a
29 proposal of its own. Thus, in 2008 Ghana clearly distinguished between the limits of
30 concessions used by the companies and a common international maritime boundary
31 negotiated between the two States.

32
33 As Members of the Chamber will be well aware, between 2008 and 2014 the Parties
34 negotiated on the delimitation of their common maritime boundary, at Ghana's
35 initiative. Ghana's opening statement presented a proposal for a maritime boundary
36 line, and acknowledged that the outcome of the negotiations would have to be
37 ratified by the Parties' respective parliaments.³³ As we have seen, Côte d'Ivoire

²⁹ 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 Dec. 1997), point 5 (emphasis added), RG, Annex 114.

³⁰ ITLOS/PV.17/C23/7 (13 February 2017, morning), at p. 12, lines 26-40 (Tsikata). What Maître Kamara said was : "[l]'objet de ces échanges bilatéraux ainsi exposés par le Ghana était clair : tenter de s'accorder sur la frontière maritime inexistante au jour de l'ouverture des discussions. » (TIDM/PV.17/C23/4 (9 February 2017), at p. 12, lines 31-32).

³¹ Discours d'ouverture du Ghana lors de la 1ère réunion de la Commission mixte ivoiro-ghanéenne sur la délimitation de la frontière maritime, 17 juillet 2008, CMCI, annexe 28.

³² 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.

³³ Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45; Discours d'ouverture du Ghana, 1ère réunion de la

1 rejected Ghana's initial proposal.³⁴ In the course of the negotiations the Parties
2 discussed extensively delimitation methods and geographical circumstances. Such
3 discussions confirm that there was no previously agreed boundary leaving only the
4 precise coordinates to be determined. Ghana did not reject Côte d'Ivoire's various
5 proposals on that basis, but debated the matter in the familiar terms of the law of
6 maritime delimitation. During this time, however, Ghana resumed and intensified its
7 drilling activities, notwithstanding Côte d'Ivoire's repeated protests, as evidenced in
8 its February 2009 statement, in other statements,³⁵ and in the letters it sent directly
9 to the companies. Faced with a series of Ivoirian proposals, Ghana by contrast
10 adopted an inflexible position, compromising the essence and objective of the
11 negotiations.

12
13 I would recall what the ICJ said, in *North Sea* case, about good-faith negotiations:

14
15 The parties are under an obligation to enter into negotiations with a view to
16 arriving at an agreement, and not merely to go through a formal process of
17 negotiation as a sort of prior condition for the automatic application of a certain
18 method of delimitation in the absence of an agreement; they are under an
19 obligation so to conduct themselves that the negotiations are meaningful,
20 which will not be the case when either of them insists upon its own position
21 without contemplating any modification of it.³⁶

22
23 The International Court could have been thinking of Ghana.

24
25 The next element of conduct is this, and I can be very brief since we developed it in
26 our written proceedings, and I recalled last week.³⁷ The Parties' CLCS submissions
27 have nothing to do with the delimitation of the international maritime boundary
28 between the Parties. The CLCS is concerned with the delineation of the outer limits,
29 not the delimitation of maritime boundaries between States. Nevertheless, the CLCS
30 submissions showed the existence of a dispute and of overlapping claims. Ghana did
31 not come back on this.

32
33 As a final element of conduct indicating the absence of a tacit agreement, we have
34 already seen the clear and unambiguous recognition of the absence of a delimitation
35 from the highest level of State authority on both sides. The Presidents of the two
36 States issued two joint statements, in November 2009 and again in May 2015,³⁸

Commission mixte ivoiro ghanéenne sur la délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 17-18 juillet 2008, CMCI, Annexe 28.

³⁴ ITLOS/PV.17/C23/4 (9 February 2017), at p. 20, lines 15-17 (Wood); CMCI, at para. 4.23; Communication de la partie ivoirienne, 2ème réunion de la Commission mixte ivoiro-ghanéenne de délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana, 23 février 2009, CMCI, Annex 30; RCI, para. 4.71.

³⁵ CMCI, paras. 2.71, 5.24; Procès-verbal de la réunion de négociation sur la délimitation de la frontière maritime entre la Côte d'Ivoire et le Ghana [5ème réunion], 2 novembre 2011, CMCI, vol. III, annexe 40

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

³⁷ ITLOS/PV.17/C23/6 (10 February 2017, afternoon), at p. 12-13, lines 38-9 (Wood).

³⁸ Communiqué conjoint établi à l'issue de la visite officielle au Ghana de son Excellence Monsieur Laurent Gbagbo, Président de la République de Côte d'Ivoire, 3-4 novembre 2009, CMCI, Annex 34, at para. 8; Communiqué conjoint publié à l'issue de la rencontre entre le Président de la République de Côte d'Ivoire, le Président de la République du Ghana et S.E. M. Kofi Annan, Genève, 11 mai

1 confirming their aspiration to reach a negotiated solution on the issue of maritime
2 delimitation. We have shown this before but, given Ghana's silence on the matter,
3 I hope you will excuse us if we show it again. The relevant part of the first Joint
4 Statement is on the screen. It states, and this is our translation, that

5
6 the land boundary has been delimited whereas discussions aiming at the
7 delimitation of the maritime boundary had been initiated by the two countries.
8 The two leaders called upon the competent authorities of the two countries to
9 proceed further with the discussions in order to reach a quick outcome.

10
11 The second joint statement was issued on 11 May 2015. In its third paragraph it
12 recalls, and again this is our translation, that "[t]he delimitation of the maritime
13 boundary remains an objective of the Parties."

14
15 Mr President, Members of the Special Chamber, these are the facts Ghana carefully
16 avoids in its attempt to conflate the petroleum relations between the Parties and the
17 issue of the delimitation of their common maritime boundary. The elements I have
18 just recalled paint a very different picture. Côte d'Ivoire has never accepted that its
19 maritime boundary was delimited by way of petroleum concessions, or that it could
20 be delimited by any means other than agreement following negotiation, as provided
21 for in UNCLOS.

22
23 Mr President, Members of the Special Chamber, before concluding, I shall address a
24 couple of miscellaneous points arising from Ghana's pleading on Monday, but I shall
25 not attempt to be exhaustive.

26
27 Professor Sands informed you in response to a question from Judge Wolfrum that
28 the distance between the land boundary terminus and the southernmost edge of the
29 oil concessions was 86.9 nautical miles.³⁹ That is correct, but it should be noted that,
30 as you can now see on the screen and at tab 4, the actual petroleum activity within
31 the disputed area extended only to 54.5 nautical miles, to a drill named PECAN 2A.
32 This was the furthest drilling by Ghana from the baseline. Reference has been made
33 in this connection to the *Peru v. Chile* case, where the ICJ found a tacit agreement
34 out to 80 miles, the furthest extent of fishing activities. I would like to draw the
35 Special Chamber's attention to a fundamental difference between *Peru v. Chile* and
36 the present case. In *Peru v. Chile* the Court had already found evidence of the
37 existence of a tacit agreement, as a result of express language in a 1954 treaty,
38 before it turned to the extent of the fishing activities as an aid to determining the
39 content of that agreement, and in particular the length of the line in respect of which
40 there was a tacit agreement. It would only be if you were to find, contrary to our
41 submissions, that there is a tacit agreement that the extent of the oil concessions (or
42 oil drilling) might be of interest.

43

2015, RCI, Annex 201 (also in Rapport de la Côte d'Ivoire sur le suivi de l'application des mesures
conservatoires, 25 mai 2015, CMCI, Annex 52).

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

1 I move to another point. On Monday Counsel for Ghana returned to the question of a
2 sketch map produced by a private company, CLS.⁴⁰ What they showed you is now
3 on the screen. This is a privately produced map, apparently from the internet site of a
4 private company. As I said last week, it has no probative weight. What is interesting,
5 however, is the fact that the sketch also shows two other lines: between Côte d'Ivoire
6 and Liberia in the west, and between Ghana and Togo, Benin and possibly Nigeria to
7 the east. Ghana has thus shown you and claimed authority for a map which indicates
8 an equidistance line between Ghana and its neighbours to the east.

9
10 Mr President, our friends opposite have sought to introduce a "critical date".⁴¹ In
11 doing so, they invite you to discount developments after that date, unless, in the
12 words of the *Taba* tribunal, "such conduct confirms the understanding reached of
13 what the situation was on the critical date".⁴² Professor Klein accused us of ignoring
14 the point in the first round. Indeed, we did, since we did not see it as a matter that
15 could assist the Chamber. I will explain why. It is hard to say when a dispute arises in
16 the case of an undelimited international maritime boundary. In a sense, there is a
17 dispute until there is an agreement. Ghana puts the date as February 2009, which
18 they no doubt consider to be the most favourable date for them. Yet the date
19 selected could equally well have been 1988, as we suggested in the Rejoinder,⁴³
20 1992, 2011, or 2014, when the case was submitted to arbitration. It is often no easy
21 matter to determine the date on which a dispute comes into existence, but we would
22 say that you do not need to do so in this case. In any event, the *Taba* test is hardly
23 helpful in a case like ours, where there are opposing views as to what the situation
24 was on any particular critical date. One thing is of interest, however: Ghana's claim of
25 a critical date in February 2009 may be seen as an admission that there was no
26 agreement, tacit or otherwise, on a delimitation line at that time.

27
28 On Monday Mr Tsikata took us to task about the map at tab 1 of our Judges' folders
29 from last week, which is entitled "Ivoirian delimitation proposal, 1988".⁴⁴ As he said,
30 we did not refer to it last week. I should perhaps explain that the map was our
31 representation of the line proposed by Côte d'Ivoire in 1988, which was the
32 prolongation of the line joining BP 54 and 55. That line was referred to by Counsel for
33 Côte d'Ivoire last week.⁴⁵ It is described in Ivoirian internal documents that we
34 annexed to our Counter-Memorial.⁴⁶

35
36 Mr President, that concludes what I have to say. Unless I can be of further
37 assistance, I would request that you call Professor Alina Miron to the podium.

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

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

⁴² *Case concerning the location of boundary markers in Taba between Egypt and Israel*, Award of 29 September 1988, *R.I.A.A.* vol. XX, p. 1, at p. 33, para. 112.

⁴³ RCI, para. 4.10.

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

⁴⁵ TIDM/PV.17/C23/4 (9 February 2017), at p. 10, line 4 (Kamara).

⁴⁶ *Compte-rendu des réunions de la Commission nationale de réabornement des frontières*, 12 et 19 mars 1992, CMCI, annex 13; *Compte-rendu des réunions du Comité technique chargé du recueil et de l'actualisation des données sur la délimitation de la frontière maritime entre le Ghana et la Côte d'Ivoire*, 16 et 18 mars 1992, CMCI, annex 14; *Compte-rendu de la réunion de la Commission nationale de réabornement des frontières*, 27 mars 1992, CMCI, annex 19.

1

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

4

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

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

7
8 Ghana does not even seek to conceal the unilateral character of the boundary which
9 it claims. It must be said that it would be hard pushed to do so, the coordinates in its
10 final submissions being those of its oil concessions. They are the coordinates as they
11 existed when the proceedings were brought, and not in 1957 or even in 2009. Ghana
12 has pushed its devotion to its oil line as far as defining the turning points of its claim
13 based not on coastal geography and possible base points, as is generally the case
14 for a provisional equidistance line, but on points connecting the various concessions.

15
16 What is certain is that our opponents are displaying boundless imagination to give
17 some semblance of a legal basis to their unilateral claim. All possible
18 characterizations are marshalled to come to the aid of Ghana. Its preference is for
19 the tacit agreement but, if you were to reject it, you could nevertheless adopt the
20 characterization of a historical or customary line. And if those two characterizations
21 do not convince you, you could always make do with estoppel or *modus vivendi* or, at
22 the very least, a relevant circumstance. As the poet said, “never mind the bottle, as
23 long as you have the drunkenness.”

24
25 The alpha and omega of Ghana’s case thus lies in its oil practice in the disputed
26 area. Otherwise, Ghana has no case: no evidence as regards conservation or
27 exploitation of biological resources, and understandably, as Sir Michael recalled,
28 since the relevant documents contradict Ghana’s argument; nothing either on
29 practice in relation to scientific research; nothing on practice in relation to protection
30 of the environment; nothing on policing activities or rescue at sea. The boundary line
31 claimed by Ghana is the line of its current oil concessions, on which Côte d'Ivoire
32 had, in a spirit of restraint, more or less aligned its own up to 2011. It is not a line of
33 oil activities, since, as I was able to show during our first round, Côte d'Ivoire has
34 regularly opposed drilling which modifies the physical character of the disputed area.

35
36 For Ghana, the relative alignment of concessions and seismic cooperation represent
37 the basis for its claims, the sole source of its entitlement and proof of the existence of
38 a tacit agreement. Sir Michael has done justice to this latter argument. He showed
39 that the Parties have disassociated oil concessions and the boundary line. It remains
40 for me to demonstrate that in law the alignment of oil concessions and authorizations
41 for seismic surveys cannot in any circumstances constitute the basis for entitlement
42 to maritime areas.

43
44 I would like to refer to case law. There is only one possible conclusion that emerges
45 from reading it, and it is patently obvious. International courts and arbitral tribunals
46 have systematically – I repeat systematically – rejected the relevance of oil practice
47 as such in determining a maritime boundary. It is consistent case law that oil practice
48 which, depending on the case, may include concessions, seismic surveys,
49 exploratory drilling and in some cases even exploitation and production of
50 hydrocarbons, cannot constitute an agreement or a relevant circumstance.

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

6
7 Our written pleadings had devoted lengthy arguments to this consistent case law, but
8 on Monday Professor Klein criticized us for ignoring this in our first round. This is a
9 curious pleading technique that involves inviting one's opponent to insist on the
10 strong points of its case, but since Ghana is prompting us to do so, we will take the
11 opportunity with pleasure.

12
13 The judgment in *Tunisia v. Libya* in 1982, on which Ghana places all its hopes, was
14 also the first time the ICJ examined the question of the importance of oil concessions
15 for the purposes of maritime delimitation. It enshrines the principle of lack of
16 relevance, and its sole exception, that of concessions confirming a tacit *modus*
17 *vivendi*.

18
19 In that case, Libya claimed that “the direct northward line asserted as boundary of
20 the Libyan petroleum zones” was “highly relevant to the determination of the method
21 of delimitation.”

22
23 Libya had aligned its oil concessions with those plotted previously by Tunisia, and
24 the two States had respected this *de facto* line, both for their seismic exploration and
25 for numerous drillings, without any protest whatsoever by the other Party. In spite of
26 this conduct, the Court nevertheless concluded that the line

27
28 had been found by the Court to be wanting in those respects necessary to
29 ensure their opposability to the other Party.

30
31 It is true that the Court did indeed delimit the first segment of the maritime boundary
32 up to around 50 nautical miles following this line, but what Ghana fails to mention is
33 that the reason why the Court opted for that delimitation method related to the fact
34 that the *de facto* line confirmed a *modus vivendi* that was crystallized prior to the
35 independence of both States:

36
37 The Court has already indicated how, in the relations between France and Italy
38 during the period when these States were responsible for the external relations
39 of present-day Tunisia and Libya, there came into existence a *modus vivendi*
40 concerning the lateral delimitation of fisheries jurisdiction expressed in *de facto*
41 respect for a line drawn from the land frontier at approximately 26° to the
42 meridian.

43
44 Thus, the *modus vivendi* resulted not from the oil concessions themselves, but from
45 a “delimitation line” between Tripolitania/Libya and Tunisia, a line that Italy had
46 proposed in 1919 to put an end to the multiple fishing incidents, a line which France,
47 far from contesting, respected scrupulously, a line which Tunisia and Libya had
48 themselves adopted as a *de facto* line after their independence, which in fact none of
49 the States challenged in that case. The interpretation that Ghana gives of this
50 judgment, claiming that the oil practice in itself constituted a *modus vivendi* is quite
51 simply incorrect.

1 Is Ghana's case similar to that of Libya, so that you can give it the benefit of the
2 *modus vivendi*? The answer is not just "no"; it is "no" to the power of four. No,
3 because Ghana should have demonstrated that France or the United Kingdom, as
4 the colonial powers, had formulated any kind of boundary proposal applying between
5 Côte d'Ivoire and the Gold Coast. Has Ghana adduced the slightest evidence to that
6 effect? No. It merely presumes that in 1955 the *modus vivendi* or the tacit line
7 already existed. On what does Ghana base that presumption? On nothing.

8
9 The sketch map currently on screen, which Professor Sands proudly displayed on
10 Monday, is a timely illustration of the absence of any grounds for Ghana's argument.

11
12 It is on this presumption, hanging in thin air, that Ghana most naturally applies the
13 concessions then drawn unilaterally by the two States. Do those concessions refer to
14 or confirm a positive act establishing the boundary? No. This is sufficient to pull the
15 rug out from under Ghana's *modus vivendi*.

16
17 But let us delve deeper. What is the legal value of the two permits granted by the
18 colonial powers in 1956 and 1957? It should be borne in mind that the only evidence
19 for these permits is on screen, published in the *Bulletin of the American Association*
20 *of Petroleum Geologists* in 1958. Two sketch maps of poor quality published in a US
21 scientific journal certainly cannot constitute original proof of a tacit agreement on the
22 boundary.

23
24 Now, even if, through some kind of wilful blindness, we ignore these countless
25 original sins in the key evidence of Ghana, were there activities based on those
26 permits that extended over time? No. Neither Ghana nor Côte d'Ivoire conducted
27 drilling in the disputed area, and these two permits were rapidly abandoned in 1963
28 and 1965.

29
30 So what is left of Ghana's *modus vivendi* argument? Nothing!

31
32 Let us now turn to the second judgment of the ICJ pertaining to oil conduct, the *Gulf*
33 *of Maine* judgment. In that case, despite the coincidence of the US and Canadian oil
34 concessions, from which Ghana would seek to derive benefit, the Chamber noted:

35
36 even supposing that there was a *de facto* demarcation between the areas for
37 which each of the Parties issued permits ... this cannot be recognized as a
38 situation comparable to that on which the Court based its conclusions in the
39 *Tunisia/Libya* case. It is true that the Court relied upon the fact of the division
40 between the petroleum concessions issued by the two States concerned.

41
42 However, the Court adds:

43
44 it took special account of the conduct of the Powers formerly responsible for
45 the external affairs of Tunisia ...and Tripolitania ..., which it found amounted
46 to a *modus vivendi*, and which the two States continued to respect when, after
47 becoming independent, they began to grant petroleum concessions.

48
49 The *Gulf of Maine* judgment thus confirms that there cannot be a *modus vivendi*
50 based on the alignment of oil concessions. That judgment does not therefore offer
51 any support for Ghana's argument. Quite the opposite, it categorically contradicts it.

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

4
5 The 1985 judgment in *Libya v. Malta* rejects Malta's argument that the common line
6 of the boundary concessions was

7
8 any pattern of conduct ... sufficiently unequivocal to constitute either
9 acquiescence or any helpful indication of any view of either Party as to what
10 would be equitable.

11
12 The second case is *Guinea v. Guinea-Bissau*, where the arbitral tribunal decided not
13 to take account of an oil concession granted by Portugal.

14
15 The third case, another arbitration, is the *Saint-Pierre-et-Miquelon* case, where
16 likewise the tribunal did not give accord any importance to oil concessions granted by
17 the Parties, especially since no drilling took place after reciprocal protests.

18
19 I will dwell just a little longer on the two awards in *Eritrea/Yemen*, which confirm the
20 great reluctance of international judicial and arbitral bodies to take account of oil
21 practice for the purposes of maritime delimitation. In its first decision on sovereignty
22 over island formations, the tribunal had, *inter alia*, taken into account (*Continued in*
23 *English*)

24
25 a pattern of Yemen's offshore concessions, unprotested by Ethiopia and
26 Eritrea, [which] taken together with the pattern of Ethiopian concessions,
27 confirmed Yemen's sovereign claims to the disputed islands

28
29 and it even noted that

30
31 [t]hose contracts ... lend a measure of support to a median line between the
32 opposite coasts of Eritrea and Yemen.

33
34 (*Interpretation from French*) However, when it reached the second phase, maritime
35 delimitation, the tribunal nevertheless held that this same median line, which Eritrea
36 saw as a historic boundary, could not be made into a maritime boundary.

37
38 The Tribunal held: (*Continued in English*)

39
40 that is not the same as saying that the maritime boundary now to be drawn ...
41 should track Eritrea's claimed "historic median line".

42
43 (*Interpretation from French*) The same evidence based on oil practice which the
44 tribunal had accepted in determining sovereignty over islands was rejected for the
45 delimitation of the maritime boundary.

46
47 I now come to the 2002 *Cameroon v. Nigeria* judgment, which is a fundamental
48 decision with regard to the legal relevance, or rather lack of legal relevance, of oil
49 practice. Nigeria relied on two circumstances – and I am quoting from its Counter-
50 Memorial. First, "the relevant licences ... mostly date back several decades", and the
51 second circumstance is that (*Continued in English*)

1 there has never been any protest from Cameroon at the granting or extension
2 of these concessions, or at subsequent exploration, drilling or exploitation.

3
4 No protest to activities.

5
6 (*Interpretation from French*) Faced with these facts, which were not contested by the
7 Parties, the Court nevertheless considered, in particularly clear and generally
8 applicable terms, that:

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

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

22
23 Has Ghana provided proof of a tacit agreement? No. On the contrary, as Sir Michael
24 has just shown, there is a whole series of evidence attesting to disagreement on the
25 boundary.

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

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

39
40 Lastly, I come to the most recent arbitral award which has certain similarities with the
41 case before you. I will leave aside all the others where the *Cameroon v. Nigeria*
42 principle has been confirmed. In this most recent award, *Guyana v. Suriname* in
43 2007, Guyana claimed to its advantage the alignment of oil concessions on either
44 side of a "historical equidistance line" which had been there for more than 50 years
45 and had not been contested by Suriname. This is exactly Ghana's argument in the
46 present case.

47
48 Having provided a detailed analysis of all the relevant previous case law, the Tribunal
49 noted the (*Continues in English*):

50

1 dictum that oil wells are not in themselves to be considered as relevant
2 circumstances unless based on express or tacit agreement between the
3 parties

4
5 and insisted upon

6
7 the marked reluctance of international courts and tribunals to accord
8 significance to the oil practice of the parties in the determination of the
9 delimitation line.

10
11 The conclusion was obvious:

12
13 The Tribunal takes the view that the oil practice of the Parties cannot be taken
14 into account in the delimitation of the maritime boundary in this case.

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

18
19 First, States plot and grant oil concessions even though the boundary is not
20 delimited. Second, it is not unusual for the respective concessions of the two States
21 to be aligned along a certain equidistance line. Third, performance of concession
22 contracts often entails seismic surveys, and less often invasive drilling activities,
23 because they always give rise to protests from the other State concerned. Fourth and
24 last, courts and tribunals are extremely reluctant, and even refuse, to take into
25 consideration oil practice, however intensive, for the purposes of delimiting the
26 maritime boundary.

27
28 On Monday Mr Reichler asked, emphatically and eloquently, whether the decrees, oil
29 concession maps or authorizations for seismic surveys meant nothing in the present
30 case. I have the impression that the case law provides a definitive answer, which my
31 esteemed friend will not like, because they do indeed mean nothing for the purposes
32 of the maritime delimitation with which we are concerned.

33
34 On the other hand, Ghana's invasive unilateral activities in the disputed area, carried
35 out despite Côte d'Ivoire's protests, do engage its responsibility; and this is the point
36 that I want to look quickly at now.

37
38 Mr President, Members of the Special Chamber, on Monday the Agent for Ghana
39 encouraged you

40
41 to look at how [oil] operations came about, and what their existence tells you
42 about the Parties' ... shared intentions as to the location of the boundary.

43
44 This is exactly what Côte d'Ivoire wants.

45
46 For the delimitation of the maritime boundary, Côte d'Ivoire has favoured bilateral
47 dialogue with its neighbour. It has also showed restraint in the maritime boundary
48 area. It has not encroached on the concessions that were unilaterally granted by
49 Ghana, and it has shared information from seismic surveys. It has not engaged in
50 invasive activities and, even though it has protested strongly against the drilling
51 operations of its neighbour, Côte d'Ivoire has always refrained from taking any

1 coercive measures to bring them to an end. Our opponents have, on several
2 occasions, chided Côte d'Ivoire because it has "never once attempted, in all those
3 years, to extend its oil activity and interests eastwards" of the line claimed by Ghana.
4

5 Mr President, it seems that these admonishments are incitements to internationally
6 wrongful acts.
7

8 Conversely, Ghana's attitude has been that of *fait accompli*, and we maintain that
9 characterization without any hesitation, despite the rather offended protests from our
10 opponents. The picture of this *fait accompli* has emerged gradually, culminating in
11 2016 when the TEN field went into production.
12

13 In 1988 this area was not drilled at all.
14

15 In 1989 Ghana began the first drilling without any prior notification to Côte d'Ivoire.
16

17 In 1999 and 2002 two wells were drilled by Ghana at the height of the Ivorian civil
18 war. On Monday Professor Sands stated that Côte d'Ivoire had not lodged any
19 specific protest against them, forgetting that Côte d'Ivoire had, from 1992, expressed
20 its general opposition to invasive activities in the maritime area to be delimited and
21 also forgetting that Ghana had failed to inform us of those drilling operations in a
22 deposit overlapping the provisional equidistance line. Moreover, that field is now
23 abandoned.
24

25 But Ghana reoffended in 2009 by authorizing Tullow to drill in another overlapping
26 field, TEN, which is far from being abandoned, as it started production last August. I
27 will pass over Côte d'Ivoire's reaffirmation of its opposition to the drilling which it
28 reiterated in 2007, 2009 and 2011. Even though during these proceedings Ghana
29 continues to ignore our protests, as it did during the negotiations, they have been
30 recorded in the case file on the basis of which you will be required to assess the
31 attitude of the Parties.
32

33 Thus, in 2017 Ghana drilled no fewer than 35 wells, running up to a distance of
34 50 nautical miles from the coast.
35

36 Mr President, as is well known, *effectivités* are like a good wine; they improve over
37 time. So we can understand why Ghana wants to age its *effectivités*, if possible by
38 half a century, because it makes it a round and significant figure. But a Beaujolais
39 Nouveau, even poured into the old wineskins of a Romanée-Conti, does not become
40 a great vintage.
41

42 The same goes for Ghana's invasive operations, which Ghana is trying to present as
43 a continuation of the concessions which it has granted since 1957. However, the
44 concession contracts currently in force date from 2006 for the Deepwater Tano/Cape
45 Three Points block granted to HESS for an initial period of three years; from 2013 for
46 the Wawa block, awarded to Tullow for an initial period of seven years; from 2013 for
47 the TEN block, awarded to Tullow again, for a period of 30 years; from 2013 for the
48 South Deepwater Tano block, awarded to AGM for an initial period of three years;
49 and from 2014 for the Expanded Shallow Water Tano block, awarded to CAMAC for
50 an initial period of three years.

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

3
4 As I said last week, Tullow was not a party to the proceedings. Even so, its interests
5 are certainly well represented by Ghana's Counsel. I will simply note that even
6 though the initial concession contract dates from 2006, it was renegotiated in 2013,
7 to become a production contract; and, as we have pointed out a number of times,
8 Tullow committed most of the production costs after the formal notice from Côte
9 d'Ivoire.

10
11 Members of the Special Chamber, Ghana has beseeched you not to call into
12 question the stability of the boundary, even though it has not been delimited. In fact,
13 it is the stability of its contractual relations with oil companies that Ghana is trying to
14 protect.

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

23
24 By way of conclusion, let me make a few brief comments on the grounds for
25 engagement of Ghana's responsibility.

26
27 In respect of sovereign rights, our opponents continue to decry the absence of
28 precedent, even though, during the first round, I analysed a number of decisions by
29 the ICJ, and at least one arbitral award, which all confirm the principle of
30 responsibility for unilateral acts in a disputed area. However, if there is a gap in the
31 case law, *quod non*, you have the opportunity to fill it.

32
33 In respect of the violation of paragraph 3 of article 83, Ghana's drilling in the disputed
34 area must be characterized as such; and I would point out that it is not necessary for
35 drilling to have taken place in an area which you declare to be Ivorian. In *Guyana v.*
36 *Suriname*, Guyana's responsibility was engaged for drilling just one well, even
37 though it was located in an area which the tribunal ultimately declared to be
38 Guyanese.

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

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

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*):

18 Please be seated. We will resume our hearing. Professor Alain Pellet has the floor.

19
20 **MR PELLET:** Thank you very much. Mr President, distinguished Members of the
21 Special Chamber, our opponents do not like this sketch map – the one that you will
22 see on the screen in just a second – but it does reflect extremely well the reality of
23 the case. It establishes the general direction of the coasts of the two States; and the
24 inversion of this direction on the section Abidjan to Cape Three Points. It shows that
25 these coasts are practically equal in length and consist of a concavity on the Ivorian
26 side and a convexity on the Ghanaian side. They compensate one another, so to
27 speak: the Ghanaian protuberance is equivalent to the Ivorian concavity.

28
29 This situation of macro-geographical equality should be kept in mind when drawing
30 the course of the maritime boundary between the two States.

31
32 Our opponents did not like the second sketch map either, but it is particularly
33 eloquent. This establishes the reality and significance of the cutoff flowing from the
34 Ghanaian line on Côte d'Ivoire's entitlement to maritime spaces. This cutoff disrupts
35 the near equality between the Parties that geography establishes. In other words,
36 nature is being called into question here: where nature created a situation of equality,
37 the Ghanaian line would impose an artificial inequality, creating a cut-off effect which
38 you can see in this sketch map very clearly.

39
40 This is not the case with the line that we think is an equitable line, namely the
41 168.7 degree azimuth. That line shares out equally the maritime areas over which
42 the two States have entitlements: not only have you got geographical equality; you
43 have got legal equality.

44
45 This has important legal implications: it shows that the line defended by Ghana (with,
46 one has to say, somewhat less conviction this week than in the first round) does not
47 correspond to the mother of all rules, namely that an equitable solution be reached.
48 Let me point out that our opponents are in agreement on this ultimate objective.
49 According to the words of the Agent of Ghana herself:

1 (Continued in English)

2
3 In finding an answer to these questions, you will of course be guided by the
4 need to arrive at an equitable solution that will do justice to the Parties in
5 accordance with law.
6

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

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

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

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

34 Also, take the *Libya v. Malta* case. The ICJ says that
35

36 The equitableness of an equidistance line depends on whether the precaution
37 is taken of eliminating the disproportionate effect of certain "islets, rocks and
38 minor coastal projections".
39

40 In consequence of that, the ICJ ruled that "it [is] equitable not to take account of Filfla
41 in the calculation of the provisional median line between Malta and Libya."
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
45 configuration."
46

47 Then, having made that choice, the Court can find that there is "no reason to adjust
48 the provisional equidistance line" because the line that the Court has drawn avoids
49 all cutoff by permitting "the adjacent coasts of the Parties to produce their effects in
50 terms of maritime entitlements in a reasonable and mutually balanced way".
51

1 It is also to avoid an inequitable situation that the ICJ in a number of cases set aside
2 recourse to equidistance in favour of the angle bisector method. Thus, in the *North*
3 *Sea* case, the Court ruled that, "if the equidistance method is used ... an inequity
4 would be created". In the *Gulf of Maine* case, a Chamber of the ICJ was of the
5 opinion that it is necessary to "renounce the idea of employing the technical method
6 of equidistance", and considered that

7
8 preference must be given to a method which, while inspired by the same
9 considerations, avoids the difficulties of application pointed out above and is
10 at the same time more suited to the production of the desired result.

11
12 In that particular case it was the angle bisector method, and in the case of *Two*
13 *Guineas* the arbitral tribunal set aside the two equidistance lines proposed by the
14 Parties in favour of an angle bisector line.

15
16 The other possibility is, of course, to draw the line to start with, if it is possible and
17 expedient. You draw a provisional equidistance line, and then you modify it to take
18 into account the relevant circumstances that such a modification requires in order to
19 come up with an equitable solution.

20
21 All this, Mr President, is to say that there are three possibilities. Where possible, you
22 can draw *ex ante* an equidistance line taking certain particular circumstances into
23 account so that that line would be immediately equitable. This first branch of the
24 alternative is not very realistic in our particular case; but it does exist in law. Similarly,
25 you could take into account circumstances that might exclude the initial use of a strict
26 equidistance line and set this line aside in favour of an angle bisector line. That is
27 what we think is the most appropriate solution in this case.

28
29 It is also permissible to retain a provisional equidistance line and, subsequently, to
30 adjust it as the second phase of the three-stage method. But you cannot do what
31 Ghana does, namely to deny the existence of the circumstances and to come up, at
32 the end of the day, with an unfair solution.

33
34 In favour of these remarks, if you allow me, Mr President, I will dwell on a few more
35 specific aspects which our friends on the other side re-visited on Monday, and other
36 aspects that they prudently did not re-visit: useful coasts; the different, but associated
37 question of base points (not without relevance to the instability of the relevant coasts
38 either); I shall also dwell at somewhat greater length on the circumstances that
39 should lead you to set aside any kind of "strict" equidistance line and those which
40 you must not and cannot take into consideration. I will also say a few words on the
41 regional context, to conclude with the final choice of the equitable line that you
42 should decide on, without letting yourselves being intimidated by the apocalyptic
43 implications with which our friends on the other side threaten you.

44
45 It sounds like quite a long programme, Mr President, but let me reassure you that I
46 can go through it quite swiftly.

47
48 To start with, useful coasts: it is not necessary to quibble about the question of the
49 coasts that have to be taken into consideration in order to construct the provisional
50 equidistance line: as Mr Reichler has pointed out, the Parties agree on this point in

1 many respects. And I note that he underlines, rightly, I believe, that, although there is
2 persistent disagreement, it (*Continued in English*) “turns out to be of very little, if any,
3 consequence”.

4
5 (*Interpretation from French*) We agree that whether or not you include in these
6 coasts the segment of the Ivorian coast between the boundary with Liberia and
7 Sassandra, it probably has no impact on the test of disproportionality – although one
8 has to point out that whatever our opponents say, the relevant coast of Côte d'Ivoire
9 is four and a half times longer than that of Ghana. On the other hand, this is in any
10 case not without importance as concerns delimitation by the bisector method.

11
12 Let me recall that, by definition, a bisector line is: “The line formed by bisecting the
13 angle formed by the linear approximations of coastlines.” As such, it is of cardinal
14 importance to determine the general direction of the coasts, which will be taken into
15 account in determining the two angles which they form. Like the
16 equidistance/relevant circumstances method, the angle bisector method, and I cite
17 the ICJ in *Nicaragua v. Honduras*:

18
19 seeks to approximate the relevant coastal relationships, but does so on the
20 basis of the macro-geography of a coastline as represented by a line drawn
21 between two points on the coast.

22
23 These lines have to reflect the general direction of the coasts and have to be
24 sufficiently long “to reflect a coastal front more than 200 nautical miles out to sea.”

25
26 The ICJ considered that it was not the case of a segment of some 100 kilometres,
27 although this was (in *Nicaragua v. Honduras*) a delimitation not extending beyond
28 200 nautical miles but only a little further than 100 nautical miles. This disqualifies the
29 coasts of respectively 119 and 19 kilometres on which Maître Reichler insisted. I
30 know that it was to draw an equidistance line, but it also implied that there was there
31 a straight segment that could have been used to construct an angle bisector. It is not
32 the case. The case law I have just described dictates – and hardly leaves any other
33 choice - that the useful coasts of the Parties for drawing a bisector line consist of
34 straight lines linking their land boundary terminus to that of their respective borders
35 between Liberia and Togo. Furthermore, the segment on which Maître Reichler relies
36 runs in the opposite direction to that of the general direction of the Parties’ coasts.

37
38 Furthermore, if you return to the three-stage method, the relevant coasts are not
39 without interest because you have to determine the necessary base points in order to
40 establish a provisional equidistance line. Even if it is not absolutely unavoidable, the
41 tendency is to confer this more and more to science – the science that Paul Reichler
42 likes so much – to determine them. In this particular case, the two Parties used the
43 Caris Lots software. These points do not coincide because Ghana refers to charts
44 from 1837-1846, whereas Côte d'Ivoire bases itself on modern and more accurate
45 charts. I am not going to go into that.

46
47 However, let me come back to the location of these base points – whether those
48 retained by Côte d'Ivoire or by Ghana.

49
50 Professor Sands asserts that:

1 (Continued in English):
2

3 We, Côte d'Ivoire, assert that there are too few base points and that these base
4 points are too close together. All you [Judges] have to do is look at the case
5 law; look at *Cameroon v. Nigeria* to note that this once again is inaccurate.
6

7 (*Interpretation from French*) I referred to *Cameroon v. Nigeria* with some degree of
8 curiosity because I could not remember that the circumstances were in any way
9 comparable; and they absolutely are not! In its 2002 Judgment, the ICJ explained
10 that, “the limitation on the length of the equidistance line is unavoidable, whatever the
11 base points used on account of the presence of third States” and that
12

13 [g]iven the configuration of the coastlines and the limited area within which the
14 Court has jurisdiction to effect the delimitation, no other base point [it had
15 retained two on either side of the estuaries of the Akwayafé River and the
16 Cross River] was necessary for the Court in order to undertake this operation.
17

18 In our case there is no limited area and no third States that would limit the extension
19 of the delimitation that the Special Chamber has to operate. So you are pretty much
20 more in a *Nicaragua v. Honduras* configuration, where a very small number of base
21 points, closely located the ones to the others – two separated by 176 metres on the
22 Ivorian coast,
23

24 would assume a considerable dominance in constructing an equidistance line,
25 especially as it travels out from the coast. Given the close proximity of these
26 base points to each other, any variation or error in situating them would
27 become disproportionately magnified in the resulting equidistance line
28 (*Nicaragua v. Honduras*).
29

30 Here, an error is all the more likely because Ghana is basing itself on old charts of
31 doubtful reliability, which led it to place all its base points out at sea – and that,
32 despite being somewhat less capricious than the estuary of the Coco River, the
33 relevant coast is nonetheless hardly a stable one. You certainly cannot say, as Paul
34 Reichler said – sententious for once, that (*Continued in English*) “the equidistance
35 line takes into account, and therefore represents, the whole 631 kilometres of
36 relevant coast, not just the distance between the base points” because “base points
37 C-3 and G-7, which control the equidistance line beyond 200 nautical miles, are
38 located 19 and 119 kilometres from the LBT respectively.”
39

40 (*Interpretation from French*) It is quite strange, is it not? These points are situated on
41 a segment of the boundary in a north-west/south-easterly direction, whereas the
42 general direction of the coasts of the two States runs south-west/north-east.
43 Furthermore, they only come into play at 220 and 225 nautical miles from the
44 baselines for points G7 and C3, respectively.
45

46 Let me underscore another oddity, Mr President. On the illustration that is meant to
47 show the Ghanaian equidistance line, Mr Reichler curiously put two base points
48 about 100 kilometres to the west of Abidjan. These two points are not of any
49 relevance in our case because they could only have an effect on the course of the
50 equidistance line beyond 290 nautical miles, in other words well beyond the outer
51 limit of the continental shelf of Ghana, upheld by the CLCS. As for Cape Three

1 Points, if it were accepted as a base point, even basing yourselves on the
2 anachronistic coastline that Ghana likes so much, it would only influence the
3 equidistance line as of approximately 270 nautical miles from the coasts, once again
4 well beyond the delineation fixed by the CLCS. As all the other charts furnished by
5 Ghana indicate, all the base points that could serve to draw the provisional
6 equidistance line are situated on a coastal segment not exceeding 13 kilometres.
7 Even if this strange chart is a Freudian slip, this confirms that Ghana's appetite for
8 areas over which it has no entitlement decidedly knows no bounds.
9

10 There you go, Mr President: I think that that pleads very favourably in favour of the
11 168.7 degree azimuth angle bisector line.
12

13 Moreover, angle bisector or corrected equidistance, what is important is that the
14 single line that you have to draw, Mr President, distinguished Members of the Special
15 Chamber, constitutes an equitable solution; and that can only be if it takes into
16 consideration all the particular circumstances of the case.
17

18 The first is, of course, the encroachment that would result from an inequitable line,
19 the line indeed that Ghana wishes you to adopt.
20

21 We are aware that, (*Continued in English*) "[i]n adjacent States, the equidistance line
22 will almost always produce a cut off."
23

24 (*Interpretation from French*) However, Mr President, there is cutoff and cutoff,
25 (*empiètement et empiètement*). Consistent with settled case law, imbued with
26 wisdom, encroachment is only to be tolerated if it is "reasonable and balanced", as
27 my esteemed opponent pointed out when he quoted me – and he is in good
28 company because this is no less than the most authoritative case law of this Tribunal
29 and of the ICJ. "Reasonable": that is pretty subjective! All you have to do is have a
30 quick glance at the sketch map projected now (you know it well, but it is very
31 eloquent) to note that the encroachment resulting from the Ghanaian line (in red) has
32 nothing balanced about it. This coast is subject to virtually no cutoff. Maybe there is
33 an infinitesimal bit of cutoff between Axim and Cape Three Points. However, the
34 cutoff of the projection of the Ivorian coast is regrettably spectacular. You can see
35 this – it is the huge triangle in dotted lines. As I pointed out on Friday last, this
36 represents an area of 33,585 square kilometres.
37

38 It is not an enclavement – that is for sure – but it does constitute, nonetheless, a
39 considerable cutoff, and that has to be corrected first of all because it is not
40 balanced; and, secondly, it predominantly concerns Abidjan, about whose
41 importance as a major commercial and fishing port I have spoken.
42

43 Curiously – as I can scarcely imagine that he would do so out of perfidy –
44 Mr Reichler also suggested a minute compensation in favour of Côte d'Ivoire.
45 Perhaps he was trying to suggest that some kind of *Peru v. Chile* situation could be
46 an acceptable compromise; but that is not the case. Why? It is for a number of
47 reasons that I am going to tell you about.
48

49 Firstly, we are not here to negotiate but to obtain a judgment based on applicable
50 principles and rules of law; secondly, because, as Sir Michael explained, we are

1 absolutely not in a *Peru v. Chile* situation in which a written agreement had confirmed
2 a tacit agreement far more compelling than that invented by our colleagues on the
3 other side; and finally, because, in any event, Ghana's wrongful activities – let me
4 insist on that – in the disputed area do not extend beyond 54.5 nautical miles from
5 the coast, and certainly not to the 87-odd nautical miles as the response of Professor
6 Sands to a question posed by Judge Wolfrum might have led Judge Wolfrum to
7 think.

8
9 The quasi-subliminal solution suggested almost as an over-discreet aside by
10 Mr Reichler quite simply cannot be taken seriously, Mr President. It would be the
11 meridian that Côte d'Ivoire suggested some time ago as a compromise. I could
12 possibly have understood Ghana trying to dangle some bait before you; but this
13 pitiful shift in position? Really, no! This being the case, the 168.7 degree azimuth,
14 which we consider the line best corresponding to an equitable solution and which is
15 the only legally justifiable solution, has the merit of limiting the cutoff of the Côte
16 d'Ivoire entitlement whilst only creating an encroachment on Ghana which is both
17 "reasonable and balanced, especially if you take into account the modest length of its
18 relevant coastline of 121 kilometres and the absence of any significant port on this
19 segment.

20
21 A few words now, Mr President, if I may, on the Jomoro Peninsula. Mr Reichler says
22 that we have got it all wrong in law as well as in fact.

23
24 In law, they say that I have basically misunderstood the 1977 award in the
25 *Anglo-French Continental Shelf* case. Maybe I have misunderstood it, but in any
26 case I have read it carefully, and this is what it says:

27
28 The further projection westwards of the Scilly Isles, when superadded to the
29 greater projection of the Cornish mainland westwards beyond Finistère, is of
30 much the same nature for present purposes and has much the same tendency
31 to distortion of the same equidistance line, as the projection of an exceptionally
32 long promontory, which is generally recognized to be one of the potential forms
33 of "special circumstance".

34
35 A promontory, which is the equivalent of a peninsula, is "one of the possible types of
36 special circumstance" – one that we would call today a "relevant" circumstance. As
37 for *Libya v. Malta*, which my opponent quoted from with relish – they read into it
38 things which the Judgment never says. Yes, "landmass has never been regarded as
39 a basis of entitlement to continental shelf rights", but this is not what it is about. If it is
40 "the land which dominates the sea", it goes without saying that peculiar geographical
41 configurations, whether they be called "anomalies", "accidents" or "unusual features",
42 may have an effect on maritime delimitation; and, like islands, they require that a
43 correction be made to the equidistance line if they lead to blatant distortions of that
44 equidistance line.

45
46 On the screen you can see the coast as our Ghanaian friends depict it. And now they
47 are turning red and, very wittily, the cartographers of the other side make it nose dive
48 into the sea (Cyrano's nose, I suppose!) That only goes to show that it is a peninsula.
49 Moreover, Mr Reichler says:

50
51 (*Continued in English*)

1 But there is a peninsula along this coast – and it is on the other side of the
2 LBT. This is a peninsula, but it is Côte d'Ivoire's peninsula, not Ghana's. We
3 have heard a lot about Ghana's base points being located along the so-called
4 Jomoro Peninsula. What you did not hear from the other side is that Côte
5 d'Ivoire's base points are located on this same stretch of coast. Thus, the
6 coastline in this area treats both States equally, and allows them both to enjoy
7 their respective seaward projections, on either side of the equidistance line,
8 without any cut-off out to 200 nautical miles and beyond.

9
10 (*Interpretation from French*) Let me make two comments on these assertions.

11
12 First, if the Ivorian strip of land can be called a peninsula, I do not see why the same
13 should not go for the Jomoro Peninsula.

14
15 I do not think it is correct to say that they are both in the same position in terms of
16 maritime delimitation. All things being equal, the Jomoro Peninsula is in the same
17 situation as Saint Martin's Island relative to Myanmar: nobody ever disputed that it
18 belonged to Bangladesh; but the Tribunal underlined that it "lies in front of
19 Myanmar's mainland coast". In fact, the protrusion, which is an accident of history, of
20 the boundary, means that the Jomoro peninsula faces the Ivorian landmass.

21
22 I know, Mr President, that in *Bangladesh v. Myanmar* ITLOS did not consider Saint
23 Martin's Island as being a special circumstance, and it was a question of delimiting
24 the territorial sea; but when we are drawing a single delimitation line over and
25 beyond territorial seas, the Tribunal refused to establish

26
27 a base point on St. Martin's Island [which] would result in a line that blocks the
28 seaward projection from Myanmar's coast. In the view of the Tribunal, this
29 would result in an unwarranted distortion of the delimitation line, and amount
30 to "a judicial refashioning of geography".

31
32 Again, quoting from the Tribunal, "[i]t depends on the particular circumstances of
33 each case."

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

44
45 The last circumstance you should consider when drawing the single delimitation line
46 is that there is another type of concentration: the concentration of hydrocarbon
47 resources in the eastern part of the Tano Basin. I will just make a few comments in
48 response to what our opponents said, factual and then legal comments.

49
50 Factual first of all: Professor Sands stated that (Continued in English) "almost the
51 entirety of the Tano-Ivorian Basin lies directly south of Côte d'Ivoire's mainland, in

1 Ivorian waters”, (*Interpretation from French*) which is really rather odd because he
2 states that, and then immediately recommends that you read an academic article
3 produced in annex 191 of our Rejoinder. In the second paragraph of that article,
4 which is indeed extremely interesting, one reads this (*Continued in English*):

5
6 The Tano Basin is located in the south-eastern part of Ghana ... The portion
7 of the basin which has proven to be of high hydrocarbons potential is located
8 about 60 km offshore Ghana with water depth ranging from 1,200 km to 1,500
9 km.

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 used
30 by our opponents, no doubt to give credence to the idea that Côte d'Ivoire is a bigger
31 producer of oil than Ghana. This is quite wrong, as is clearly shown if you compare
32 the two sketch maps and put them on the same scale, which Professor Sands felt
33 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
48 friends on the other side put the problem the other way round. It is not a question of
49 sharing resources belonging to Ghana, as they seem to think, but it is a matter of
50 determining to whom these resources belong, not based on economic considerations

1 – and we are perfectly aware of the fact that they are hardly taken into account when
2 it comes to maritime delimitation matters – but because of the very specific
3 geomorphology of the continental shelf in the disputed area.

4
5 Last Chance Saloon argument: Me Reichler invokes the absence of any precedent.
6 This calls for a number of comments. International law, first of all, is not all
7 precedent; there is nothing to stop case law from developing further, and your
8 judgment can contribute to that.

9
10 My esteemed opponent also construes the ICJ decision in the *Jan Mayen* case in a
11 very narrow and pretty selective way. Even if it is true that the Court took into
12 account traditional fisheries rights in the disputed area, it was to give Denmark the
13 possibility of "equitable access to the capelin stock" – it is not oil but it is a natural
14 resource – and therefore adjusted, to the advantage of that country, the median line
15 which it had originally drawn.

16
17 Thirdly – and this is in a number of cases I referred to in my second oral pleading last
18 week – international courts have accepted the possibility of taking into account
19 seabed resources. In its judgment of 1993 in *Jan Mayen*, the ICJ did take account of
20 its own case law in this matter. I refer you now to paragraph 72 of the judgment of
21 the Court, which I will not quote to save time. At the end of that paragraph, the Court
22 states: "[t]hose resources are the essential objective envisaged by States when they
23 put forward claims to sea-bed areas containing them."

24
25 Côte d'Ivoire and Ghana are pursuing the same objective here. Where Côte d'Ivoire
26 is concerned, we tried to negotiate with our neighbour and friend, but now we have
27 come before the Special Chamber to negotiate. Ghana, however, preferred to try to
28 present the situation as being a *fait accompli*, which they are trying to pass off as a
29 tacit agreement or, failing that, as a *modus vivendi*, which it claims should lead you to
30 adjust the equidistance line, which it now acknowledges does not coincide with the
31 purported customary equidistance line, whilst minimizing the size of the gap.

32
33 In fact, Mr President, this purported *modus vivendi* should no more influence your
34 decision than the potential losses which Ghana claims are terrible, and which Ghana
35 or its co-contractors may suffer from if you were to decide in favour of Côte d'Ivoire.

36
37 I shall only mention the purported *modus vivendi* as a reminder. Alina Miron
38 demonstrated most persuasively and with great conviction, first of all, that you cannot
39 talk about a *modus vivendi* here; secondly, that even if there were a *modus vivendi*, it
40 would not be of a nature to entail any adjustment to the maritime boundary between
41 the Parties, and that therefore it is not and cannot be considered a relevant
42 circumstance pursuant to the second phase of the three-stage method. It is an
43 autonomous delimitation method, which is impossible to distinguish from a tacit
44 agreement. I would add that Ghana is particularly ill-advised to claim that the line of
45 its oil concessions was considered by Côte d'Ivoire as being an equitable solution.
46 This line, which is in no way equitable, merely reflects the *fait accompli* in the area, a
47 *fait accompli* against which Côte d'Ivoire has filed abundant protests and against
48 which we continue to protest.

1 Similarly, the purported catastrophic consequences of a judgment which would lead
2 to a delimitation which would jeopardize a number of the imprudently but deliberately
3 granted concessions granted by Ghana to a number of oil companies should not
4 intimidate you, Members of the Special Chamber, clearly, and should not influence in
5 any way the course of the maritime boundary on which it is incumbent upon you to
6 decide.

7
8 In this respect, I have the impression that the Ghanaian Party at the start of the week
9 toned it down a bit compared with the thunderous imprecations from Professor Klein
10 during the first round of oral pleadings. It is not a question of apocalyptic losses any
11 more, or a sudden slump in Ghanaian GDP. Our friends on the other side are still,
12 however, warning you against “mayhem”, which according to them would be the
13 result of any calling into question of the purported customary oil line. They have
14 moved the spotlight a little bit: they are now focusing on the risk of jeopardizing
15 contracts concluded with those oil companies which have been the beneficiaries of
16 their imprudence. I quote, for example, from Professor Sands (*Continued in English*):

17
18 If the Special Chamber departs from the existing maritime boundary, the
19 consequences will be very significant indeed. The concessions that have been
20 granted by Ghana will be undermined, and issues may arise under the
21 contracts that underpin them and which have been entered into in
22 consequence of them.

23
24 (*Interpretation from French*) The Agent for Ghana underlined that the end result
25 would be “chaotic, complicated and confusing”.

26
27 I do not know, Mr President, whether these consequences will be quite so dramatic,
28 but, in any case, Ghana can only blame itself for having awarded these concessions
29 and for having encouraged the exploitation of its hydrocarbon resources in the
30 disputed area, despite Côte d'Ivoire's protests and warnings, and having closed the
31 door on any possible settlement in the courts during that crucial period 2009-2014. In
32 any case, these considerations have nothing whatsoever to do with the delimitation
33 upon which you are required to decide. This is clearly not a circumstance which can
34 have any effect on the line of the boundary.

35
36 Mr President, Ghana's counsel has been particularly discreet about the regional
37 context: two rather surreptitious mentions and that is it, in five hours of pleadings last
38 Monday. They just dismissed with a wave of the hand the relevance of this issue.
39 This is a very disdainful attitude, so we do not have much to add to what we have
40 already said during the first round of oral pleadings, namely that even if this is not a
41 relevant circumstance, strictly speaking, which would lead you to modify the
42 equidistance line, although after all – anyway, this does plead in favour of the
43 bisector method. I sense that our colleagues on the other side have avoided the
44 discussion on the bisector method, and that is largely because they did not want to
45 tackle this problem where equity is aligned with the law.

46
47 Mr President, in his first intervention last Monday, Professor Sands enthusiastically
48 quoted, almost with exultation, from a passage of the *Barbados v. Trinidad and*
49 *Tobago* award, which I myself referred to, to recall the margin of discretion which you
50 enjoy when it comes to maritime delimitation. I share his positive opinion on this

1 passage, even if I proclaim it with more of a British stiff upper lip than he did. This is
2 what the arbitrators said in that excellent award of 2006 (*Continued in English*):

3
4 There will rarely, if ever, be a single line that is uniquely equitable. The Tribunal
5 must exercise its judgment in order to decide upon a line that is, in its view,
6 both equitable and as practically satisfactory as possible, while at the same
7 time in keeping with the requirement of achieving a stable legal outcome.
8 Certainty, equity and stability are thus integral parts of the process of
9 delimitation.

10
11 (*Interpretation from French*) But you should not mix everything up, Mr President. The
12 triple motto which Professor Sands gets excited about – certainty, equity and stability
13 – is a feature of the approach adopted by the Tribunal, where they have to rely on
14 finding an equitable solution; they have to be clear without leaving room for
15 contradictory interpretations, and they have to ensure that the situations which result
16 from these decisions are stable. It is clear that, in the name of stability - for that is
17 what I suspect my opponent was thinking of in particular - you cannot be expected to
18 reward the *fait accompli* which Ghana has created.

19
20 To decide on the delimitation which the Parties have asked you to proceed to,
21 Members of the Special Chamber, you have to use your powers of discretion, without
22 restricting yourselves to being schoolmasters, applying mathematical or geometrical
23 formulae. You have to take objective considerations as a basis, and then decide on
24 an approach based on a proven method, taking into account all the parameters, all
25 the specific circumstances, in a situation which is far less banal than our Ghanaian
26 friends would have you believe.

27
28 The 2006 award so relished by Professor Sands recalls this: in any given situation,
29 several lines may seem to respond to the requirement of an equitable solution. We
30 are convinced of this, and we want to arrive at a reasonable understanding, so that
31 both States can exploit without further delay the hydrocarbon resources in the
32 disputed area which appertains to them. Côte d'Ivoire has proposed during these
33 negotiations, which it did not know at that time were notional, a number of alternative
34 lines: in 1988 the extension seawards of the last segment of the land boundary going
35 from BP 54 to BP 55; in 2009 a meridian constituted by the median between the
36 meridian starting from BP 55 and that starting from the last point on the land
37 boundary before the turning point at 90 degrees towards the lagoon, in other words,
38 a meridian which neutralizes the Jomoro Peninsula; in 2010 a meridian passing to
39 the LBT, in other words starting from that point, in other words, BP 55.

40
41 During negotiations in 2011, Côte d'Ivoire proposed an initial bisector based on the
42 data it had at that time; then in 2014, thanks to the new information it had received, it
43 proposed a second bisector, the one with which you are familiar, Members of the
44 Special Chamber, which corresponds to the 168.7 degree azimuth line.

45
46 Having said that, Mr President, it is one thing to make proposals during diplomatic
47 negotiations, during which parties may take into account all sorts of circumstances,
48 including the wish to conclude swiftly or the wish to give an advantage to the other
49 party for whatever reason, but it is not the same as a situation where a court such as
50 yours has to draw a line in compliance with generally applicable legal principles.

1 We believe that the line we are asking you to agree on meets that requirement
2 because it acknowledges reasonably and in a balanced way the respective
3 entitlements of both Parties. It takes into account all the particular circumstances.
4 The line is drawn according to the rules of the art and accommodates the interests of
5 the other States in the region. As we underlined, the simplest, most objective, and
6 most effective method for drawing this line is the bisector method.

7
8 I remind you of a point I insisted upon last week. It is just one variant of the three-
9 stage method commonly called the equidistance/relevant circumstances method.
10 Both give you guarantees of objectivity by including the use of geometry and by
11 taking into account all the specific circumstances. The first is merely a question of
12 determining what the relevant coasts are, and the second, at the second stage,
13 where you can adapt the line to take into account relevant circumstances. Both of
14 them, it seems to us, lead to the same line of the maritime boundary between Côte
15 d'Ivoire and Ghana, and this is the equitable solution which Côte d'Ivoire asks you to
16 decide upon, Mr President and Members of the Special Chamber.

17
18 Thank you very much for your attention to my pleadings, prepared with the
19 assistance of Ms Tessa Barsac. I would ask you, Mr President, to give the floor now
20 to Me Pitron.

21
22 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

23 Thank you, Professor Pellet, for your intervention. I give the floor without further ado
24 to Me Pitron.

25
26 **MR PITRON** (*Interpretation from French*): Thank you, Mr President.

27
28 Mr President, distinguished Judges, after all these numerous hours of debate you
29 have all the elements that you need to form your decision. We do not need to revisit
30 them; it would be a waste of time.

31
32 Now that you will be deliberating shortly, I would just like to stick to the fundamentals
33 of this case and why you were seized in the first place.

34
35 What actually have the Parties requested of you? To resolve the dispute concerning
36 the delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the
37 Atlantic Ocean.

38
39 What tools do you have today to respond to this question?

40
41 The simplest would have been to have a boundary accepted by both States.
42 Unfortunately for you and for Ghana, that is not the case. As you have heard
43 throughout the hearings, in unequivocal fashion, *inter alia* this morning by Me
44 Kamara, Côte d'Ivoire has recalled a number of times – 1970, 1975, 1988, 1992,
45 1997 and 2008 all the way through to 2014 – that its maritime boundary with its
46 neighbour remained undelimited. The two Parties negotiated for at least ten years to
47 try to achieve this, without success. Sir Michael recalled in excellent fashion this
48 morning why the repeated stance of Côte d'Ivoire prohibited the existence of such an
49 agreement.

1 How could, moreover, a Court bind a State by a boundary agreement to which that
2 State never consented, even more so when that State had repeatedly made it clearly
3 known that it disagreed with its neighbour?
4

5 The second tool at your disposal, which might have facilitated your task, resides in
6 the reference to the line of oil blocks to come, as Ghana repeats *ad nauseam*, to its
7 customary equidistance boundary.
8

9 However, it has been recalled at length to you that no legal value can be accorded to
10 a line of oil blocks. Professor Miron set out this morning in definitive fashion that
11 never have judges taken into account the existence of such a line in the process of
12 delimiting a maritime boundary between two States.
13

14 On this particular point Ghana continues to repeat that the allegedly passive conduct
15 of Côte d'Ivoire (*Continued in English*) "during five decades" (*Interpretation from*
16 *French*) would constitute flagrant proof of its acceptance of a *fait accompli*.
17

18 But, Mr President, distinguished Judges, let me put a question to you: what could
19 Côte d'Ivoire's conduct be when confronted with its neighbour's hegemonic position?
20 Go to war?
21

22 Does not the Montego Bay Convention oblige parties to negotiate where they
23 disagree on the delimitation of a maritime boundary? What else was Côte d'Ivoire
24 doing in 1988, when it proposed to its neighbour a meeting to determine the maritime
25 boundary between the two States, then within the framework of ten or so meetings
26 held by the Joint Commission on the Delimitation of the Maritime Boundary?
27

28 Côte d'Ivoire practised what any responsible State would practise in a conflictual
29 situation in order to avoid exacerbating the situation, all the while preserving its
30 rights: negotiate, negotiate, negotiate. Should Ghana be rewarded today for having
31 refused to adopt a constructive attitude in the negotiations by relying on a *de facto*
32 situation, created by Ghana for its own advantage, and thus sanction Côte d'Ivoire
33 for having systematically sought an agreement by refusing the use of force?
34

35 At this stage, Mr President, distinguished Members of the Special Chamber, I think
36 you will be at a bit of a loss, because you have to note that none of the arguments
37 raised by Ghana can be upheld, and that Ghana has made both you and us waste a
38 great deal of time trying to demonstrate what cannot be demonstrated.
39

40 Côte d'Ivoire for its part has done the work, the work for which the two States seized
41 you, namely, to put before you evidence: the evidence which will enable you to
42 delimit a maritime boundary with its neighbour. Côte d'Ivoire relied on methods in
43 force and took into consideration, both in the choice of its methods and for the course
44 of the boundary, the decisive geographical circumstances in the case. The disputed
45 area claimed by the two Parties is a kind of lozenge, which you can see on the
46 screen, of about 32,000 square kilometres. Côte d'Ivoire claims sovereign rights
47 falling to it, to the west of the 168.7 degree azimuth line, which constitutes the only
48 appropriate line of delimitation between the two Parties. This area, moreover, is the
49 area of whose existence the Chamber took note in April 2015 in its Order prescribing
50 provisional measures. Any reduction of this area by any form of artifice with which

1 Ghana tempts you by taking into account not the 168.7 degree azimuth line but the
2 provisional equidistance line identified by Côte d'Ivoire, which you can now see on
3 the screen and what Ghana calls "the area in dispute", is out of the question.
4

5 The reality – and that has been our analysis throughout the case, I mean Côte
6 d'Ivoire's entire team – is that Ghana is paying today for the mistaken choices it
7 thought it had to make in this case. Ghana started off with some maximalist line
8 which it claimed, namely they wanted to have ratified, at whatever cost, this line of
9 petroleum blocks, to artificially validate that line *a posteriori* by recourse to the
10 equidistance/relevant circumstances method, giving its reasoning some semblance
11 of legal rigour. The logical demonstration of its position would have required an
12 inverse approach: first of all, verify the existence of circumstances consistent with the
13 line of oil blocks but, as is the rule, any kind of extreme position, tainted in its
14 premises, inevitably leads to contradiction and shows perforce the erroneous
15 character of the demonstration.
16

17 Let me just give you three examples, among many others, of the insurmountable
18 inconsistencies confronting Ghana today because of the position that it has adopted.
19

20 The first of these contradictions relates to the subject of the dispute itself. What did
21 Ghana ask you to start with and then jointly Côte d'Ivoire and Ghana subsequently?
22 Let me cite, by reference to the special agreement of 3 December 2014 signed by
23 both Parties in the presence of President Golitsyn, what they wanted to do: “to
24 submit to a special chamber of the International Tribunal for the Law of the Sea the
25 dispute concerning the delimitation of their maritime boundary in the Atlantic Ocean.”
26 I read it out: "delimit" the boundary between Ghana and Côte d'Ivoire.
27

28 How can Ghana contradict itself to the point that it asks you today via its Agent to
29 “declare the existence of a boundary which the Parties have themselves long agreed
30 and delimited in practice and in consequence”? If this is not a true denial, it is at the
31 very least a flagrant inconsistency. Is it possible to find oneself in a more awkward
32 position?
33

34 The second of these contradictions is that Ghana is forced to systematically reject – I
35 would even say systemically reject – all delimitation propositions made by Côte
36 d'Ivoire and all Côte d'Ivoire's arguments in support of its propositions.
37

38 Indeed, how could Ghana accept a single one of Côte d'Ivoire's arguments, because
39 that would be tantamount to calling into question the only boundary which it wants,
40 namely that of its oil blocks? Thus, Ghana adopts an unchanging position, sticking to
41 a restrictive, if not to say over-narrow, approach to the case law – what I would call a
42 sort of self-righteous refusal to move, and that leads to conflicts when you are blind
43 to reality. What about the tiny segment of coasts used for the construction of the
44 provisional equidistance line? A banality, according to Ghana, even if there is no
45 precedent at all which deals with a comparable situation. The fact that the segment in
46 question runs in a contrary direction to the coasts of the two States? Well, that is
47 unimportant according to Ghana, it does not matter, despite the cutoff which results
48 offshore of Abidjan.
49

1 What about the Jomoro peninsula? No partial effect, according to Ghana, despite its
2 small area and decisive character for the course of the provisional equidistance line.

3
4 How about the instability of the coasts? Not proven, according to Ghana, but nothing
5 from its expert on the scientific demonstration presented by Côte d'Ivoire.

6
7 The exceptional concentration of hydrocarbons in the disputed area? Of no
8 significance, according to Ghana, given the oil deposits off Côte d'Ivoire's coasts;
9 and of Mr Pellet's excellent scientific demonstration, nothing on the scientific
10 demonstration presented by Côte d'Ivoire.

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

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

28
29 The third and final contradiction that Ghana is compelled to display owing to the
30 flaws of its original decisions: instrumentalize the proceedings, and here I am
31 referring to the use of article 298 of the Montego Bay Convention. I will be brief. Let
32 us just recall a few facts. On 11 and 12 February 2009, a ministerial meeting is held
33 in Abuja with the member states of ECOWAS, to which Côte d'Ivoire and Ghana
34 belong, and concerned with the outer limits of the continental shelf, where it is
35 decided that "the maritime boundaries of opposing adjacent States will be the
36 subject of discussions in a spirit of co-operation to arrive at a final decision."

37
38 On 23 February, nine days later, as part of the second negotiation meeting with
39 Ghana, the Ivorian side solicits the suspension of unilateral activities by Ghana.

40
41 At the same time, in March, Ghana discovers a significant oil deposit in the TEN
42 zone, and in December of the same year it invokes article 298 of the Convention that
43 excludes recourse to an international court to settle the dispute between the two
44 States on their boundary.

45
46 Thus, the same year, 2009, will have seen both a reiteration of Côte d'Ivoire's
47 position on its boundary in line with that of States of the region, discovery of oil in the
48 disputed area, and Ghana raising the article 298 protective shield.

49

1 As shown on the next slide, no fewer than 30 wells - that is between five and seven a
2 year - are drilled in the disputed area by Ghana over the next five years, as shown on
3 the subsequent slides. The virgin area of 1985, 30 years later, became an area
4 comprising no fewer than 34 wells – the small black dots – all drilled by Ghana
5 specifically as of 2009.

6
7 Mr President, in the interests of time, I will now adopt the oratorical technique of one
8 of Ghana's counsel by relying on the proven and objective facts that I have just cited.

9
10 We can readily imagine Ghana, having begun difficult negotiations with Côte d'Ivoire
11 as part of the delimitation of the maritime boundary, discovering that the Tano basin
12 is rich in oil. Let us not use big words. Justice, good faith and – let us be even more
13 general – equity would certainly have led Ghana to inform its neighbour of these
14 discoveries and put in place a joint exploitation agreement awaiting delimitation of
15 the boundary between the Parties. Who knows? As is often the case, maybe each
16 Party would have been satisfied with a beneficial agreement allowing each to exploit
17 the oil in the non-delimited area. Assisted by counsel, we can readily imagine Ghana
18 reviewing the possibilities open to it to unilaterally exploit the area concerned. What
19 better than to protect itself by having recourse to article 298? Was it in Accra,
20 Washington or London? Five years later, the wells are drilled, production is about to
21 come on stream, oil companies, duly warned by Côte d'Ivoire for several years now,
22 are worried about continuing in such uncertain exploration and extraction conditions.
23 The fact is sufficiently accomplished to the benefit of Ghana to abandon the
24 protection of article 298 and within 48 hours file an arbitration compromise.

25
26 The obverse side of the coin is that recourse to legal proceedings now compels
27 Ghana to pay the price for its extreme positions.

28
29 It quotes in its pleadings (*Continued in English*) "the considerable scale of the
30 damages [Ghana] would suffer if Côte d'Ivoire's change of position were to be
31 accepted."

32
33 (*Interpretation from French*) To be even more specific, the damages would be
34 threefold: damage inflicted on its economy, which was discussed during the
35 provisional measures phase; and two additional types of damage, which are
36 complementary: on the one hand, the risk of being sued by the oil operators who,
37 misled as to the sovereignty of Ghana's rights in the area, might claim significant
38 compensation for damages; and, on the other, the risk of having to negotiate with
39 Côte d'Ivoire the practical arrangements that will stem from your decision were you to
40 adopt any line other than that which they claim.

41
42 Therein lies an additional contradiction that Ghana is facing. It was Ghana and
43 Ghana alone that decided to grant concessions in a non-delimited area and therefore
44 did not belong to it. It was Ghana and Ghana alone that included in the contracts the
45 misleading mention according to which the concessions granted were within the
46 Ghana's jurisdiction, and I cite (*Continued in English*) "all of the said area is within
47 the jurisdiction of Ghana".

48
49 (*Interpretation from French*) It was Ghana and Ghana alone that ignored Côte
50 d'Ivoire's protests and began to grant oil exploration and exploitation permits. It was

1 Ghana and Ghana alone that exacerbated the damage by continuing to grant a
2 number of these permits in spite of its neighbour's protests. It was Ghana and Ghana
3 alone that deliberately protected itself from all legal interference by maintaining its
4 declaration pursuant to article 298, thereby blocking the swift resolution of a
5 crystalized dispute.

6
7 Thus, Ghana blames Côte d'Ivoire for its own failings and asks it to bear the
8 consequences. There is no need for me to go on any longer in my demonstration of
9 that which, out of contradiction, becomes inconsistency, if not to recall this cardinal
10 principle: that every party must unilaterally limit the risks that it takes within a dispute.

11
12 Mr President, as to the apocalyptic consequences of changing the line that
13 opportunistically allowed Ghana to secure its access to oil in the area, they would
14 prompt a wry smile from any oil and gas specialist. Is it necessary to recall the
15 countless agreements reached between two States competing on an oilfield located
16 in a non-delimited maritime boundary area? Those agreements that international
17 courts strongly encourage. It is firmly established by case law that possible practical
18 difficulties (assuming, as Ghana does, that co-operation with its neighbour
19 constitutes a difficulty in the exploitation of an overlapping deposit) to which
20 delimitation of the exploitation of resources could lead could not, in any case, be
21 viewed as something that prevents a court from exercising its powers in the matter.
22 The ICJ recalled the opposite in the *North Sea* case, which, in the interests of time, I
23 will not quote.

24
25 I could go on like this, reeling off the litany of inconsistencies that Ghana is up
26 against owing to the totally arbitrary nature of the boundary line with Côte d'Ivoire
27 that it unilaterally set to its advantage with the sole aim of preserving its interests to
28 the detriment of law and equity.

29
30 I will stop there because I know that we have been heard, Mr President, Judges, and
31 I would ask you to kindly give the floor to Minister Toungara, Agent for the Republic
32 of Côte d'Ivoire.

33
34 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

35 Thank you, Mr Pitron, for your presentation.

36
37 Before giving the floor to the Agent of Côte d'Ivoire, I would like to mention that
38 paragraph 2 of article 75 of the Rules of the Tribunal provides that at the conclusion
39 of the last statement made by a Party at the hearing, its Agent, without recapitulation
40 of the arguments, shall read that Party's final submissions. A copy of the written text
41 of these, signed by the Agent, shall be communicated to the Tribunal and transmitted
42 to the other Party.

43
44 I now invite the Agent of Côte d'Ivoire, Minister Adama Toungara, to give his
45 statement and to read the final submissions of Côte d'Ivoire.

46
47 **MR TOUNGARA** (*Interpretation from French*): Thank you, Mr President.

48
49 Mr President, Members of the Special Chamber, Côte d'Ivoire is renowned for
50 scrupulously keeping its word, for stubbornly seeking peace through dialogue, and

1 for is aversion to conflict. This political choice was first made by President Félix
2 Houphouët-Boigny who made Côte d'Ivoire "a friend to all and an enemy to none".

3
4 This was also the choice made by his successors, in particular His Excellency
5 Alassane Ouattara.

6
7 Côte d'Ivoire has conducted itself in this way at all times vis-à-vis Ghana, its
8 neighbour and brother, in respect of the delimitation of their common maritime
9 boundary.

10
11 It is in this spirit that Côte d'Ivoire entered into a series of discussions and
12 negotiations, marked by meetings and commitments made at the level of the Heads
13 of State of the two countries.

14
15 In my previous position as Minister for Mines, Petroleum and Energy, I was an eye
16 witness to ten rounds of negotiations, conducted unsuccessfully, between the two
17 States.

18
19 I assisted President Alassane Ouattara when, on 11 May 2015 in Geneva, he met his
20 Ghanaian counterpart, John Dramani Mahama, in the presence of Mr Kofi Annan, the
21 former Secretary-General of the United Nations.

22
23 At that summit the two Heads of State, true to their mutual vision of regional
24 integration, publicly stated their wish to reach an agreement on the delimitation of a
25 boundary which was still under discussion and said that the delimitation of the
26 maritime boundary remained an aim to be achieved.

27
28 At the end of his official visit to Côte d'Ivoire on 1-2 June 2016, John Dramani
29 Mahama, the Ghanaian President, reaffirmed that position.

30
31 Mr President, Members of the Special Chamber, Côte d'Ivoire and Ghana have
32 pleaded before your esteemed Chamber.

33
34 It is clear, after these pleadings, that there has never been a formal, informal or tacit
35 agreement between Côte d'Ivoire and Ghana on the limit of their common maritime
36 boundary; that Côte d'Ivoire has never agreed a customary equidistance line with
37 Ghana; and that there has never been any silent acceptance by Côte d'Ivoire of the
38 oil or other activities undertaken by Ghana in the disputed area.

39
40 That is why, in 2014, we joined with Ghana to ask you to make the delimitation.

41
42 Côte d'Ivoire has confidence that your justice will strengthen peace and stability
43 between our two States.

44
45 Mr President, Members of the Special Chamber, 15 countries in our sub-region have
46 created an economic and political group called the Economic Community of West
47 African States (ECOWAS). This organization has meant that we have been able to
48 provide peace, stability and economic development for the people in the sub-region.
49

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

5
6 I would like to express our deep gratitude to you, Mr President, and the Members of
7 the Special Chamber for listening to us with patience and kind attention. I would like
8 to thank the Registrar and the Registry staff, whose high level of efficiency we have
9 greatly appreciated. Thanks, too, to the interpreters who have translated the
10 presentations of each side so outstandingly. I would also like to say to the Agent for
11 Ghana and her delegation how much we appreciate the cordial atmosphere between
12 the two teams, which reflects the relationship between our two countries.

13
14 I would like to wish the Ghanaian delegation a safe journey home at Accra.

15
16 Mr President, Members of the Special Chamber, I shall now read the final
17 submissions of the Republic of Côte d'Ivoire:

18
19 On the basis of the facts and law set forth in its written submissions and during the
20 oral pleadings, the Republic of Côte d'Ivoire requests the Special Chamber to reject
21 all Ghana's requests and claims, and:

- 22
23 (1) to **declare and adjudge** that the sole maritime boundary between Ghana and
24 Côte d'Ivoire follows the 168.7° azimuth line, which starts at boundary post 55
25 and extends to the outer limit of the Ivorian continental shelf;
26
27 (2) to **declare and adjudge** that the activities undertaken unilaterally by Ghana in
28 the Ivorian maritime area constitute a violation of:
29
30 (i) the exclusive sovereign rights of Côte d'Ivoire over its continental shelf, as
31 delimited by this Chamber;
32
33 (ii) the obligation to negotiate in good faith, pursuant to article 83,
34 paragraph 1, of UNCLOS and customary law;
35
36 (iii) the obligation not to jeopardize or hamper the conclusion of an agreement,
37 as provided for by article 83, paragraph 3, of UNCLOS; and
38
39 (3) to **declare and adjudge** that Ghana has violated the provisional measures
40 prescribed by this Chamber by its Order of 25 April 2015;
41
42 (4) **and consequently:**
43
44 (a) **to invite** the Parties to carry out negotiations in order to reach agreement
45 on the terms of the reparation due to Côte d'Ivoire, and
46
47 (b) **to state** that, if they fail to reach an agreement within a period of six (6)
48 months as from the date of the Judgment to be delivered by the Special
49 Chamber, said Chamber will determine those terms of reparation on the
50 basis of additional written documents dealing with this subject alone.

1 Thank you.

2

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

4 Thank you, Minister Toungara.

5

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

8

9 I would now like to give the floor to the Registrar, who will give you some information
10 about documentation.

11

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

13

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

21

22 Thank you, Mr President.

23

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

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

28

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

32

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

35

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

41

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

45

46 The hearing is now closed.

47

48

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