



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER

Press Release

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

SPECIAL CHAMBER PRESCRIBES PROVISIONAL MEASURES

The Special Chamber of the International Tribunal for the Law of the Sea formed to deal with the dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean today delivered its Order on a Request for provisional measures filed by Côte d'Ivoire. Judge Boualem Bouguetaia, President of the Special Chamber, read the Order at a public sitting of the Chamber.

The dispute was submitted, by way of special agreement concluded between the two States concerned on 3 December 2014, to a special chamber formed in application of article 15, paragraph 2, of the Statute of the Tribunal. The case was entered as No. 23 in the List of cases of the Tribunal.

The Request for provisional measures was submitted to the Special Chamber by Côte d'Ivoire on 27 February 2015. At the public hearing held on 29 and 30 March 2015, Côte d'Ivoire requested the Special Chamber to prescribe provisional measures requiring Ghana to:

- take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area;
- refrain from granting any new permit for oil exploration and exploitation in the disputed area;
- take all steps necessary to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire;
- and, generally, take all necessary steps to preserve the continental shelf, its superjacent waters and its subsoil; and
- desist and refrain from any unilateral action entailing a risk of prejudice to the rights of Côte d'Ivoire and any unilateral action that might lead to aggravating the dispute.

At the same public hearing, Ghana requested the Special Chamber to deny all of Côte d'Ivoire's requests for provisional measures.

In its Order of 25 April 2015, having found that it has *prima facie* jurisdiction over the dispute, the Special Chamber notes that the power to prescribe provisional measures under article 290, paragraph 1, of the Convention has as its object the preservation of the

respective rights of the parties to the dispute or the prevention of serious harm to the marine environment pending the final decision (paragraph 39). It considers however that it may not prescribe provisional measures unless it finds that there is a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute (paragraph 41). Concerning the rights which Côte d'Ivoire claims on the merits and seeks to protect, the Chamber states that, before prescribing provisional measures, it need only satisfy itself that these rights are at least plausible (paragraph 58) and finds that Côte d'Ivoire has presented enough material to show that the rights it seeks to protect in the disputed area are plausible (paragraph 62).

In relation to Côte d'Ivoire's request for provisional measures to prevent serious harm to the marine environment, the Chamber finds that Côte d'Ivoire has not adduced sufficient evidence to support its allegations that the activities conducted by Ghana in the disputed area are such as to create an imminent risk of serious harm to the marine environment (paragraph 67). The Special Chamber underlines however that the risk of serious harm to the marine environment is of great concern to it (paragraph 68) and that the Parties should in the circumstances "act with prudence and caution to prevent serious harm to the marine environment" (paragraph 72).

The Special Chamber also considers that there is a risk of irreparable prejudice where, in particular, activities result in significant and permanent modification of the physical character of the area in dispute and where such modification cannot be fully compensated by financial reparations (paragraph 89) and that whatever its nature, any compensation awarded would never be able to restore the *status quo ante* in respect of the seabed and subsoil (paragraph 90). This situation may affect the rights of Côte d'Ivoire in an irreversible manner if the Special Chamber were to find in its decision on the merits that all or any part of the area in dispute belongs to Côte d'Ivoire (paragraph 91). The Chamber therefore considers that the exploration and exploitation activities, as planned by Ghana, may cause irreparable prejudice to the sovereign and exclusive rights invoked by Côte d'Ivoire in the continental shelf and superjacent waters of the disputed area, before a decision on the merits is given by the Special Chamber, and that the risk of such prejudice is imminent (paragraph 96).

The Special Chamber further notes that, in accordance with article 89, paragraph 5, of the Rules, it may prescribe measures different in whole or in part from those requested (paragraph 97).

In the view of the Special Chamber, the suspension of ongoing activities conducted by Ghana in respect of which drilling has already taken place would entail the risk of considerable financial loss to Ghana and its concessionaires and could also pose a serious danger to the marine environment resulting, in particular, from the deterioration of equipment (paragraph 99). It therefore considers that an order suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling has already taken place, would cause prejudice to the rights claimed by Ghana and create an undue burden on it and that such an order could also cause harm to the marine environment (paragraphs 100 and 101).

The Special Chamber considers it appropriate, in order to preserve the rights of Côte d'Ivoire, to order Ghana to take all the necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area (paragraph 102).

Pursuant to article 95, paragraph 1, of the Rules, the Special Chamber requests each Party to submit a report and information on compliance with the provisional measures prescribed not later than 25 May 2015.

The operative provisions of the Order of 25 April 2015 read as follows:

“THE SPECIAL CHAMBER,

(1) Unanimously,

Prescribes, pending the final decision, the following provisional measures under article 290, paragraph 1, of the Convention:

(a) Ghana shall take all necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area ...;

(b) Ghana shall take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area that is not already in the public domain from being used in any way whatsoever to the detriment of Côte d'Ivoire;

(c) Ghana shall carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment;

(d) The Parties shall take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end;

(e) The Parties shall pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.

(2) Unanimously,

Decides that Ghana and Côte d'Ivoire shall each submit to the Special Chamber the initial report referred to in paragraph 105 not later than 25 May 2015, and authorizes the President of the Special Chamber, after that date, to request such information from the Parties as he may consider appropriate after that date.

(3) Unanimously,

Decides that each Party shall bear its own costs.”

Judge *ad hoc* Mensah appends a separate opinion to the Order of the Special Chamber.

The text of the Order, the text of Judge *ad hoc* Mensah's separate opinion and a recorded webcast of the hearing are available on the [website](#) of the Tribunal.

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