

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2015

Public sitting

held on Monday, 30 March 2015, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President of the Special Chamber,
Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

Verbatim Record

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

<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 Marietta Brew Appiah-Opong, Attorney General and Minister for Justice,
as Agent;

Ms Helen Awo Ziwu, Solicitor-General,
H.E. Ms Akua Dansua, Ambassador of the Republic of Ghana to the Federal
Republic of Germany, Berlin, Germany,

as Co-Agents;

and

Mr Philippe Sands QC, Professor of International Law, University College of
London, Matrix Chambers, London, United Kingdom,
Mr Paul S. Reichler, Partner, Foley Hoag LLP,
Mr Daniel Alexander QC, 8 New Square, University College, London, United
Kingdom,
Ms Clara Brillembourg, Partner, Foley Hoag LLP,
Mr Pierre Klein, Professor, Centre of International Law, Université Libre de
Bruxelles, Brussels, Belgium,
Ms Alison Macdonald, Member of the Bar of England and Wales, Matrix
Chambers, London, United Kingdom,
Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India,

as External Counsel;

Mr Fui Tsikata, Reindorf Chambers, Accra,
Mr Martin Tsamenyi, Professor, A. M. University of Wollongong, Australia,

as Counsel;

Mr Kwame Mfodwo, Maritime Boundaries Secretariat, Office of the President,
Ms Jane Aheto, Ministry of Foreign Affairs and Regional Integration,

as International Law Advisers;

Mr Korshie Gavor, Ghana National Petroleum Corporation (GNPC),
Ms Vivienne Gadzekpo, Ministry of Energy,

as Advisers;

Mr Alex Tait, Vice-President, International Mapping Associates,
Mr Theo Ahwiring, Chief Executive, Petroleum Commission, Regulatory Issues
and Petroleum,
Mr Thomas Manu, Director of Exploration, Ghana National Petroleum
Corporation (GNPC), Petroleum,

Mr Lawrence Apaalse, Lead Geologist, Ghana National Petroleum Corporation (GNPC), Continental Shelf and Petroleum,

Mr Kwame Ntow-Amoah, Ghana National Petroleum Corporation (GNPC), Petroleum,

Mr Nana Asafu-Adjaye, Consultant, Petroleum,

Mr Kojo Agbenor-Efunam, Environment Protection Authority, Environmental Affairs,

Dr Joseph Kwadwo Asenso, Ministry of Finance, Economics and Finance,

Mr Nana Poku, Ghana National Petroleum Corporation (GNPC), Cartographer,

as Technical Advisers;

Ms Nancy Lopez, Assistant, Foley Hoag LLP,

Ms Anna Aviles-Alvaro, Legal Assistant, Foley Hoag LLP,

as Assistants.

Côte d'Ivoire is represented by:

Mr Adama Toungara, Minister for Petroleum and Energy,

as Agent;

Dr Ibrahima Diaby, Director-General of Hydrocarbons, Ministry of Petroleum and Energy,

as Co-Agent;

and

Mr Thierry Tanoh, Deputy Secretary-General to the Presidency,

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

as Special Advisers;

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

Mr Adama Kamara, Avocat, Côte d'Ivoire Bar, Partner, Adka,

Mr Alain Pellet, Professor emeritus, University of Paris Ouest, Nanterre La Défense, former Chairman of the International Law Commission, Member of the Institut de droit international, France,

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

Ms Alina Miron, Doctor of Law, Centre de droit international de Nanterre,
University of Paris Ouest, Nanterre La Défense, France,

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,
Mr Eran Sthoeger, LL.M., New York University School of Law, New York, United
States of America,

as Counsel;

Mr Lucien Kouacou, Directorate-General of Hydrocarbons, Ministry of
Petroleum and Energy,
Ms Lucie Bustreau, Gide Loyrette Nouel, France,

as Advisers.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The
2 Special Chamber will resume the hearing in the *Dispute concerning delimitation of*
3 *the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean.*
4

5 We will now begin the second round of oral arguments from Ghana. Without further
6 ado, I give the floor to Mr Philippe Sands for his presentation.
7

8 **MR SANDS:** Mr President, Members of the Special Chamber, I will make just a few
9 points briefly in response to the presentations made this morning, with regard to
10 what was said by our friends from Côte d'Ivoire and, equally, what was not said. We
11 will be brief because we think it is more useful for us to respond to what you have
12 heard this morning. We responded in our first round very fully to what Côte d'Ivoire
13 had said on its first day.
14

15 I am going to make ten points. The first point concerns issues of timing and
16 prudence. Côte d'Ivoire says that Ghana has been imprudent. We say that we have
17 not.
18

19 In addressing this issue, one is bound to ask oneself: when did a dispute arise
20 between the Parties? Côte d'Ivoire likes to take everything back to the year 2009.
21 There was a moment this morning when Sir Michael gallantly sought to take you
22 back to 1988, but you have seen the evidence before you, and it is plain that there
23 was no dispute then, and the point was not strongly made. Mr Kamara and
24 Sir Michael said very little about what happened in the four decades before 2009 but
25 let us be clear: for more than forty years there was no dispute between Ghana and
26 Côte d'Ivoire. You will have noticed this morning that Côte d'Ivoire were notably
27 reluctant to say anything much about President Houphouët-Boigny's 1970 decree,
28 and, most significantly, they did not dispute its contents.
29

30 The Tribunal of course is aware that during that period there was no formal
31 agreement. Much was made about this point this morning but Ghana has never
32 claimed otherwise. What there was was an understanding, or a tacit agreement, or a
33 consistent practice, that clearly recognized an equidistance line as the boundary. It
34 will be for the merits to determine the exact nature of the legal situation that
35 pertained at the time.
36

37 It was only in 2009 that the situation began to change but only behind the scenes. By
38 then many, many concessions had been signed, and much activity had begun.
39 Money was spent, there was exploration, there was drilling. None of this was
40 objected to by Côte d'Ivoire. That is a critical point.
41

42 The initial change came suddenly, unexpectedly and, most significantly, privately.
43 Meridian 1, apparently cobbled together in some haste, was handed over at a private
44 meeting. The next year, Côte d'Ivoire turned up with Meridian 2. The year after that it
45 arrived at another meeting with a totally different line again, this time a bisector.
46 Interestingly, although Côte d'Ivoire makes much of the 1977 law, we do not see any
47 reference in that law to meridians or to bisectors. Throughout this period Côte
48 d'Ivoire's public position remained constant, as we described yesterday, and they
49 have not challenged our account. Its own concessionaires, including Tullow, knew of
50 no change. Côte d'Ivoire only went public in late 2011, barely three years ago, and

1 that is more than five years after the concessions that had given rise to the activities
2 now complained of were commenced, and by the end of 2011, as Mr Pitron knows
3 well, many wells had already been drilled.

4
5 Côte d'Ivoire accuses Ghana of acting without prudence but can that really be said?
6 What is a prudent State to do, faced with a neighbour that turns up at private
7 meetings and constantly changes its position as to what the situation is in a private
8 setting but publicly says something completely different? That was the situation that
9 Ghana faced. That was the reality.

10
11 I turn to my second point, the plausibility of claims, and in particular the claim by
12 Côte d'Ivoire. Of course, we are a little flummoxed right now as to what claim exactly
13 it is that they are making. Are they claiming Meridian 1 or 2, are they claiming some
14 sort of bisector line, or are they claiming the new line that was suddenly spun up just
15 a few weeks ago, a newly constructed equidistance line?

16
17 We frankly have difficulty in knowing what it is they are saying, and it seems that
18 they do too. Sir Michael is always very careful with his words, and we noticed that he
19 chose his words this morning very carefully: "You surely cannot conclude ... that
20 Côte d'Ivoire's claim to any part of the disputed area is ... implausible."

21
22 That is an interesting formulation, because it does not specify what the claim is, it
23 does not specify the area in which plausibility is said to exist and, in particular, it
24 does not argue that the entire bisector claim, for example, is plausible. Indeed, no
25 one on behalf of Côte d'Ivoire asserted that that claim was plausible. We take that as
26 a concession; they recognize the implausibility of the positions they have taken and
27 at least, if not all, most claims. You will note also that they had nothing to say about
28 the plausibility of Ghana's claim. On that they were completely silent.

29
30 That brings me to a third point, since we are dealing with the issue of plausibility, and
31 that is the maps, many of which underpin elements of Ghana's claim. Côte d'Ivoire
32 was notably defensive this morning in regard to all of the Ivorian maps displayed by
33 Mr Reichler yesterday, which showed clearly and unambiguously that the
34 equidistance line was accepted by Côte d'Ivoire for more than forty years, not only as
35 the boundary between its and Ghana's oil concessions, but also as the international
36 border between the two States. Remarkably, Mr Pellet went so far as to dismiss all of
37 these maps on the basis that (*Interpretation from French*) "none of these maps and
38 none of these sketch maps came from a Governmental source".

39
40 (*Continued in English*) It may be that he has not looked at them very carefully. This is
41 from tab 7 of our Judges' folder of yesterday, and it was displayed prominently on
42 the screen. As shown on the front page, it was published by an entity that calls itself
43 Côte d'Ivoire Ministry of Mines and Energy. The map on the next page shows the
44 equidistance line as the boundary with Ghana. Mr Reichler also showed you the
45 maps attached to the concession agreements that Côte d'Ivoire signed with Vanco in
46 2005 and Yam's in 2006. They were at tabs 11 and 12 of yesterday's Judges' folder.

47
48 These maps also clearly show the equidistance line as the boundary with Ghana.
49 The concession agreements themselves were annexed to our written pleadings, and
50 now I am going to show you the signature pages, signed in each case on behalf of

1 the Republic of Côte d'Ivoire by none other than the Minister of Mines and Energy.
2 Then, of course, there was the signature of the Ivorian Minister of Mines and Energy
3 on the letter of 28 November 1997, at tab 19 of yesterday's folder, consenting to
4 Ghana's request to conduct seismic surveying across the equidistance line "in
5 Ivorian territorial waters close to the maritime border between Ghana and Côte
6 d'Ivoire".
7

8 Finally by way of example, there was Côte d'Ivoire's Strategic Development Plan for
9 2011-2030, at least 13 years after the judgment of this Tribunal on the merits,
10 prepared by the Ministry of Mines, Petroleum and Energy. That was at tab 16, and it
11 described the location of block CDI-100, the former Yam's concession area, as "right
12 next to the Ghanaian border".
13

14 So we do not know what he was looking at yesterday, but these are all maps and
15 documents issued by the Government of Côte d'Ivoire. They have not been
16 challenged or disputed.
17

18 In addition to all of these official Government maps and statements, there were the
19 numerous maps produced by PETROCI showing the equidistance line as the
20 international border with Ghana. This morning Côte d'Ivoire's Counsel told you that
21 PETROCI is a private company that does not speak for the Government. Then the
22 Agent told you, in his concluding remarks, that he actually founded PETROCI, and it
23 is in fact a wholly Government-owned entity. Surely PETROCI knows where Côte
24 d'Ivoire's boundaries are, and perhaps that is why PETROCI is not here on Côte
25 d'Ivoire's delegation. The last ditch effort to disown PETROCI is a sign of
26 desperation on this point. PETROCI is not a private entity, as was implied. It is a
27 company that is known as a "*structure sous tutelle*", an entity answerable to the
28 Ministry of Petroleum and Energy. Turning to annex 9 of our Written Statement, you
29 will see the concession agreement with Vanco in which PETROCI is identified as the
30 holder on behalf of the State of all offshore mining rights.
31

32 Sir Michael told you that the two dots and a dash on these Ivorian maps do not
33 indicate an international border, except on land. He concedes that the same symbol
34 is used on these maps to depict the land border between Côte d'Ivoire and Ghana,
35 and that the same line extends into the sea even beyond the limits of Côte d'Ivoire's
36 most seaward oil concessions, but the same symbols do not indicate an international
37 border in the sea, he told you, because the IHO recommends that, on nautical
38 charts, international borders be represented by plus signs. The difficulty Sir Michael
39 faces is that none of the maps we displayed yesterday are nautical charts. The IHO
40 recommendation is simply inapplicable to these maps. The symbols do, we say,
41 depict an international border, both on land and in the sea.
42

43 Sir Michael also referred you to documents and maps that had been generated in
44 connection with Côte d'Ivoire's and Ghana's submissions to the Commission on the
45 Limits to the Continental Shelf in 2009. He suggested that there was some
46 contrivance perhaps on our part in the maps we presented in our written pleadings
47 and displayed yesterday, neither of which he actually displayed. Let us display them.
48

49 Here is the sketch map he referred to from our written pleadings, showing the
50 continental shelf claim of both Parties and the customary equidistance boundary.

1 Here is the map Mr Reichler displayed yesterday, which is not a sketch map but a
2 reproduction of the map Côte d'Ivoire submitted to the United Nations with, as
3 Mr Reichler carefully explained, the equidistance line and Ghana's continental shelf
4 limit superimposed. Both maps show exactly the same thing, that in May 2009, when
5 Côte d'Ivoire – and I mean Côte d'Ivoire, not PETROCI – submitted its extended
6 continental shelf data to the United Nations, it, like Ghana, made claims only on its
7 own side of the equidistance boundary.

8
9 Let me turn to my fourth point, and that concerns the evidence before this Tribunal.
10 There was some effort this morning to dismiss the four witness statements. We were
11 told that they were self-serving, which is, I think, shorthand to cover the failure of
12 Côte d'Ivoire to produce any witness testimony of its own. Yet the fact is that we are
13 before a court of law and that witness testimony is totally unchallenged. Côte d'Ivoire
14 could have produced witness testimony of its own, or it could have invited these
15 witnesses to be cross-examined. By contrast, we, and perhaps you too, could not
16 help but be rather surprised at the end of the morning when the distinguished Agent
17 for Côte d'Ivoire suddenly announced "I am a witness." I felt like jumping up and
18 looking for my opportunity to cross-examine but I do not think that would have gone
19 down too well. He is not a witness in this case. He is the Agent of Côte d'Ivoire. That
20 said, his words in relation the central role of PETROCI were really rather interesting
21 and they tended to undermine rather the suggestion that you somehow should take
22 no account at all of PETROCI.

23
24 I turn to my fifth point – and I am going to deal with this briefly – the new documents
25 entered by Côte d'Ivoire. We really do not seek to make much of this. This morning
26 before the hearing, Mr President, we raised simply an issue of principle: we had not
27 even read the documents. We did not know what was in them; we had simply seen
28 them for the first time, and now that we have seen them, we see that they do not
29 actually change anything and we do not intend to address their contents for that
30 reason; they do not require any substantive response.

31
32 The reality is – and here we just make the point of principle – document 3 in the
33 Judge's folder this morning was a new document, Decree 75-769, and we now know
34 that it is not available on the website, or at least, it was not available on the web until
35 this afternoon, when Côte d'Ivoire put it on the web, and, just as a matter of principle,
36 Mr President and Members of the Tribunal, we do think it is an unorthodox way to
37 litigate a case. We filed our Written Statement more than a week ago, they have
38 obviously had this document for a considerable period of time, and to spring it on us
39 this morning unexpectedly is, at best, not the usual way of conducting litigation in
40 these matters.

41
42 I turn to my sixth point – the timetable for decision-making in the offshore oil and gas
43 sector. I confess that we on our side were a little surprised by some of the comments
44 made by Professor Pellet. I think he said that Ghana took the risk of losses when it
45 granted the permits. As a first point, that cannot be right. The permits were granted
46 in 2006. For more than 35 years we had a very settled situation on both sides of the
47 line. Côte d'Ivoire had full knowledge of the grant of the permits and it never objected
48 for at least five years.

1 Then Professor Pellet said that all Côte d'Ivoire asks for is (*Interpretation from*
2 *French*) "merely a delay of around one year in the exploitation of oil resources".

3
4 (*Continued in English*) He then referred to what he described as a momentary harm.
5 I make two points in relation to that surprising comment. He rather displayed his lack
6 of knowledge of the oil and gas industry. You simply cannot down tools and then
7 start again three months later, six months later, one year later, three years later.
8 Secondly, it betrays a lack of knowledge of the facts and the evidence that is before
9 you, for all this subject is addressed by witness statements which make clear that
10 stopping a project ten years into its life midstream would shift operations from a
11 going concern to a graveyard concern. It would have the most impacts on the
12 investments already made in relation to both facilities and equipment for which
13 construction is far advanced and dates back to decisions taken in 2006. Equipment
14 will degrade and Ghana will possibly lose its contractors entirely. We refer you to the
15 statements made by officials of the GNPC¹ and Ghana's Ministry of Finance² and
16 Tullow.³ Côte d'Ivoire may not like these witness statements but what they cannot
17 do, in the absence of any evidence of their own, is challenge them; and these
18 witness statements make it clear that you are not talking about a momentary harm
19 but about the most significant consequences imaginable for these arrangements.
20 Professor Pellet stood before you and argued by assertion. He has not a shred of
21 evidence to support the point that he made.

22
23 I turn to my seventh point – the applicable standard that is to be applied. We
24 welcome Professor Pellet's statement this morning that the standard to be applied is
25 that the rights of both Parties must be preserved, not only those of Côte d'Ivoire. It
26 has taken Côte d'Ivoire the entirety of its Request, the entirety of its first round and
27 about 80 per cent of its second round to finally make that concession. We accept
28 that concession. It is an important concession because from that point much flows in
29 this case.

30
31 My eighth point concerns the case law and I shall be even briefer. We noticed this
32 morning that Mr Pitron really did not challenge Professor Klein's statement on two of
33 the cases that have attracted the attention of both Parties, namely *Aegean Sea* and
34 *Guyana v. Suriname*. He suggested that perhaps Professor Klein's criticism of Côte
35 d'Ivoire's argument was a bit excessive but you will have noticed that he did not
36 engage on the merits of those two cases, and on the two central points of difference.
37 In both of those cases there had been longstanding disputes not preceded by a
38 settled period with a settled recognition of a boundary, and in both cases new activity
39 that had never before occurred is what prompted the disputes.

40
41 I turn to my ninth point, which relates to the seventh point on the applicable law
42 standard, that is, the rights of Ghana. There was total silence from Côte d'Ivoire in its
43 Request and in its first round on this issue, and then finally Côte d'Ivoire spoke
44 today. What did they say? Professor Pellet said that Ghana's rights were
45 (*Interpretation from French*) "in no way threatened". He said "[i]t is a question of
46 preserving the rights of Côte d'Ivoire, those of Ghana being in no way threatened".⁴

¹ Ghana PM, Vol. III, Annex S-GNPC, para. 33.

² Ghana PM, Vol. III, Annex S-MOF.

³ Ghana PM, Vol. III, Annex S-TOL, *inter alia* paras 33-35.

⁴ ITLOS/PV.15/C23/3, 30 March 2015, p. 13, para. 9 (A. Pellet).

1
2 (*Continued in English*) That would be an extraordinary proposition. The unchallenged
3 testimony of the consequences of a shutdown are plain – and yet Professor Pellet
4 says that all the harm that will follow, the momentary consequence, does not in any
5 way at all undermine Ghana’s rights. We leave that with you. The point is obviously
6 untenable, given the history of this case, and it is the heart of the matter. Taking
7 President Abraham’s approach and opinion in the *Pulp Mills* case, it is clear that
8 once you look at the competing rights of the Parties, the balance comes down clearly
9 in favour of Ghana’s entitlement to continue having regard to the acquiescence and
10 performance acts of Côte d’Ivoire over many, many decades.

11
12 I turn to my tenth and final point, and again it is another concession from Professor
13 Pellet. (*Interpretation from French*) “The losses which ... would result from the
14 acceptance by the Special Chamber of our request to suspend activity are
15 essentially lost earnings – or, more precisely, delayed receipt of earnings,”
16 (*Continued in English*) and, of course, only to the losses of Ghana. Thank you,
17 Professor Pellet. That is what is called pure financial loss and it is compensable. It is
18 reparable in a judgment on the merits, although, as we have made clear, the scale of
19 Ghana’s possible losses is, we say, unquantifiable. The key point is that the losses
20 that Côte d’Ivoire suffers are purely financial and eminently reparable, and we take
21 Professor Pellet’s own approach and invite him to reflect on the consequences for
22 this claim.

23
24 By way of closing, we listened very attentively to what our friends from Côte d’Ivoire
25 said today. It was full of contradictions. One the one hand, we were accused of
26 addressing the merits constantly, and then they proceeded to do exactly the same.
27 You heard Mr Kamara, Sir Michael Wood and Professor Pellet. Yet Côte d’Ivoire was
28 silent about so much. The environmental harm is plainly abandoned, as is the claim
29 to data and information. Nothing was said about it today, and how could it be, in
30 relation to the lack of evidence on the environment and the evidence on which Côte
31 d’Ivoire was completely silent today in relation to its failure to seek any information
32 from Ghana as recently as 2014 in relation to seismic surveying? Today nothing was
33 said about how Côte d’Ivoire would compensate the momentary harm that would be
34 caused to Ghana by a stop order.

35
36 Mr President, I shall stop there. We think that you have everything you need in the
37 two written statements and from the first round of oral arguments. The law of this
38 Tribunal is clear; the practice of this Tribunal has been crystal clear. This is not a
39 case in which provisional measures come close to being the subject of an order.

40
41 Mr President, I now ask you to invite the Agent and Attorney General of Ghana to
42 present our closing statement and read our submissions, and I thank you once again
43 for your kind attention.

44
45 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):
46 Thank you for your statement, Mr Sands. I note that you could not resist the
47 temptation to mention the documents which were received belatedly this morning by
48 you and by the Chamber. I believe that we discussed this matter with both Parties
49 and with the President and that the President took note and informed both Parties
50 immediately of the Chamber’s decision. Thank you, Mr Sands.

1
2 Before giving the floor to the Agent for Côte d'Ivoire, as the Minister will be both
3 making her statement and presenting the submissions of Ghana, let me remind you,
4 as I did this morning, of the provisions of article 75, paragraph 2. This provision
5 states that

6
7 At the conclusion of the last statement made by a party at the hearing, its
8 agent, without recapitulation of the arguments, shall read that party's final
9 submissions. A copy of the written text of these, signed by the agent, shall
10 be communicated to the Special Chamber and transmitted to the other party.

11
12 I now invite the Agent of Ghana, Ms Brew Appiah-Opong, to give her presentation
13 and to present to us the final submissions of Ghana. Minister, you have the floor.

14
15 **MS BREW APPIAH-OPONG:** Mr President, distinguished Members of the Special
16 Chamber, may I begin by paying tribute to the oral submissions made on behalf of
17 Côte d'Ivoire. They have been attractively presented but have also been quite
18 unjustified and have contained the most glaring omissions.

19
20 I will not repeat the points that I made in the first round or go into the facts in greater
21 detail. You have our extensive written and oral submissions and evidence and you
22 will have an opportunity to study these in your deliberations.

23
24 I will briefly address four issues, to conclude our oral submissions. I do so in the
25 spirit of indicating the useful and important role that this Tribunal can play in
26 resolving the dispute on the merits between the Parties. Equally, it is to be recalled
27 that provisional measures are an exceptional and discretionary remedy, to be
28 granted only when all necessary conditions are met. That is plainly not the case for
29 the request brought by Côte d'Ivoire.

30
31 First, plausibility: Côte d'Ivoire has done nothing to displace the fact that Ghana has
32 a solid case for entitlement to the area that it newly claims, which was recognized in
33 mutual petroleum concession practice over many years and backed by principles of
34 domestic and international law.

35
36 It is, we respectfully submit, not good enough to come before this Special Chamber
37 without mentioning the history and say that Côte d'Ivoire has plausible rights and
38 should therefore be given the order it seeks and, at the same time, say "let us not
39 talk about the historical position or Ghana's rights". You cannot reach a decision on
40 the merits at this stage – we understand that – but there is usually a reason why a
41 party does not want to discuss the merits and we all know what that is.

42
43 In this case there is a clear case for the application of equidistance and the certainty
44 that it has produced over a long period. Côte d'Ivoire may have a new claim to move
45 a long-established boundary but it cannot be said to be a plausible claim to justify the
46 grant of provisional measures, and it is most certainly not a more plausible claim
47 than Ghana's.

48
49 Côte d'Ivoire's position is highlighted by a further point. It is standard in many
50 jurisdictions concerning interim relief for a party making the kind of claim that Côte

1 Côte d'Ivoire asserts to compensate others who are damaged, if it is wrong. Yet Côte
2 d'Ivoire says nothing about how this Special Chamber should preserve our rights
3 even if they were reparable in principle. That both indicates the level of confidence
4 that they have in their own case and highlights the scale and irreparability of the loss.

5
6 May I turn to the suggestion repeatedly made that Ghana has acted "unilaterally" or
7 in a high-handed way? There was even a suggestion that Ghana is bent on
8 hegemony. Ghana is not.

9
10 The actions of which Côte d'Ivoire now complains are rooted in work done over
11 many years, decisions taken and contracts entered into almost a decade ago, at a
12 time when Côte d'Ivoire recognized and acted consistently with our activities as
13 regards petroleum activities in the area that it now claims. As you have seen,
14 Ghana's current exploration and development is, as regards territorial scope,
15 precisely in accordance with the scope of territory repeatedly recognized by Côte
16 d'Ivoire, including by the founding President of Côte d'Ivoire. That is not a quest for
17 hegemony on our part; it is a reflection of the long-standing *mutual* respect of
18 boundary delimitation, based on established principles of international law.

19
20 One point made this morning was that in 2009 Côte d'Ivoire said that the border
21 should not follow the oil concessions. However, that was long after the key
22 concessions had been granted and long after exploration in the area had
23 commenced. It was said that Côte d'Ivoire took the precaution of not granting
24 concessions as though they were somehow holding back with respect to territory
25 they had designated as their own. This is simply wrong. They did not depict the area
26 that they now claim as part of Côte d'Ivoire, let alone offer concessions in it, at the
27 time. Indeed, they did not even do so in 2009.

28
29 May I next respond to two factual points which have arisen during this hearing?

30
31 First, the suggestion that specifically Ghana's monitoring of environmental matters
32 as regards petroleum exploration and exploitation is deficient is wrong and is not
33 supported by evidence. We have dealt with that specifically in our written
34 submissions at paragraph 74 supported by evidence. Ghana implements a regular
35 and effective monitoring programme, which includes verification through inspections
36 by the Environmental Protection Agency.

37
38 Similarly, we have dealt with the issue of selection and competence of contractors.
39 There is nothing in this point. The process has been entirely appropriate and they
40 are competent. We note that Côte d'Ivoire has not invited the Tribunal to compare
41 Ghana's approach in this area with its own.

42
43 Second, there has been entirely normal exploration and development activity based
44 on decisions taken and contracts entered into long ago. As was said this morning,
45 wells in the area now claimed by Côte d'Ivoire were drilled many years ago. Activity
46 in the region has followed a normal time-scale for the offshore oil sector with more
47 wells drilled in the appraisal and production phase. That is not acceleration; it is
48 standard practice. That work is well advanced.

1 The reallocation of blocks is not acceleration. The practice of area management is
2 that there are relinquishments and consequent reallocations. That has happened in
3 Côte d'Ivoire too, but the key blocks in which there is the main activity have been
4 licensed for many years.

5
6 May I then conclude by returning to a point with which I began?
7

8 Ghana respectfully submits that the reasons for refusing the order sought are even
9 clearer here than in previous cases before the Tribunal.

10
11 First, there is in this case a certainty of serious unquantifiable and irreparable harm
12 to Ghana's actual rights and interests, including rights which it has been exercising
13 under the Convention in the area for a lengthy period, if the measures are granted.
14 This is not seriously contested by Côte d'Ivoire. This is not a question of a slight
15 inconsequential delay. If all activities must be held up, there will be a delay of two
16 and a half years of all exploration and production throughout the area with immediate
17 and long-term adverse impact. Interim measures of the kind proposed by Côte
18 d'Ivoire are the antithesis of "practical".
19

20 Second, it has not been established that there will be any harm to Côte d'Ivoire's
21 potential rights, still less irreparable harm, if the measures it seeks are not granted.
22

23 Third, there is no urgency. That is reinforced by the history between the Parties and
24 the fact that, at no time, have the points as to alleged irreparable harm been raised
25 with the Ghanaian authorities. During the hearing, Côte d'Ivoire has put forward no
26 credible material to support its position, despite the extensive evidence from Ghana.
27

28 Fourth, the environmental and competence allegations made by Côte d'Ivoire, and
29 the claim to rights relating to environmental information, are manifestly
30 unsustainable. The Tribunal cannot properly act on such allegations without clear
31 evidence, which is entirely absent. As to the environmental information point, Côte
32 d'Ivoire appears to contemplate that this Tribunal should prevent Ghana and
33 companies who have, at great expense and over a long period, acquired intellectual
34 property rights in information, from using them at a critical point in field development.
35 That, we submit, would be clearly wrong.
36

37 Fifth, the Parties are already cooperating extensively over petroleum production and
38 environmental issues and have done so for a considerable period. It is in our
39 common interest to ensure that oil production is conducted in an environmentally
40 sound way in the Gulf of Guinea – and we have already been working together to
41 that end. There is cooperation. There has been no suggestion that this cooperation
42 is defective. This is not a situation in which it is necessary or appropriate for the
43 Tribunal to impose a different regime of cooperation or information exchange.
44

45 If the Tribunal grants the measures, it will make it less likely that such cooperation
46 will be as fruitful as it has been recently. If a substantial part of the oil industry is shut
47 down on Ghana's western border for a considerable period, that is likely to make
48 regional cooperation over matters concerning that industry harder to achieve.
49

1 Finally, one of the more surprising things that was suggested yesterday by Côte
2 d'Ivoire was that Ghana should defuse the situation pending determination by the
3 Tribunal by stopping work in the area. We agree that, pending determination of a
4 dispute, a Party and the Tribunal should not take steps which are likely to aggravate
5 it. It is, we suggest, clear that Côte d'Ivoire's attempt to prevent the continuation of
6 the existing activities is likely to seriously aggravate this dispute and make its
7 resolution much harder.

8
9 In short, the measures sought by Côte d'Ivoire would guarantee disproportionate,
10 irreparable harm to Ghana, they would aggravate this dispute, and they would cause
11 irremediable injustice.

12
13 Finally, with all respect to our neighbour, Côte d'Ivoire has not acted in accordance
14 with the principles of comity between nations in this case in attempting, on the basis
15 of the very thin material it has put forward, to halt a significant part of one of Ghana's
16 vital industries.

17
18 Côte d'Ivoire made this application as though the events from 1960 to 2009 had not
19 occurred, as though the entire history began only in 2009, or late 2011, when it made
20 its new claims public. With great respect, that is not a reasonable approach. Côte
21 d'Ivoire acted as it did for more than four decades as did Ghana, and it is not now
22 entitled to disregard this.

23
24 Ghana takes this case and our international legal obligations seriously, particularly
25 when subject to unjustified attack. We have filed detailed and extensive written
26 submissions backed by extensive written evidence. We have offered witness
27 testimony, none of which has been challenged. We have brought a substantial
28 delegation to this Tribunal covering the many areas touched by this application. This
29 approach has not been reciprocated either in the written submissions or at this
30 hearing.

31
32 Much could be said about that. May I, instead, conclude in the Ghanaian tradition of
33 international diplomacy and the spirit of ECOWAS, by simply saying that this should
34 be one of the most straightforward cases that this Tribunal has had to decide. It is,
35 we respectfully submit, clear that the provisional measures sought should be
36 refused.

37
38 On behalf of Ghana, I therefore formally request that the application for provisional
39 measures be declined. A formal written submission pursuant to article 75 will be
40 provided.

41
42 May I conclude by thanking you, Mr President and the distinguished Members of the
43 Tribunal, and the Registrar and his excellent staff for arranging this hearing so
44 quickly, and for exceptionally agreeing to sit on a Sunday to deal with the hearing in
45 such an efficient way. The work of the translators and the Registry has been
46 exemplary and we are grateful for that.

47
48 Mr President, distinguished Members of the Tribunal, that concludes the oral
49 argument on behalf of Ghana.

50

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

2 Thank you, Ms Brew Appiah-Opong.

3

4 That was the last oral statement of this hearing so we have arrived at the end of the
5 oral proceedings for this case. I will now give the floor to the Registrar to give you
6 some information about documentation.

7

8 **THE REGISTRAR:** Thank you, Mr President. Mr President, pursuant to article 86,
9 paragraph 4, of the Rules of the Tribunal, the Parties may, under the supervision of
10 the Tribunal, correct the transcripts of speeches and statements made on their
11 behalf, but in no case may such corrections affect the meaning and scope thereof.
12 These corrections relate to the checked versions of the transcripts in the official
13 language used by the party in question. The corrections should be submitted to the
14 Registry as soon as possible and by Thursday, 2 April 2015 at 6 p.m., Hamburg
15 time, at the latest. Thank you, Mr President.

16

17 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): On
18 behalf of the Special Chamber of the International Tribunal for the Law of the Sea,
19 I would like to take this opportunity to express our appreciation for the quality of the
20 presentations from the Agents of both countries, Ghana and Côte d'Ivoire.

21

22 I would also like to thank the Agents of the Parties for the exemplary spirit of
23 cooperation which they have demonstrated throughout these proceedings.

24

25 The Special Chamber will now withdraw for its deliberations. The order in this case
26 will be delivered next month. The Agents of the Parties will be informed in good time
27 of the date on which the order will be delivered, but I would ask them to remain at the
28 disposal of the Special Chamber in order to provide any assistance and information
29 that it may need in its deliberations prior to the delivery of the order.

30

31 The hearing is closed.

32

(The sitting is closed at 5.04 p.m.)