

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



2017

Public sitting

held on Tuesday, 7 February 2017, 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)

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**Verbatim Record**

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

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

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1     **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The  
2     Tribunal will resume its session by continuing to hear the oral pleadings of Ghana. I  
3     will immediately give the floor to Professor Reichler, but first let me say that we are  
4     beginning at 3 p.m., and we will finish at 6 p.m., with a 30-minute break at 4.30 p.m.,  
5     resuming at 5 p.m.

6  
7     You have the floor, Mr Reichler.  
8

9     **MR REICHLER:** Mr President, Members of the Special Chamber, I now turn to the  
10    last relevant circumstance alleged by Côte d'Ivoire, which is the, in English  
11    translation, "exceptional concentration of hydrocarbons in the area".<sup>1</sup> This is a rather  
12    brazen argument, and it makes clear what Côte d'Ivoire's approach is really based  
13    on. Their case boils down to this: there is oil out there, and Côte d'Ivoire wants it, so  
14    you should treat that as a relevant circumstance and draw the boundary in such a  
15    way that Côte d'Ivoire gets some of the oil. In fact, Mr President, that is exactly why  
16    we are here before you: there is oil out there, and Côte d'Ivoire wants access to it.  
17    The rest of their case is just window dressing, and it has led Côte d'Ivoire to adopt  
18    one indefensible position after another, as Professor Sands showed you.

19  
20    Realizing finally that their plea for an angle bisector is hopeless, they resort in the  
21    alternative to what they call an "adjustment" of the equidistance line, but their use of  
22    the word "adjustment" is dramatically understated. This is no mere adjustment; it is a  
23    wholesale transformation, replacing a line that runs in one direction, to the south-  
24    west, with another line that runs in a completely different direction, to the south-east.

25  
26    Côte d'Ivoire asks you to do this on the assertion that the presence of "an  
27    exceptional concentration of hydrocarbons"<sup>2</sup> is a relevant circumstance.<sup>3</sup> That is not  
28    only *not* the law today, but contrary to it. No court or arbitral tribunal – not a single  
29    one – has ever ruled that the presence of hydrocarbons was a relevant  
30    circumstance, or has adjusted an equidistance line or any other provisional  
31    delimitation line based on the presence of hydrocarbons in the disputed area.

32  
33    The ICJ provided the most recent guidance on this point in *Nicaragua v. Colombia*,  
34    where it rejected the presence of hydrocarbons as a relevant circumstance, on the  
35    ground that: "issues of access to natural resources" must be "so exceptional ... to  
36    warrant ... treating them as a relevant circumstance."<sup>4</sup>

37  
38    Côte d'Ivoire argues that access to oil is "so exceptional" in this case because there  
39    appears to be a lot of it. But, we say, this cannot be what the Court meant by  
40    requiring that access to resources be "so exceptional" in order for it to be considered  
41    a relevant circumstance.

42  
43    In setting this high standard, the Court was invoking its prior rulings on that issue,  
44    and expressly its judgment in the *Black Sea* case, where it quoted approvingly from

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<sup>1</sup> RCI, para. 2.62.

<sup>2</sup> *North Sea Continental Shelf (Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3 (hereinafter "North Sea Continental Shelf, Judgment"), para. 101(D)(2).

<sup>3</sup> RCI, paras 2.66-2.74.

<sup>4</sup> *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624, para. 223.

1 the *Gulf of Maine* case. In *Gulf of Maine*, the Special Chamber rejected the  
2 argument of the United States that the boundary should be adjusted to ensure  
3 access of US fishermen to their customary fishing areas. It ruled that access to  
4 natural resources should be taken into account only in situations where shifting the  
5 boundary would be required to avoid “catastrophic repercussions for the livelihood  
6 and economic well-being of the population of the countries concerned.”<sup>5</sup>

7  
8 In *Jan Mayen*, the Court determined that this specific requirement was met, because  
9 failure to adjust the boundary line would have deprived Denmark of access to fish  
10 stocks on which its fishermen were historically dependent.<sup>6</sup> *Jan Mayen* remains the  
11 only case in which a court or tribunal has ever adjusted a provisional boundary line  
12 to avoid depriving a party of resources that it had historically enjoyed in the past.  
13 There is no case in which a line was adjusted in order to allow a State access to  
14 resources that it never previously enjoyed.

15  
16 Côte d'Ivoire struggles to show why access to hydrocarbons should be treated  
17 differently than access to fish, and considered a relevant circumstance in the  
18 absence of catastrophic repercussions, or where there has been no prior access to  
19 these resources and thus no deprivation of them. There is certainly nothing in *Gulf of*  
20 *Maine* or *Jan Mayen* to support Côte d'Ivoire's attempt to distinguish between access  
21 to living and non-living resources. In *Gulf of Maine*, the Special Chamber regarded  
22 access to hydrocarbon resources in the same manner as access to fisheries,  
23 explaining that its division of “the main areas in which the subsoil is being explored  
24 for mineral resources”<sup>7</sup> caused “no reason to fear that any such danger” of  
25 catastrophic repercussions would come to fruition.<sup>8</sup>

26  
27 Côte d'Ivoire cannot show – indeed, it does not even allege – that it would suffer  
28 catastrophic repercussions if the customary equidistance boundary were confirmed.  
29 There would, in fact, be no repercussions, since a State cannot be deprived of  
30 something it never had access to in the first place.

31  
32 Mr President, this completes my discussion of Côte d'Ivoire's alleged relevant  
33 circumstances. None of the five factors invoked by Côte d'Ivoire even remotely  
34 qualifies. They have provided absolutely no basis for making any adjustment of a  
35 provisional line.

36  
37 I turn next, and lastly, to the one circumstance that Ghana considers relevant, and  
38 which does justify an adjustment of the provisional equidistance line. That relevant  
39 circumstance is the practice of the Parties for over 50 years, and the *modus vivendi*  
40 that was achieved, to recognize and respect the customary equidistance boundary  
41 as the international border between the two States. Of course, Ghana regards this to  
42 be much more than a relevant circumstance. In Ghana's view, the half-century of  
43 consistent practice is proof of an agreement between the Parties that a boundary

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<sup>5</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 246, para. 237.

<sup>6</sup> See *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Reports 1993, p. 38, para. 76.

<sup>7</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, Judgment, I.C.J. Reports 1984, p. 246, para. 239.

<sup>8</sup> *Ibid.*, para. 238.

1 exists, that it follows an equidistance line, and that that line is the one we have  
2 depicted on our maps as the customary equidistance boundary. It is only in the  
3 alternative that we argue that, if a boundary is to be newly delimited by this Special  
4 Chamber, the Parties' 50-year mutual practice should be, at the very least, a relevant  
5 circumstance justifying an adjustment to the provisional equidistance line so that the  
6 boundary delimited by the Special Chamber is the customary equidistance boundary.  
7

8 This map, which is also at tab 10, shows how small an adjustment is required. Here  
9 is a closer look. Here is an even closer look, zooming in on the territorial sea. At  
10 12 nautical miles, the distance between the two lines, that is, Ghana's provisional  
11 equidistance line and the customary equidistance boundary, is only half a nautical  
12 mile. Shortly thereafter, the provisional equidistance line approaches and runs  
13 almost concurrently with the customary boundary, until, at approximately 77 nautical  
14 miles, the provisional equidistance line crosses the customary equidistance  
15 boundary. From that point seaward, it runs slightly to the west of the customary  
16 boundary. At 200 nautical miles, the provisional equidistance line lies a mere  
17 0.39 nautical miles, that is, 0.4 miles, west of the customary boundary. The two lines  
18 distribute almost the same amount of maritime space to each Party. Within  
19 77 nautical miles, the customary equidistance boundary favours Ghana slightly,  
20 giving it approximately 51 square nautical miles more maritime space than the  
21 provisional equidistance line. But beyond 77 nautical miles, the customary  
22 equidistance boundary favours Côte d'Ivoire a bit more, giving it 67.5 square nautical  
23 miles more maritime space than the provisional equidistance line.  
24

25 The customary equidistance boundary is thus slightly more favourable to Côte  
26 d'Ivoire than Ghana's provisional equidistance line. Nevertheless, it is Ghana's  
27 submission that the provisional equidistance line should be adjusted to conform to  
28 the customary equidistance boundary. A half-century of consistent recognition of the  
29 customary equidistance boundary by both States cannot be ignored. It cannot mean  
30 nothing.  
31

32 We say, as well, that the Parties' mutual recognition of the customary equidistance  
33 boundary must be considered a relevant circumstance, because it is evidence of  
34 what they have both considered to be equitable over the 1960s, the 1970s, the  
35 1980s, the 1990s, and the 2000s, until only a few years ago, when Côte d'Ivoire  
36 abruptly abandoned its longstanding position.  
37

38 In *Tunisia v. Libya*, the ICJ observed that it "must take into account whatever indicia  
39 are available of the line or lines which the Parties themselves may have considered  
40 equitable or acted upon as such ...".<sup>9</sup> In that case, the Court found that a line that  
41 was employed "separately" by each Party "delimiting the eastward and westward  
42 boundaries of petroleum concessions" was a circumstance of "great relevance" and  
43 "one of the circumstances proper to be taken in account" in the delimitation.<sup>10</sup>  
44

45 Here, there can be no question that the Parties did consider the customary  
46 equidistance boundary to be equitable at all times prior to the discovery of oil on the  
47 Ghanaian side, and that that boundary is, to an even greater extent than the line that

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<sup>9</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, Judgment, I.C.J. Reports 1982, p. 18, para. 118.  
<sup>10</sup> *Ibid.*, paras 118, 125.

1 was employed separately and for a much shorter period by Tunisia and Libya, a  
2 circumstance of “great relevance” that should “be taken into account” in the  
3 delimitation.

4  
5 It is Ghana’s position that this longstanding practice resulted in a *de facto* or tacit  
6 agreement on the customary equidistance boundary. If, *quod non*, the Special  
7 Chamber does not consider that the Parties’ mutual acceptance of the customary  
8 equidistance boundary rises to the level of a binding agreement, then it is surely at  
9 least sufficient to establish the existence of a 50-year *modus vivendi* which both  
10 Parties long considered equitable, and thus it constitutes a relevant circumstance to  
11 be taken into account in adjustment of the provisional equidistance line.  
12

13 Mr President, for these reasons, Ghana respectfully submits that the Special  
14 Chamber should confirm that the boundary within 200 nautical miles is the  
15 customary equidistance boundary, as depicted on this map, which is also at tab 11. It  
16 starts on the low water line at the point closest to the agreed land boundary terminus  
17 at BP 55, and follows an average bearing of 192 degrees. The coordinates of the  
18 turning points are shown on the map. Ms Singh will show that this boundary easily  
19 passes the disproportionality test in the third stage of the delimitation process.  
20

21 Mr President, Members of the Special Chamber, I thank you for your patient  
22 attention, and ask that you call Ms Singh to the podium.  
23

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

25 Thank you, Mr Reichler, for your presentation. I immediately give the floor to  
26 Ms Anjolie Singh.  
27

28 **MS SINGH:** Mr President, Members of the Special Chamber, it is an honour to  
29 appear before you and a privilege to do so for Ghana once again.  
30

31 My task this afternoon is to set out Ghana’s case on the maritime boundary between  
32 the Parties in the continental shelf beyond 200 nautical miles, and to respond to Côte  
33 d’Ivoire’s written pleadings in this regard. Mr President, the graphics you will see  
34 during my presentation are at tab 1 of the Judges’ folders for this afternoon.  
35

36 The agreement between the Parties on the customary equidistance boundary  
37 extending beyond 200 nautical miles is clearly confirmed by – and reflected in – their  
38 respective 2009 Submissions to the Commission on the Limits of the Continental  
39 Shelf (CLCS). The plate you see depicts the continental shelf entitlements of the  
40 Parties beyond 200 nautical miles, separated by the customary boundary that is  
41 based on equidistance. In its original submission to the Commission in May 2009,  
42 Côte d’Ivoire asserted a claim beyond 200 nautical miles only to the west of the  
43 customary equidistance boundary with Ghana.<sup>1</sup> You can see this in purple.  
44

45 Similarly, and entirely consistently with its own approach, and that of Côte d’Ivoire,  
46 Ghana’s submission asserted a claim only to the east of that boundary.<sup>2</sup> That is the  
47 line in green. In 2009 there was no overlap. This offers a clear confirmation of a fact

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<sup>1</sup> Memorial of Ghana (4 Sept. 2015) (hereinafter “MG”), Vol. VI, Annex 75 (Côte d’Ivoire, Original Submission to the CLCS (8 May 2009)).

<sup>2</sup> MG, Vol. VI, Annex 74 (Ghana, Submission to the CLCS (28 April 2009)).

1 that the Special Chamber should take account of, we say: in 2009 the Parties  
2 recognized and agreed on the existence and location of their maritime boundary both  
3 within and beyond 200 nautical miles.

4  
5 Côte d'Ivoire maintained its 2009 submission for almost seven years, until March  
6 2016. Only then did Côte d'Ivoire – and its lawyers – come to the belated realization  
7 that the position it was arguing before this Chamber was manifestly incompatible  
8 with the submission it had made to the Commission in 2009. Côte d'Ivoire explains  
9 its late change of position by saying that there was no “urgency” to complete its  
10 submission earlier.<sup>3</sup> Indeed, the urgency seems to have been prompted by the  
11 imminent filing date for its Counter-Memorial. So, on 24 March 2016, a mere 11 days  
12 before it filed its Counter-Memorial, Côte d'Ivoire replaced its original submission  
13 with a new revised submission, one that greatly extended the scope of its claim.<sup>4</sup>

14  
15 Mr President, Ghana's position on the boundary in the outer continental shelf is the  
16 same as for the boundary up to 200 nautical miles. Ghana's primary case is that the  
17 Special Chamber should confirm that the customary equidistance boundary is the  
18 maritime boundary and that it extends beyond 200 nautical miles. Ghana's  
19 alternative case, in the unlikely event that the Special Chamber reaches the view  
20 that there is no customary equidistance boundary beyond 200 nautical miles, is to  
21 delimit a boundary in accordance with the requirements of the Convention. As  
22 Mr Reichler has indicated, this leads to a boundary in the same location as the  
23 customary boundary.

24  
25 Before I address Côte d'Ivoire's arguments, I am pleased to say that there are some  
26 significant points of convergence between the Parties. First, the Parties agree that  
27 they have entitlements to a continental shelf beyond 200 nautical miles.<sup>5</sup> This is, of  
28 course, subject to the Commission's recommendations regarding Côte d'Ivoire's  
29 entitlement. Côte d'Ivoire accepts that Ghana's title is, in its words, “particularly  
30 incontestable”, as the Commission has already adopted recommendations regarding  
31 the outer limits of Ghana's continental shelf in accordance with article 76(8) of the  
32 Convention.<sup>6</sup> Second, the Parties agree that this Chamber has jurisdiction to delimit  
33 the continental shelf beyond 200 nautical miles.<sup>7</sup> This is consistent with the practice  
34 of ITLOS and now the ICJ.<sup>8</sup> Third, in principle, they agree on the respective roles of  
35 the Commission and this Chamber.<sup>9</sup> Finally, and importantly, there is agreement that  
36 the same principles of delimitation are to be applied both within and beyond

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<sup>3</sup> Rejoinder of Côte d'Ivoire (4 Apr. 2016) (hereinafter “RCI”), para. 3.54.

<sup>4</sup> Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter CMCI), Vol. VI, Annex 179. (Côte d'Ivoire, Revised Submission to the CLCS (Mar. 2016)).

<sup>5</sup> Reply of Ghana (25 July 2016) (hereinafter “RG”), para. 4.7; CMCI, para. 8.5: Entitlement to a continental shelf beyond 200 M, as ITLOS has made clear, is “determined by reference to the outer edge of the continental margin, to be ascertained in accordance with article 76, paragraph 4”: *Bangladesh v. Myanmar*, Judgment, para. 437.

<sup>6</sup> CMCI, para. 8.5 (“est d'autant moins contestable”).

<sup>7</sup> MG, paras 6.14-6.28; CMCI, para. 8.2.

<sup>8</sup> *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment*, 17 March 2016.

<sup>9</sup> MG, para. 6.21 *et seq.*; CMCI, para. 8.3. The CLCS's role is to: “draft recommendations the delineation of the outer limits of the continental shelf” and the Special Chamber is tasked with the: “delimitation between the two States”, both within and beyond 200 M. Both have different but complementary mandates.

1 200 nautical miles.<sup>10</sup> Despite these significant agreements, differences remain on  
2 two issues, and these will be the subject of the rest of my presentation.  
3  
4 First, differences remain on the extent of each Party's entitlement, particularly in light  
5 of Côte d'Ivoire's reliance on its revised submission made in 2016 and its  
6 misrepresentation of Ghana's position in this regard. The second area of difference  
7 is the application of the methodology for the delimitation beyond 200 nautical miles.<sup>11</sup>  
8 Whether you take Ghana's primary or alternative argument, Côte d'Ivoire's  
9 application leads to a result that is neither equitable nor legally defensible.<sup>12</sup>

10  
11 I turn now to the Parties' submissions to the Commission and their respective  
12 entitlements beyond 200 nautical miles. Ghana's 2009 submission to the  
13 Commission identified two areas beyond 200 nautical miles along the same margin:  
14 the Eastern and Western Extended Continental Shelf Regions.<sup>13</sup> It is only the  
15 western region that is relevant here, as it is adjacent to the Eastern Extended  
16 Continental Shelf Region of Côte d'Ivoire.<sup>14</sup> The plate that you see now depicts its  
17 outer edges.<sup>15</sup> As you can see, it is defined by four fixed points: OL-GHA-8,  
18 OL-GHA-7, OL-GHA-4, and OL-GHA-9. You can see that it lies to the east of the  
19 customary equidistance boundary with Côte d'Ivoire. It also lies east of the  
20 provisional equidistance line described by Mr Reichler. At its furthest seaward  
21 extension, Ghana's continental shelf extends approximately 45 nautical miles  
22 beyond the 200 nautical miles limit.

23  
24 On 10 March 2014, the subcommission established to examine Ghana's submission  
25 presented its unanimous recommendations to the Commission. It endorsed three of  
26 Ghana's four outer limit points. It only refrained from considering the last, most  
27 westerly outer limit fixed point (OL-GHA-9) "in the absence of an international  
28 continental shelf boundary agreement between Ghana and Côte d'Ivoire".<sup>16</sup> Ghana  
29 accepted the recommendations on the same day. On 5 September 2014, the  
30 Commission adopted the subcommission's recommendations. It "agree[d] with the  
31 determination of the fixed points [Sed-GHA-7-Rev, OL-GHA-7 and OL-GHA-4]  
32 establishing the outer edge of the continental margin of Ghana in the Western  
33 Region." The Commission found that Ghana had fulfilled the conditions set out in  
34 article 76.<sup>17</sup>

35

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<sup>10</sup> See MG, paras 6.29-6.34; CMCI, paras 8.22-8.23, 8.25.

<sup>11</sup> CMCI, paras 8.6, 8.21 *et seq.*

<sup>12</sup> See e.g. RCI, para. 13; see generally RCI, Chapter 3.

<sup>13</sup> MG, Vol. VI, Annex 74 (Ghana, Submission to the CLCS, p. 10.)

<sup>14</sup> Côte d'Ivoire agrees. See CMCI, paras 8.7, and footnote 534.

<sup>15</sup> MG, paras 6.8-6.9 and MG, Vol. VI, Annex 78, (Ghana's Revised Executive Summary (21 August 2013, Accra), p. 7, which sets out the location of the outer limit fixed points of Ghana's Western Extended Continental Shelf Region (Fig. 2): The points are:

- point OL-GHA-8 is located where the sediment thickness formula line intersects with the 200 nautical miles line measured from Ghana's territorial sea baseline
- points OL-GHA-7 and OL-GHA-4 are defined by the sediment thickness formula, and
- point OL-GHA-9 is adjacent to the point where the customary equidistance boundary line meets the outer limit of the continental shelf.

<sup>16</sup> MG, para. 6.10.

<sup>17</sup> MG, paras 6.10-6.11 and Vol. VI, Annex 79 (CLCS, Summary of Recommendations (5 Sept. 2004)); RG, paras 4.20-4.21.

1 It follows from the operation of article 76, paragraph 8, of the Convention that the  
2 outer limits of Ghana's continental shelf beyond 200 nautical miles are now firmly  
3 established. This is one respect in which this case is unique. It is the first maritime  
4 boundary case in which a party before an international court or tribunal has already  
5 received recommendations on its outer limits from the Commission, prior to the case  
6 being decided. In our respectful submission, this Special Chamber, and indeed any  
7 international court, is bound to respect the decision of the Commission on the  
8 delineation of the outer limits of national jurisdiction.  
9

10 Turning to Côte d'Ivoire's entitlement, this was set out in its original submission to  
11 the Commission in May 2009,<sup>18</sup> shortly after Ghana made its submission. It  
12 encompassed an area beyond 200 nautical miles, referred to as the "Eastern  
13 Extended Continental Shelf Region."<sup>19</sup> Its outer limits were defined by six fixed  
14 points.<sup>20</sup> Taken together, you can see that in 2009 the western limit of Ghana's outer  
15 continental shelf and the eastern limit of Côte d'Ivoire's outer continental shelf  
16 respected the customary equidistance boundary.  
17

18 Côte d'Ivoire's original submission also noted the "absence of disputes" at that  
19 time.<sup>21</sup> This was correct, and it is significant. Côte d'Ivoire does not dispute that the  
20 Parties acted in concert when they made their 2009 submissions. They engaged the  
21 same expert to advise them;<sup>22</sup> they used the same vessel to acquire data for their  
22 submissions, a vessel that was offered to Côte d'Ivoire by Ghana to meet the  
23 deadline for its submission. The Ivorian team boarded the vessel from a Ghanaian  
24 port shortly after the Ghanaian team disembarked.<sup>23</sup> Mr President, these are facts  
25 that reflect a clear and unambiguous agreement, the existence of an agreed  
26 boundary, the absence of a dispute, and the fact that representations made by each  
27 side were then relied on by the other.  
28

29 The lack of a dispute before the Commission in respect of the outer continental shelf  
30 continued from 2009 until 2016. When this case was filed in 2014, as matters stood,  
31 there was no dispute between the Parties as regards any decision the Commission  
32 had to take. When the Commission took its decision in relation to Ghana, there was  
33 no dispute. Ghana was able to rely on Côte d'Ivoire's 2009 submission during the  
34 provisional measures phase of these proceedings in March 2015.<sup>24</sup> Côte d'Ivoire did  
35 not indicate to the Special Chamber or to Ghana that its 2009 submission was – as it  
36 now claims – "a brief initial presentation",<sup>25</sup> that it was incomplete or wrong, or that it  
37 was going to be revised in any way. Once again, Côte d'Ivoire offered a surprise with  
38 its revised submission.

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<sup>18</sup> CMCI, para. 8.14.

<sup>19</sup> MG, Vol. VI, Annex 75 (Côte d'Ivoire, Original Submission (8 May 2009), p. 6.).

<sup>20</sup> MG, para. 6.12; RG, para. 4.22.

<sup>21</sup> MG, Vol. VI, Annex 75 (Republic of Côte d'Ivoire, Original Submission to the CLCS, p. 5); RG, para. 4.22.

<sup>22</sup> CMCI, para. 4.115.

<sup>23</sup> See RG, para. 4.14 and RG, Vol. IV, Annex 141 (Email exchanges between GNPC and PETROCI (16 Oct. 2008 – 19 Jan. 2009); Annex 142 (Email from Aquatec Diving Services Ltd. to Aquatec Marine Services Ltd. (24 Nov. 2008)); Annex 143 (Email from Graham Moates, GEM Survey Limited, to Aquatec Marine Services Ltd. (10 Dec. 2008)); Annex 158 (Crew List, R.V. Akademik A Karpinskiy (12 Dec. 2008)).

<sup>24</sup> See ITLOS/PV.15/C23/2/Corr.1 (29 Mar. 2015), pp. 8:45-9:6.

<sup>25</sup> CMCI, paras 8.14 ("une brève présentation initiale").

1  
2 But perhaps Côte d'Ivoire's sudden change should not have come as a surprise.  
3 After all, you have seen several examples of changes of position coming out of the  
4 blue: new methodologies (Meridians 1 and 2, then Bisectors 1 and 2, then adjusted  
5 equidistance), new charts, new lines, new claims. On the approach of Côte d'Ivoire,  
6 prior practice and agreement may be discarded without consequence.  
7

8 As a result of its revised submission, since March 2016 the outer continental shelf  
9 entitlements of the Parties are now said by Côte d'Ivoire to overlap. On the screen  
10 you can see a comparison of Côte d'Ivoire's 2009 and 2016 submissions. The next  
11 image shows the overlap with Ghana's outer limit points. Four of the six new outer  
12 limit points identified by Côte d'Ivoire are almost at the same places as Ghana's  
13 outer limit points.<sup>26</sup> As you can see, RCI.1 overlaps with OL-GHA-4, and so on. Côte  
14 d'Ivoire uses its revised submission before you to discard years of common practice  
15 and agreement and to create a dispute where none previously existed.<sup>27</sup> However, it  
16 cannot simply wish away its original 2009 submission, a document that both  
17 strengthens Ghana's case on the existence of an agreed customary boundary and  
18 underscores Côte d'Ivoire's longstanding recognition of the existence and location of  
19 the boundary up to 2009.  
20

21 Ghana submits that Côte d'Ivoire's pre-litigation position on the boundary beyond  
22 200 nautical miles, which it maintained consistently for seven years, including a year  
23 and a half after these proceedings began, remains on the record and is to be given  
24 great weight. Equally, a submission made in 2016, two years into these proceedings,  
25 should be treated for what it is: a self-serving and unilateral effort that underscores  
26 the significance of what was done in 2009. It cannot add any support to the new  
27 claim. This is consistent with international jurisprudence on the weight to be given to  
28 pre- and post- litigation statements by the Parties.<sup>28</sup>  
29

30 Mr President, Members of the Special Chamber, this brings me to the second part of  
31 my presentation: the precise location of the boundary in the area beyond  
32 200 nautical miles. Ghana's position beyond 200 nautical miles is the same as it is  
33 within 200 nautical miles. There is an agreed boundary in both areas that is based  
34 on equidistance, which both Parties have recognized and respected as the  
35 international boundary in their practice until at least 2009. This is the customary  
36 equidistance boundary from BP 55 (the land boundary terminus) to the outer limit of  
37 national jurisdiction, which lies beyond 200 nautical miles.<sup>29</sup>  
38

39 In the event that the Chamber considers a fresh delimitation to be necessary,  
40 Ghana's alternative position is that the proper application of the equidistance  
41 methodology yields the same result. The provisional equidistance line should be

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<sup>26</sup> See RG, para. 4.26.

<sup>27</sup> As the Revised Submission was silent regarding the current dispute, Ghana has alerted the CLCS to the existence of this dispute and the new overlap in the OCS entitlements of the Parties. See RG, Vol. IV, Annex 145 (Note Verbale from the Permanent Mission of Ghana to the UN to the Secretary General of the UN, No. UN-15 (13 July 2016)).

<sup>28</sup> See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua (Intervening)), Judgment, I.C.J. Reports 1992*, p. 351, paras 362, 364 (finding that, where the dispute was submitted to the Court in 1986, Honduras's 1991 letter of protest to El Salvador's long-standing demonstration of sovereignty over the disputed islands lacked evidentiary value).

<sup>29</sup> RG, para. 4.34.

1 adjusted, as Mr Reichler has explained, based on relevant circumstances, to  
2 conform to the customary equidistance boundary. The same line should be extended  
3 along the same azimuth beyond 200 nautical miles. In this regard, I offer two  
4 preliminary remarks: first, this Chamber's exercise of jurisdiction in the outer  
5 continental shelf will not prejudice the rights of any third States, as there are no third  
6 States that have any entitlements in this area; second, in the light of Professor  
7 Sands' and Mr Reichler's presentations on the methodology for the delimitation  
8 I shall not address Côte d'Ivoire's arguments on its contrived angle bisector  
9 proposal.<sup>30</sup> If there is no justification for its application in the area up to 200 nautical  
10 miles, there can be no justification in its application beyond 200 nautical miles.

11  
12 Ghana's position is straightforward and based firmly on jurisprudence. There is in  
13 law only a single continental shelf, and article 83 of the Convention applies equally to  
14 the delimitation of the continental shelf both within and beyond 200 nautical miles.<sup>31</sup>  
15 Côte d'Ivoire agrees.<sup>32</sup> It follows then that the appropriate method for delimiting the  
16 entire continental shelf remains the same. Once again, Côte d'Ivoire agrees, at least  
17 in principle.<sup>33</sup>

18  
19 This is in line with both of the *Bay of Bengal* cases.<sup>34</sup> In both cases, ITLOS and the  
20 Annex VII tribunal found that the approach adopted within 200 nautical miles then  
21 extended to the area beyond. The tribunals followed the equidistance/relevant  
22 circumstances method for the delimitation of the continental shelf within 200 nautical  
23 miles and then proceeded with the same method beyond 200 nautical miles. In both  
24 cases, the continental shelf beyond 200 nautical miles was delimited by extending  
25 the continental shelf boundary that had been established up to 200 nautical miles,  
26 generally along the same azimuth.<sup>35</sup>

27  
28 We say that that approach is to be applied in this case. Côte d'Ivoire has offered no  
29 principled position for disagreeing with it. It argues that the same geographical  
30 circumstances that play a role in the delimitation of the boundary within 200 nautical

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<sup>30</sup> RCI, para. 3.59-3.62.

<sup>31</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, paras 361, 362; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, paras 77, 465.

<sup>32</sup> CMCI, paras 8.22-8.23.

<sup>33</sup> CMCI, para. 8.23 ("adhère sans réserve ... de principe").

<sup>34</sup> In *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, para. 455, ITLOS held that: "the delimitation method to be employed ... for the continental shelf beyond 200 nautical miles should not differ from that within 200 nm. Accordingly, the equidistance/relevant circumstances method continues to apply for the delimitation of the continental shelf beyond 200 nm." In *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 465, the Tribunal followed the same approach: "Having adopted the equidistance/relevant circumstances method for the delimitation of the continental shelf within 200 nm, the Tribunal [proceeded with] the same method to delimit the continental shelf beyond 200 nm."

<sup>35</sup> In *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, para. 462, ITLOS determined that: "the adjusted equidistance line delimiting both the [EEZ] and the continental shelf within 200 nm between the Parties ... as continues in the same direction beyond the 200 nm limit of Bangladesh until it reaches the area where the rights of third States may be affected." In *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 478, the Tribunal continued the delimitation line established within 200 nautical miles until it reached the boundary between Bangladesh and Myanmar beyond 200 M.

1 miles are applicable beyond that.<sup>36</sup> Mr Reichler has already shown you that none of  
2 these supposed “geographical circumstances” is helpful to Côte d’Ivoire up to  
3 200 nautical miles, and we say that they do not help them any more beyond  
4 200 nautical miles.

5  
6 Ghana’s position is that there is an existing boundary which continues beyond  
7 200 nautical miles. This is confirmed and fully supported by the Parties’ 2009  
8 submissions to the Commission, which show that there was no overlap, that there  
9 was agreement. In the event that the Chamber was to disagree with this position,  
10 Mr Reichler has set out the alternative – the equidistance/relevant circumstances  
11 method. The equidistance line that he has identified for the continental shelf within  
12 200 nautical miles, as adjusted very slightly to conform to the customary  
13 equidistance boundary as a relevant circumstance, should be extended beyond  
14 200 nautical miles to the limit of the Parties’ national jurisdiction. This is consistent  
15 with the law and there is no need to depart from it.

16  
17 There is one caveat to this approach. Ghana notes that any delimitation effected by  
18 the Special Chamber beyond 200 nautical miles would have to be contingent on the  
19 Commission finding that Côte d’Ivoire does, in fact, have an outer continental shelf  
20 entitlement that extends to the established outer continental shelf entitlement of  
21 Ghana.<sup>37</sup> If the Commission were to reject Côte d’Ivoire’s outer continental shelf  
22 entitlement, then the boundary between Ghana and Côte d’Ivoire would naturally  
23 terminate at the 200 nautical miles limit, since there would be no possibility of  
24 overlapping entitlements beyond this point.

25  
26 Finally, I come to the question of the equitableness of the boundary proposed by  
27 Ghana. As Mr Reichler has said, under the equidistance/relevant circumstances  
28 method, this is assessed at the third and final stage of the delimitation process by  
29 means of the test for disproportionality.<sup>38</sup> The method to be followed is this: First, the  
30 ratio between the lengths of the Parties’ relevant coasts is determined. As you can  
31 see, Côte d’Ivoire’s relevant coast is 308 km long and Ghana’s is 121 km. This yields  
32 a ratio of 2.55:1. Second, the portions of the relevant maritime area allocated to each  
33 Party by the provisional or adjusted equidistance line are measured and a ratio is  
34 determined. Here, the provisional equidistance line, adjusted as proposed by Ghana  
35 to conform to the customary equidistance boundary, allocates 126,790 square  
36 kilometers to Côte d’Ivoire and 62,757 square kilometers to Ghana. The ratio is

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<sup>36</sup> CMCI, para. 8.38; RCI, para. 3.50.

<sup>37</sup> In its Reply Ghana had noted certain technical limitations in Côte d’Ivoire’s Revised Submissions. For example, there are technical limitations concerning the extent to which Côte d’Ivoire can demonstrate natural prolongation from its land territory to the outer edge of the margin, given its very narrow physical margin. See RG, paras 4.29 and 4.43.

<sup>38</sup> See e.g. *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, I.C.J. Reports 2009, p. 86, para. 122:

Finally, and at the third stage, the Court will verify that the line (a provisional equidistance line which may or may not have been adjusted by taking into account the relevant circumstances) does not, as it stands, lead to an inequitable result by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line. ... A final check for an equitable outcome entails a confirmation that no great disproportionality of maritime areas is evident by comparison to the ratio of coastal lengths.

1      2.02:1.<sup>39</sup> Third, the two ratios are compared to determine if there is a sufficiently  
2      gross disproportion to justify a further adjustment to the boundary line. A ratio of  
3      2.02:1 does not reflect a significantly disproportionate division of the relevant area.  
4  
5      As the International Court said in the *Black Sea* case, no further adjustment of the  
6      line is required to achieve an equitable solution unless it “lead[s] to any significant  
7      disproportionality by reference to the respective coastal lengths and the  
8      apportionment of areas that ensue.”<sup>40</sup>  
9  
10     The purpose of this exercise is not to ensure a perfectly proportionate result. Instead,  
11    it is intended to guard against a disproportionate result that would render the  
12    proposed delimitation inequitable.<sup>41</sup> In fact, neither the International Court, nor ITLOS  
13    nor any Annex VII tribunal has ever found an adjustment to be required at this stage  
14    of the process. That was true in both the *Bay of Bengal* cases, where the tribunals  
15    found no “significant disproportion” that would require the shifting of the adjusted  
16    equidistance line to ensure an equitable solution.<sup>42</sup> Accordingly, there is no  
17    disproportion in this case that would justify a further adjustment of the boundary line  
18    at the third stage of the delimitation process.  
19

20     The boundary that Ghana asks you to confirm from the LBT to the outer limit of  
21    national jurisdiction is an equitable one. The boundary beyond 200 nautical miles  
22    extends from point CEB 7, where it crosses the 200 nautical miles limit to the point  
23    where national jurisdiction ends, at approximately 245 nautical miles along an  
24    average bearing of 192 degrees. *This image* sets out the entire boundary.  
25

26     Mr President, Members of the Special Chamber, that concludes my presentation.  
27    I thank you for your attention and request that you call on Professor Klein, as  
28    Ghana’s next speaker.  
29

30     **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I  
31    thank Ms Singh for her presentation and I give the floor to Mr Pierre Klein. You have  
32    the floor, Professor Klein.  
33

34     **MR KLEIN** (*Interpretation from French*): Thank you very much, Mr President,  
35    distinguished Members of the Special Chamber. I think one hardly needs to recall at  
36    this stage of the proceedings that one of the core arguments of Côte d’Ivoire within  
37    the framework of this current dispute consists in asserting that the practice followed  
38    over the decades by the two Parties lacks all relevance as far as the determination of  
39    their joint maritime boundary is concerned. Our opponents propose in this regard a  
40    wholly particular reading of the facts of the case that hardly corresponds to the  
41    realities. My colleague Fui Tsikata has amply demonstrated that to you yesterday  
42    and today, and I will not revisit that particular point.

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<sup>39</sup> RG, para. 3.99.

<sup>40</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, I.C.J. Reports 2009, p.86, para. 210. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012, p. 624, paras 240-242; *Barbados v. Trinidad and Tobago*, Award of 11 April 2006, para. 238.

<sup>41</sup> MG, 5.94.

<sup>42</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 4, para. 499; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India*, Award of 7 July 2014, para. 497.

1 Our opponents also assert that, in any event, the factual situation which has been  
2 observed on the ground for decades is not likely to produce any legal effect. First,  
3 this would be the case as concerns the fact that this situation is inadequate to meet  
4 the required conditions in international case law for the conclusion that a tacit  
5 agreement in terms of delimitation exists to be reached. I dealt with this question at  
6 length this morning and I showed you that there is no element in the relevant case  
7 law that could call into question Ghana's position in this respect. However, the  
8 criticisms voiced by our opponents do not stop there; they also claim that the  
9 practice of the Parties cannot be taken into account as a circumstance preventing  
10 Côte d'Ivoire from calling into question a legal situation which its own behaviour  
11 caused to arise between the Parties. It is this last argument – and more broadly how  
12 the principle of estoppel comes into play in this case – on which my oral argument  
13 this afternoon will be focused.

14  
15 In *Bangladesh v. Myanmar* the Tribunal recalled:

16 in international law, a situation of estoppel exists when a State, by its  
17 conduct, has created the appearance of a particular situation and another  
18 State, relying on such conduct in good faith, has acted or abstained from  
19 an action to its detriment.<sup>1</sup>

20 There is no doubt whatsoever for Ghana that it is a situation of this nature with which  
21 it was confronted from the moment when Côte d'Ivoire started to call into question  
22 the customary limit based on an equidistance line, that Côte d'Ivoire had accepted as  
23 a maritime boundary for over 50 years. As from the provisional measures stage,  
24 Ghana set out to what extent this change of position was likely to entail considerable  
25 prejudice for it.<sup>2</sup> Ghana set out in the written pleadings the extent of the damages  
26 resulting from the Ivorian *volte face*. It was by basing itself on the pre-existing  
27 situation, characterized by a stable maritime boundary, respected by both Parties  
28 over decades, that Ghana granted concessions in the maritime spaces situated to  
29 the east of that line. It was in reliance on this same situation that billions of dollars  
30 have been invested, above all since the mid-2000s, for exploration and then  
31 subsequently for the exploitation of the oil resources present in this area.<sup>3</sup> I hardly  
32 need to recall as well that the Request for Provisional Measures presented by Côte  
33 d'Ivoire led to a partial freezing of activities in the area, and that has already resulted  
34 today in numerous job losses and very substantial financial prejudice.<sup>4</sup> The attempt  
35 by Côte d'Ivoire to invoke Ghana's international responsibility (to which my colleague  
36 Alison Macdonald will return shortly) shows that this debate is anything but

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<sup>1</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 4 (hereinafter: "Bangladesh/Myanmar, Judgment"), para. 124.

<sup>2</sup> See, in particular, Public sitting at the International Tribunal for the Law of the Sea, Verbatim Record, ITLOS/PV.15/C23/2/Corr.1 (29 March 2015), pp. 31-32 (Prof. Sands).

<sup>3</sup> Memorial of the Republic of Ghana (4 September 2015) (hereinafter: "MG"), paras 5.67-5.72, Reply of Ghana (25 July 2016) (hereinafter: "RG"), paras 2.122-2.124.

<sup>4</sup> Second statement of Paul McDade on behalf of Tullow Oil plc (11 July 2017), RG, Vol. IV, Annex 166, para. 7. See also *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015, p. 146, para. 99: "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 ...").

1 theoretical. If Côte d'Ivoire were able to get home on this point, it would be a loss of  
2 millions of dollars that Ghana would suffer on account of Côte d'Ivoire's impromptu  
3 about-turn. It is precisely this type of result, wholly inequitable, that the principle of  
4 estoppel is meant to counter.

5  
6 However, if you listen to the other side, estoppel has no place in the present case.  
7 "[C]learly", our opponents say with aplomb in their Rejoinder, "Côte d'Ivoire has ...  
8 never made representations or given Ghana any assurances in which it could have  
9 placed its trust or adopted behaviour which would have been detrimental to it."<sup>5</sup> The  
10 other side tries, by introducing, *inter alia*, particular circumstances, principally the  
11 crises that the country has undergone between 1993 and 2009, as justifications for  
12 the silence of Ivorian authorities over many years in face of oil exploration and  
13 exploitation activities carried out in the border area.<sup>6</sup> On the one hand, there is an  
14 absence of representation and on the other a silence, from which no legal  
15 consequence can be inferred. What is the reality of all of this?

16  
17 With respect to the absence of representation, let me invite you, Mr President,  
18 distinguished Members of the Special Chamber, to place yourselves in the shoes of  
19 the Ghanaian authorities throughout these last decades to better appreciate whether  
20 the representations of which Ghana affirms the existence were indeed nothing but a  
21 figment of its imagination.

22  
23 Imagine you have a neighbour who, as of 1970, adopts official decrees signed by the  
24 President of the Republic, who tells the whole world – and that includes you – that  
25 the region delimited by this text is defined seaward of its coast "by the border line  
26 separating the Ivory Coast from Ghana".<sup>7</sup> Not, Mr President, "by a line which has  
27 effect solely with regard to the course of oil concessions". No – "by the boundary line  
28 separating Côte d'Ivoire from Ghana", a boundary which, according to the self-same  
29 text, follows the equidistance line.

30  
31 You have a neighbour whose national oil company reports directly to several  
32 ministerial departments, regularly publishes charts that show to the whole world –  
33 and to you too – that the maritime boundary between your two States follows an  
34 equidistance line. Not, Mr President, a limit that only applies to oil concessions but is  
35 indeed the seaward extension of the land boundary, including beyond the areas of  
36 the concessions.

37  
38 You have a neighbour who, when they have to carry out seismic surveys in the  
39 maritime boundary area, asks your permission to turn around in "Ghanaian waters",  
40 adding to its request a chart that places these waters beyond the line – the same  
41 line – the equidistance line, identifying it by the word "Ghana".<sup>8</sup> Not, Mr President, "in

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<sup>5</sup> Rejoinder of the Republic of Côte d'Ivoire (14 November 2016) (hereinafter: "RCI"), para. 5.35.

<sup>6</sup> RCI, para. 5.37.

<sup>7</sup> Republic of Côte d'Ivoire, *décret No. 70-618 accordant un permis de recherches pétrolières aux sociétés ESSO, SHELL et ERAP* (Decree 70-618 Granting An Exclusive Petroleum Exploration Permit To Esso, Shell, & ERAP Group) (14 October 1970). CMCI, Vol. IV, Annex 59.

<sup>8</sup> Fax from Kassoum Fadika, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC), re authorization for seismic vessel to turn around in Ghanaian waters (9 March 2007), RG, Vol. IV, Annex 137; Email from Boblai Victor Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to

1 waters which we know fall to Ghana for the granting of oil concessions". No – "in  
2 Ghanaian waters".  
3  
4 You have got a neighbour who, when it presents its submissions to the CLCS,  
5 makes for the whole world to see – you included – the extreme limit of the extended  
6 continental shelf claimed coincide with the equidistance line referred to so often.<sup>9</sup>  
7 Not, Mr President, with some angle bisector line or some meridian – no, with the  
8 equidistance line. We are in 2009, 39 years after the adoption by your neighbour of  
9 an official text that refers to "the boundary line separating Côte d'Ivoire from Ghana",  
10 and which gives it substance as an equidistance line.

11  
12 But, no, if you listen to Côte d'Ivoire, all of that does not have the least significance  
13 whatsoever. You would be totally unreasonable, even dishonest, if you were for one  
14 moment to think that that line does indeed represent the boundary separating your  
15 maritime territory from that of your neighbour – but a question all the same. If really  
16 in all these elements that I have just reviewed there was no representation likely to  
17 lead to conviction in the mind of a third party, then why did the Ivorian authorities  
18 decide to change – only as of 2011 – the representation of the maritime areas falling  
19 under the sovereignty of Côte d'Ivoire in the different documents that they produced?  
20 Why did they decide – only in 2016 – to amend the submission that they presented  
21 to the CLCS in such a fashion that this submission should be consistent with the new  
22 Ivorian claim of a maritime boundary following an angle bisector line? Would it by  
23 any chance at all be because the other side realized – rather too late in the day –  
24 that these were so many representations likely to create legal effects?

25  
26 Once again, our opponents clearly have a lot of problems reconciling themselves  
27 with the facts. Everything in the case files shows that Côte d'Ivoire has, by its  
28 constant and repeated actions, created over time a representation which clearly led  
29 Ghana to adapt its own actions accordingly. This representation, you will have  
30 understood, is clearly that of a maritime boundary that follows an equidistance line  
31 and which has constantly served as a reference to the two States for the  
32 development of their activities in the area in issue. It is this representation that  
33 Ghana asserts created an obligation for Côte d'Ivoire to not brusquely depart from  
34 the position that it had maintained over the decades, at the risk of causing extremely  
35 significant prejudice to Ghana.

36  
37 Is it necessary in these circumstances to speak not only of the acts but also of the  
38 silence of Côte d'Ivoire, which Côte d'Ivoire now attempts to either repudiate or  
39 minimize? Hardly – and I will only touch upon it briefly. Côte d'Ivoire's argument  
40 whereby the absence of all protests on its part over a very long period is justified by  
41 successive crises that the country underwent fails once again to be bolstered by the  
42 case file. What does the case file show? Far from being distracted by any questions  
43 linked to the exploitation of its natural offshore resources, the Ivorian authorities,  
44 quite to the contrary, throughout this whole period pursued these activities and,

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Thomas Manu, Ghana National Petroleum Corporation (GNPC) (13 March 2007), RG, Vol. IV,  
Annex 138.

<sup>9</sup> Republic of Côte d'Ivoire, Submission for the Establishment of the Outer Limits of the Continental Shelf of Côte d'Ivoire pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (8 May 2009) (hereinafter: "Republic of Côte d'Ivoire, Initial submission to the CLCS"), MG, Vol. VI, Annex 75.

1 furthermore, often did so in perfect coordination – nay, even cooperation – with their  
2 opposite numbers in Ghana.<sup>10</sup> If the Ivorian authorities abstained from any protest  
3 with respect to these activities being carried out in the maritime areas in question by  
4 Ghana during all these years, it is not because they were unaware, nor because the  
5 political crises in the country prevented them from so doing. No, it is much simpler:  
6 because they never felt there was any reason to protest. Each State was continuing  
7 to carry out its activities on its own side of the equidistance line in accordance with  
8 the practice that it had always followed. This silence, then, is eminently revelatory,  
9 and reassured the Ghanaian authorities in their conviction that there did indeed exist  
10 an agreement between the Parties with respect to the course of their maritime  
11 boundary.

12 Over and beyond these factual questions, Côte d'Ivoire's challenge to estoppel is  
13 also argued on legal grounds. Our opponents try to rely on two cases in which the  
14 invocation of estoppel was dismissed by the courts seized of them. The other side  
15 refers first of all to the *Gulf of Maine* case, asserting that "[t]he ICJ refused to  
16 characterize as estoppel a situation in which Canada clearly notified the United  
17 States of its boundary claims by official diplomatic channel and had started to grant  
18 oil concessions in the disputed area."<sup>11</sup>

19 This is perfectly correct but the facts in that case were very different from those that  
20 characterize the instant case. The Chamber of the Court, first of all, was of the  
21 opinion that the terms of the letter adduced by Canada as an element of  
22 acquiescence by the US could not be so taken into account because they could not  
23 be "opposed to the government of the United States" and could not be considered as  
24 "an official declaration of the United States Government on that country's  
25 international maritime boundaries."<sup>12</sup>

26 This type of obstacle is absent in the present case, where the President of Côte  
27 d'Ivoire himself adopted an official position on the question of the course of the  
28 maritime boundary, which was then followed in constant fashion by the country's  
29 authorities.

30 Secondly, the Chamber of the Court also felt that it seemed "disproportionate" to wish  
31 to attribute to the silence maintained over but a few years by the American authorities  
32 in the face of Canada's actions "legal consequences taking the concrete form of an  
33 estoppel".<sup>13</sup> On this point, equally, the contrast with our case is striking. Here, it is not  
34 only a question of silence but also of explicit positions, with the Ivorian authorities  
35 recognizing the line of equidistance as the joint maritime boundary. And it is certainly  
36 not a question of a short term, because Côte d'Ivoire's behaviour continued over  
37 decades. The line of argument of the other side is in no way buttressed by this  
38 precedent.

39 Finally, our opponents once again try to rely on the *Barbados v. Trinidad and Tobago*  
40 case, where estoppel was also dismissed. They argue in this regard that the Arbitral

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<sup>10</sup> RG, para. 2.102-2.110.

<sup>11</sup> RCI, para. 5.39.

<sup>12</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984, p. 246*, para. 139.

<sup>13</sup> *Ibid.*, para. 140.

1 Tribunal refused to accept that sporadic authorizations to conduct seismic surveys,  
2 the award of oil concessions and patrols carried out in the area in question  
3 constituted sufficient proof to establish estoppel.<sup>14</sup> But, once again, two major  
4 differences between that precedent and our case must be observed. Firstly, in  
5 *Barbados v. Trinidad and Tobago*, it was solely a question of the absence of protest,  
6 whereas the estoppel invoked by Ghana is based primarily on official positions,  
7 positive acts, by the Ivorian authorities. It was these representations, repeated over  
8 time, which led Ghana to the conviction that it could rely on the existence of a  
9 common maritime boundary following an equidistance line in developing the  
10 exploration and exploitation of its offshore natural resources, and which simply  
11 illustrated the absence of challenge. That was clearly not the case in *Barbados v.*  
12 *Trinidad and Tobago*, where Barbados merely invoked the lack of protest by Trinidad  
13 and Tobago against certain actions that it had carried out in the disputed maritime  
14 areas. Secondly, in this latter case, the practice of the States concerned showed  
15 precisely that challenges had arisen with respect to the limits of their respective  
16 maritime areas. This was clearly confirmed by the arrests of Barbadian fishermen off  
17 Tobago by the authorities of Trinidad and Tobago on several occasions.<sup>15</sup> These  
18 are evidently circumstances such as to diminish considerably the weight of an  
19 argument based on estoppel. It is difficult, to say the least, to infer acquiescence  
20 from certain silences maintained by a State when, at the same time, that State is  
21 carrying out actions which reflect its rejection of its neighbours' claims. But, once  
22 again, this situation has nothing in common with the instant case. There has been no  
23 procrastination on the part of Côte d'Ivoire, no silence on one side and no hostile  
24 reaction on the other. At no time before 2009 did the other Party protest against what  
25 it considered to be an encroachment by Ghana on the disputed maritime areas. At  
26 no time did it attempt to assert its authority over those areas in any way whatsoever.  
27

28 Once again, it is on account of the specific circumstances of that case that the  
29 Arbitral Tribunal rejected the reliance on estoppel in the *Barbados v. Trinidad and*  
30 *Tobago* case and, once again, our opponents are attempting to infer from that  
31 specific decision a general rule that the absence of protest in the face of activities  
32 such as seismic surveys or the award of oil concessions cannot form the basis for a  
33 situation of estoppel. But, of course, there is nothing to allow that step to be taken  
34 and nothing to justify the argument that estoppel be rejected in this case. Quite the  
35 contrary. I have shown you that, by the conduct it adopted and repeated over many  
36 years, Côte d'Ivoire demonstrated to Ghana, without the slightest ambiguity, that it  
37 accepted the customary equidistance line as the common maritime boundary.  
38

39 In the award concerning the *Chagos Islands*, the Arbitral Tribunal set out the four  
40 conditions which, in its view, should be met in order to accept the existence of a  
41 situation of estoppel.<sup>16</sup>  
42

---

<sup>14</sup> RCI, para. 5.39.

<sup>15</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them, decision of 11 April 2006*, 17 RSA, pp. 147-251, para. 50.

<sup>16</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea, Award of 18 March 2015, para. 438.

1 Firstly, a State must have made clear and consistent representations, by word,  
2 conduct or silence. That is indeed the case here, with explicit positions being  
3 adopted by the Ivorian authorities, including in a number of official documents, and a  
4 complete absence of protest with respect to the activities carried out by Ghana in the  
5 area which is now disputed by Côte d'Ivoire, over several decades, without the  
6 slightest departure from this practice.

7  
8 Secondly, such representations must be made through an agent authorized to speak  
9 for the State with respect to the matter in question. How could this condition be  
10 better met than by decrees issued by the President of the Republic or documents  
11 such as the submission made by Côte d'Ivoire to the Commission on the Limits of  
12 the Continental Shelf?

13  
14 Thirdly, the State invoking estoppel must have been induced by the conduct in  
15 question to act to its detriment or to suffer a prejudice. I highlighted to you a few  
16 moments ago the scale of the prejudice which has already been caused to Ghana by  
17 the partial interruption of oil activities in the area in dispute and the considerable  
18 scale of the damages it would suffer if Côte d'Ivoire's change of position were to be  
19 accepted.

20  
21 Finally, the representation must be such as to give rise to a legitimate expectation for  
22 the State which relied on it. Here again, how could the Ghanaian authorities have  
23 doubted for a single moment that the constant messages they were receiving from  
24 their Ivorian neighbour, year after year, over decades, could have reflected anything  
25 other than a shared perception of the common maritime boundary? The factual and  
26 legal conditions for the application of the principle of estoppel in the present case are  
27 therefore manifestly met.

28  
29 Ghana requests the Chamber to take note of this and to find that the opposing Party  
30 may not therefore suddenly change position in this regard, as it has done since  
31 2009, without seriously infringing Ghana's rights.

32  
33 Thank you very much, Mr President, Members of the Special Chamber. Thank you  
34 for your kind attention and I request, Mr President, that you kindly give the floor to  
35 my colleague Daniel Alexander.

36  
37 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I  
38 thank Professor Klein for his presentation and I give the floor to Mr Daniel Alexander,  
39 who will be the final speaker before the coffee break at 4.30 p.m.

40  
41 **MR ALEXANDER:** Mr President, Members of the Special Chamber, it is an honour  
42 to appear before you on behalf of Ghana.

43  
44 May I now turn to a different topic and address you on the allegation that there has  
45 been a breach of the Order prescribing provisional measures. Côte d'Ivoire has  
46 claimed that Ghana has violated the Order of 25 April 2015.<sup>1</sup> It even goes so far as

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<sup>1</sup> See Rejoinder of Côte d'Ivoire (14 Nov. 2016) (hereinafter "RCI"), paras 6.41-6.65.

1 to suggest that Ghana has “disregarded” it.<sup>2</sup> With respect, Côte d’Ivoire’s allegations  
2 are wholly unjustified. Ghana has complied in full with each aspect of the Order.

3  
4 Ghana notified all concerned of the Order of the Special Chamber and requested  
5 compliance with it by its letter dated 4 May 2015.<sup>3</sup> The letter invited operators to take  
6 appropriate steps to ensure that they complied with it and to keep adequate records  
7 of steps taken, and they have done so.<sup>4</sup> I will deal with the issues referred to by Côte  
8 d’Ivoire in order: new drilling, maritime safety, preservation of information, monitoring  
9 of activities, environmental protection and cooperation.

10  
11 May I address the issue of new drilling first, since Côte d’Ivoire has focused on it in  
12 its Counter-Memorial and Rejoinder. Put simply, there has been no new drilling, not  
13 just in the TEN fields area but throughout the whole region designated unilaterally by  
14 Côte d’Ivoire as the “disputed area”. The only activity that has been undertaken has  
15 been ongoing activities conducted by Ghana in respect of which drilling had already  
16 taken place.

17  
18 I will deal first with interpretation of the Order and then highlight the relevant facts.

19  
20 The Order provides that Ghana shall take all necessary measures to ensure that no  
21 new drilling, either by Ghana or under its control, takes place in the “disputed area”.  
22 The Order must be read as a whole. In particular, paragraphs 99 and 100 make it  
23 clear what the Special Chamber was contemplating when it used the term “no new  
24 drilling” and what was regarded as “new”. It said:

25  
26 the suspension of ongoing activities conducted by Ghana in respect of which  
27 drilling has already taken place would entail the risk of considerable financial  
28 loss to Ghana and its concessionaires and could also pose a serious danger  
29 to the marine environment resulting, in particular, from the deterioration of  
30 equipment.<sup>5</sup>

31  
32 Similarly, in paragraph 100 the Special Chamber states that:

33  
34 an order suspending all exploration or exploitation activities conducted on  
35 behalf of Ghana in the disputed area, including activities in respect of which  
36 drilling has already taken place, would therefore cause prejudice to the right  
37 claimed by Ghana and create an undue burden on it.<sup>6</sup>

38  
39 These paragraphs of the Order make it clear that Ghana was not required to  
40 suspend all ongoing activities in respect of which drilling had already taken place,  
41 including, specifically, exploration or exploitation activities. Other parts of the Order

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<sup>2</sup> RCI, para. 6.41.

<sup>3</sup> Second Statement of Paul McDade on behalf of Tullow Oil plc (11 July 2016) (hereinafter, “Second Statement of Tullow”), Appendix C, RG, Vol. IV, Annex 166; Report of the Republic of Ghana to the Special Chamber of the International Tribunal for the Law of the Sea (25 May 2015), Annex B (Letter to Petroleum Operators), CMCI, Vol. IV, Annex 53.

<sup>4</sup> See RG, paras 5.47-5.49.

<sup>5</sup> *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d’Ivoire), Provisional Measures, Order of 25 April 2015, ITLOS Reports 2015*, p. 146 (hereinafter “Order on Provisional Measures”), para. 99.

<sup>6</sup> *Ibid.*, para. 100.

1 reinforce this. The Order acknowledges Ghana's position that stopping all activity in  
2 the TEN field

3  
4 would be "financially ruinous" and the enormous investment in the Deepwater  
5 Tano Concession Block, including the TEN ... fields, which has taken place  
6 over the last nine years (since 2006), would be threatened with irreparable  
7 harm.<sup>7</sup>

8  
9 The Order is designed to prevent irreparable harm in this respect as well.

10  
11 Côte d'Ivoire chooses to play down these provisions of the Order and does not refer  
12 to them in its Counter-Memorial.<sup>8</sup> Instead, it invites the Special Chamber to construe  
13 its Order in an illogical way, taking no account of its express terms and its purpose.  
14 Côte d'Ivoire's approach is contrary to sensible principles of interpretation of a  
15 provisional measures order in international law. Its interpretation expressed in its  
16 Counter-Memorial and Rejoinder would mean that the Special Chamber had  
17 prescribed measures preventing the activities which the Order expressly permitted  
18 and which aggravated the harm that the Order was designed to avoid. That  
19 approach is, quite simply, not supportable.

20  
21 As to the facts, I will deal mainly with the TEN fields and the specific point on well  
22 NT07, upon which Côte d'Ivoire has now focused attention. May I begin, however, by  
23 reminding you of some key facts about the TEN fields and the impact of your Order  
24 generally.

25  
26 The TEN fields are among the most important discoveries of hydrocarbons in this  
27 part of the Gulf of Guinea. The region in which the TEN fields lie had been under  
28 exploration and appraisal for many years. They have been developed principally by  
29 Tullow, pursuant to agreements made over 10 years ago, which you have already  
30 seen.<sup>9</sup> The TEN project represents over 28 million man hours of work, none of  
31 which, of course, has been done or paid for by Côte d'Ivoire or any of its partners.

32  
33 After these enormous investments, incurred both by Ghana and its contractors and  
34 partners over a lengthy period, the TEN fields finally started to produce oil, according  
35 to longstanding plans, in August 2016.<sup>10</sup> That schedule was contemplated in the  
36 TEN Plan of Development referred to in the statements of Mr McDade, the Chief  
37 Operating Officer of Tullow, which was approved by the Government of Ghana  
38 nearly four years ago.<sup>11</sup> That Plan of Development contemplated up to 24  
39 development wells.<sup>12</sup> Of those, 10 were planned to be ready for first oil in 2016.<sup>13</sup>

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<sup>7</sup> *Ibid.*, para. 84 (quoting Written Statement of Ghana (23 March 2015) (hereinafter "WSG"), paras 49, 51).

<sup>8</sup> See RCI, paras 6.42-6.50.

<sup>9</sup> See WSG, para. 45.

<sup>10</sup> See RG, paras 2.122, 5.53; Statement of Paul McDade on behalf of Tullow Oil plc. (18 Mar. 2015) (hereinafter "Statement of Tullow") (previously submitted in Ghana PM, Vol. III, Annex S-TOL), MG, Vol. VI, Annex 73.

<sup>11</sup> See Second Statement of Tullow, para. 3, RG, Vol. IV, Annex 166; Statement of Tullow, para. 29, MG, Vol. VI, Annex 73.

<sup>12</sup> Second Statement of Tullow, para. 3, RG, Vol. IV, Annex 166.

<sup>13</sup> Statement of Tullow, paras 34, 96, Annex 73, MG, Vol. VI; Second Statement of Tullow, paras 3, 5, RG, Vol. IV, Annex 166.

1  
2 It may assist the Special Chamber to have an *aide mémoire* of the TEN field's wells  
3 planned and drilled at the date of its Order, with the dates on which they were drilled.  
4 This is displayed on your screen and at tab 2 of your Judges' folder. It can be seen  
5 that all of the wells were planned and approved by Ghana well before this claim was  
6 commenced. There had been, until the Order, a steady and orderly implementation  
7 of the plan. This is shown in the annex to Mr McDade's statement, which gives the  
8 dates on which these particular wells were drilled: there were two in 2009 (one post-  
9 first oil well, TG01-GP, and one not used), two in 2010 (one first oil well, NT02-GI,  
10 and one not used), five in 2011 (of which three are used for first oil), two in 2012  
11 (one post-first oil well and one not used), three in 2013 (all of which are used for first  
12 oil), three in 2014 (all of which are used for first oil) and one in 2015 (used as a water  
13 injector for post-first oil).<sup>14</sup>

14  
15 This shows a steady programme of drilling of these wells over a period of some six  
16 years. As can be seen, some of the post-first oil wells were drilled before first oil. The  
17 idea suggested by Côte d'Ivoire that there has been an artificial acceleration of  
18 drilling of a new well in 2015 to try to defeat the Special Chamber is wholly  
19 unjustified. It is unsupported by any evidence and is contrary to the evidence before  
20 you.

21  
22 It is important also to remember the wide-ranging effect of the Order. It brought all  
23 new drilling in the TEN area to a halt, albeit permitting activities with respect to wells  
24 already drilled. However, the Order of the Special Chamber was far more extensive  
25 geographically and it has been complied with by Ghana far more extensively. There  
26 has been no new drilling, not just in the TEN fields area but throughout the whole of  
27 the region unilaterally designated by Côte d'Ivoire as the "disputed area".<sup>15</sup>

28  
29 Mr McDade's statement gives Tullow's perspective on the adverse impact of this in a  
30 number of respects, looking at the TEN fields alone: a cutback on drilling, the  
31 potential to have a material and negative impact on the economics and financial  
32 performance of the TEN project, excess costs, job losses and so forth.<sup>16</sup> Ghana  
33 raised the issue of the failure of Côte d'Ivoire to undertake to compensate Ghana  
34 and others for this in the provisional measures phase<sup>17</sup> and in the Reply.<sup>18</sup> Where,  
35 we ask, is the undertaking from Côte d'Ivoire to compensate those affected in this  
36 way if its case is not accepted, including in respect of other parts of the disputed  
37 area where work has also been held up? We say no more about it now, but Ghana's  
38 position is reserved.

39  
40 May I now deal with the facts relating to well NT07, upon which Côte d'Ivoire has  
41 now focused.<sup>19</sup>

42

---

<sup>14</sup> Second Statement of Tullow, Appendix A, RG, Vol. IV, Annex 166.

<sup>15</sup> Witness Statement of Thomas Manu, Ghana National Petroleum Corporation (GNPC) (19 July 2016), Appendix II, RG, Vol. IV, Annex 168.

<sup>16</sup> Second Statement of Tullow, para. 7, RG, Vol. IV, Annex 166.

<sup>17</sup> See WSG, para. 125; Public Sitting at the International Tribunal for the Law of the Sea, Verbatim Record (30 Mar. 2015), ITLOS/PV.15/C23/4, pp. 6:32-34, 7:49-8:4 (Statements of Mr Philippe Sands QC and Ms Brew Appiah-Opong).

<sup>18</sup> See Reply, para. 5.30. See also *ibid.*, paras 1.30, 5.4.

<sup>19</sup> See RCI, paras 6.56-6.61.

1 NT07 – shown in this slide to remind you of its location – is a water injector well. It  
2 was not required for first oil but has been required shortly thereafter.<sup>20</sup> A water  
3 injector assists one or more production wells in the following way. An oilfield  
4 reservoir, as you will probably know, is like a hard “sponge”. It contains  
5 hydrocarbons in porous rock. Usually it contains three layers of fluids: water at the  
6 bottom, oil in the middle and gas at the top. The pressure in such a reservoir is very  
7 high. As a result, oil will flow out of the reservoir into a production well. In some  
8 reservoirs, however, the pressure is too low or becomes too low for optimal  
9 hydrocarbon flow. That can be addressed by injecting water into the reservoir under  
10 high pressure, forcing the hydrocarbons out. Water injectors are important to ensure  
11 that there is adequate production and that the reservoir is properly maintained.

12  
13 In the TEN fields, producing wells have associated water injectors.<sup>21</sup> NT07 is the  
14 water injector for production well NT01. At the date of the provisional measures  
15 hearing, production well NT01 had been completely drilled.<sup>22</sup> The well was not a “first  
16 oil” well but started production shortly after, in September 2016. Drilling of the water  
17 injector for NT01 began in March 2015. By the date of the Order, it had been drilled  
18 to a depth of 2,700 metres.<sup>23</sup> Consistent with the requirements of the Order, which  
19 provided that it should not affect activities in respect of wells drilled prior to the  
20 Order, the well was then drilled to its final depth of 4,136 metres<sup>24</sup> and completed.  
21 “Completion” of a well is a complex, multi-step, activity. It involves, among other  
22 things, the installation of production tubing, perforation of the reservoir interval,  
23 cleaning and testing the well. These activities are carried out to prepare the well for  
24 its purpose<sup>25</sup>.

25  
26 Côte d’Ivoire does not have anything to contradict the evidence of the Chief  
27 Operating Officer of Tullow that completing the drilling of the well to its intended  
28 depth rather than leaving it half-drilled is consistent with good oilfield practice.<sup>26</sup> A  
29 well left half drilled, just like a building left half built, can lead to problems. It can  
30 result in an unstable well-bore, a risk of corrosion and damage its usability,  
31 necessitating additional monitoring.

32  
33 These facts were set out in Ghana’s Reply of July 2016.<sup>27</sup> They are confirmed and  
34 recorded in detail in the documents that Côte d’Ivoire requested and which were  
35 provided in October last year. So far from showing that there has been a violation of  
36 the Order, the documents confirm that there has not been. They show that there has  
37 only been work undertaken on wells already drilled in accordance with the terms of  
38 the Order.<sup>28</sup>

39  
40 In summary, contrary to Côte d’Ivoire’s position, since the Order, Tullow has only  
41 conducted activities permitted by it. If Côte d’Ivoire truly believed that Ghana was in

---

<sup>20</sup> RG, para. 5.52; Second Statement of Tullow, paras 3-10, RG, Vol. IV, Annex 166.

<sup>21</sup> *Ibid.*, para. 4.

<sup>22</sup> *Ibid.*, Appendix A.

<sup>23</sup> *Ibid.*, para. 9, Appendix A.

<sup>24</sup> See Study of the operations of the West Leo and Stena DrillMax drilling rigs since 25 April 2015, Appendix 1, G0096, Drilling Report (5 Apr. 2015), RCI, Vol. III, Annex 207.

<sup>25</sup> See G0306-G0453.

<sup>26</sup> Second Statement of Tullow, para. 9, RG, Vol. IV, Annex 166.

<sup>27</sup> See RG, paras 5.51-5.52.

<sup>28</sup> See G0001-G2536.

1 violation of this part of the Order, it could have come back to this Chamber.<sup>29</sup> It has  
2 not done so, and that speaks loudly.

3  
4 On this issue, may I also deal briefly with the records provided by Ghana in October  
5 2016? As the Special Chamber will know, a large number of different activities are  
6 conducted by equipment generally known as drilling rigs. Oil production is not a  
7 question of simply drilling a hole and waiting for the oil to come out. A well has to be  
8 cased with a steel and concrete liner to ensure that it is stable and then it has to be  
9 completed in the way that I have described.<sup>30</sup> The necessary pipework and  
10 connectors have to be installed and many other complex operations conducted.  
11 These operations are conducted from a moveable platform, described as a drilling  
12 rig, which performs a large range of functions that are recorded in documents often  
13 generically described as drilling records. Often they are records of activities with  
14 respect to a well that are specifically not drilling, and you can see that in the records  
15 provided here. I will not go through them this afternoon because the Special  
16 Chamber can easily read the useful summaries of activity in each of the records to  
17 confirm this, should it be interested to do so.

18  
19 Côte d'Ivoire tries to present a misleading picture of what the records show by not  
20 referring the Special Chamber to the actual contents of them. The records<sup>31</sup>  
21 themselves show that there has not been any drilling of the formation, with the  
22 exception of the extension of the NT07-WI water injector, which was already in hand  
23 at the time of the Order in the way that I have described to you.<sup>32</sup> Côte d'Ivoire  
24 compounds its error by trying to characterize as "drilling" a range of rig activities that  
25 do not involve drilling of any kind. It goes so far as to suggest that activities such as  
26 well completion and de-completion in which a rig was used violate the prohibition  
27 against new drilling. This is a further indication of the unreal approach that it takes to  
28 this issue. It is the kind of exploitation activity with respect to already drilled wells that  
29 the Order permitted and was not to be regarded as new drilling. There is, with all  
30 respect to Côte d'Ivoire, no substance whatever in its arguments on this issue.

31  
32 Finally, I turn to deal briefly with the other issues. Côte d'Ivoire's position seems  
33 somewhat confused in that it refers to some of them but actually does not appear to  
34 allege breach of the Order.

35  
36 First, as to maritime safety, Côte d'Ivoire does not appear to allege breach.<sup>33</sup> Ghana  
37 issued maritime warnings and imposed restrictions on maritime traffic around the  
38 TEN fields.<sup>34</sup> Those were appropriate safety measures to protect other maritime

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<sup>29</sup> See Letter from Agent of Ghana to Registrar, ITLOS (16 Sept. 2016), p. 3.

<sup>30</sup> See Second Statement of Tullow, para. 8, RG, Vol. IV, Annex 166.

<sup>31</sup> See G001 to G0096, G0161 to G0168, G0297, G0456, G0460, G0550, G0709, G1036, G1116 to G1143, G1411, G1440, G1518 to G1528, G1645, G1690 to G1705, G2079, G2118, G2286 to G2289, G2297, G2304 to G2313, G2321 to G2490.

<sup>32</sup> See G0001 to G0096.

<sup>33</sup> See CMCI, paras 9.65-9.66.

<sup>34</sup> See "Seafarers warned as TEN Project picks steam", *B&FT Online* (5 Feb. 2016), CMCI, Vol. V, Annex 148; International Maritime Organization, Subcommittee on Navigation, Communications, and Search and Rescue, *Routeing Measures and Mandatory Ship Reporting Systems: Amendment to the existing Area to Be Avoided Off the coast of Ghana in the Atlantic Ocean, Submitted by Ghana*, IMO Doc. No. NCSR 3/3/6 (24 Nov. 2015), CMCI, Vol. VI, Annex 169.

1 users, as well as the marine environment and the relevant equipment, from damage  
2 caused by a collision or unduly close approach of vessels to a rig.<sup>35</sup>

3  
4 Next, on preservation of information, Ghana has complied with the aspect of the  
5 Order requiring preservation of information.<sup>36</sup> Again, it does not appear to be  
6 suggested otherwise.

7  
8 As to monitoring of activities in the disputed area, again Côte d'Ivoire does not  
9 appear to suggest breach,<sup>37</sup> so may I just bring you up to date on this and remind  
10 you of the relevant provisions of Ghanaian law. In summary, Ghana has exercised  
11 full control over the activities of those undertakings active in the area. It retains in  
12 place and applies the stringent environmental and regulatory framework for oil  
13 activities. This was described in detail in the submissions for the provisional  
14 measures hearing.<sup>38</sup>

15  
16 As regards environmental monitoring, the Special Chamber can see from the  
17 minutes of the joint meetings that there was a full discussion of the issues  
18 concerning environmental protection. Points in dispute were referred to the Agents  
19 for decision,<sup>39</sup> although in the event they did not meet and Côte d'Ivoire did not

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<sup>35</sup> See RG, paras 5.55.

<sup>36</sup> Order on Provisional Measures, para. 108(1)(b). The Order provides that Ghana should 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.

<sup>37</sup> *Ibid.*, paras 108(1)(b)-(c). The Order provides that Ghana should 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 and that the parties should take all necessary steps to prevent serious harm to the marine environment.

<sup>38</sup> See WSG, para. 66 (citing The Ghana National Petroleum Corporation Law (PNDCL 64) (1983), which established the Ghana National Petroleum Corporation (GNPC), mandated it to undertake the exploration, development, production and disposal of petroleum (*available at* <http://laws.ghanalegal.com/acts/id/516/ghana-nationalpetroleum-corporation-act#> (accessed 27 Jan. 2017)); The Petroleum Exploration and Production Law (PNDCL 84) (1984), which repealed the provisions of the Minerals Act (Act 126) (1962) that applied to petroleum and governs exploration and production activities (*available at* <http://laws.ghanalegal.com/acts/id/543/petroleum-exploration-and-production-law#> (accessed 27 Jan. 2017)); The Ghana National Petroleum Corporation, Petroleum Income Tax Law (PNDCL 188) (1987) establishes a system of taxation on petroleum production (*available at* <http://laws.ghanalegal.com/acts/id/544#> (accessed 27 Jan. 2017)); The Petroleum Revenue Management Act (Act 815) (2011), which provides a framework for the collection, allocation and management of petroleum revenue in a responsible, transparent accountable and sustainable manner for the benefit of Ghanaians (*available at* [http://www.mofep.gov.gh/sites/default/files/reports/Petroleum\\_Revenue\\_Management\\_Act\\_%202011.PDF](http://www.mofep.gov.gh/sites/default/files/reports/Petroleum_Revenue_Management_Act_%202011.PDF) (accessed 27 Jan. 2017)); The Petroleum Commission Act (Act 821) (15 July 2011), which established the Petroleum Commission, charged with regulating and managing the utilisation of Ghana's petroleum resources as required by Ghana's Constitution (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/Petroleum-Commission-Act-2011-Act-821.pdf> (accessed 27 Jan. 2017)); The Petroleum (Local Content and Local Participation) Regulations (2013) aimed at securing Ghanaian participation in all aspects of the petroleum industry, and thereby build local capacity in the oil and gas sector (*available at* <http://www.reportingoilandgas.org/wp-content/uploads/PETROLEUMLOCAL-CONTENT-AND-LOCAL-PARTICIPATION-REGULATIONS2013.pdf> (accessed 27 Jan. 2017))).

<sup>39</sup> Government of Ghana and Government of Côte d'Ivoire, *Minutes of the First Meeting of the Côte d'Ivoire-Ghana Joint Committee of Experts on the Protection of the Marine Environment Concerning the Maritime Border Dispute between Côte d'Ivoire and Ghana* (6 Oct. 2015), CMCI, Vol. IV, Annex 56.

1 pursue the matter further. Ghana was to provide environmental reports in advance of  
2 meetings to be fixed to discuss any issues. In January 2016, Ghana provided Côte  
3 d'Ivoire with a report that provides an account of the environmental issues to the end  
4 of 2015.<sup>40</sup> It shows that there were no adverse environmental issues. No meeting  
5 was arranged then or since, and therefore no further report has been provided. Côte  
6 d'Ivoire has not followed this up. However, Ghana has, of course, continued to  
7 engage in environmental monitoring. No one has suggested that there have been  
8 any adverse environmental events or issues which require further discussion.  
9

10 Finally, as regards cooperation and provision of information,<sup>41</sup> Ghana has again  
11 been entirely cooperative. Where reasonable requests were made, it has agreed to  
12 them, as the record of communications and meetings shows. The questions raised in  
13 Côte d'Ivoire's letter of July 2015<sup>42</sup> were addressed at meetings attended by the  
14 Agents of both Parties and numerous specialist representatives in September and  
15 October 2015<sup>43</sup> and in the work undertaken subsequent to those meetings. As can  
16 be seen from the records, issues reasonably raised by Côte d'Ivoire were properly  
17 addressed or were not followed up once responded to by Ghana.  
18

19 However, Côte d'Ivoire requested far more information than is reasonable or  
20 necessary. Ghana was right not to agree to Côte d'Ivoire's more extreme requests,  
21 which included requests for daily reports of activities in the "disputed area" and to  
22 have their own representatives present during all of Ghana's well operations.<sup>44</sup> None  
23 of this was even sought in the provisional measures request. It was not ordered by  
24 the Special Chamber, and it is manifestly disproportionate and unnecessary.  
25

26 In conclusion, with respect, I say that it is regrettable that Côte d'Ivoire has sought to  
27 question Ghana's good faith compliance with the Order. Ghana has complied in full,  
28 and we therefore respectfully invite the Special Chamber to reject Côte d'Ivoire's  
29 submissions on this issue.  
30

31 Mr President, Members of the Special Chamber, I thank you for your attention and  
32 ask whether you would like to take a break or give the floor to Ms Macdonald for the  
33 concluding presentation of the day.  
34

35 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):  
36 Thank you, Mr Alexander. It is 4.30 and we will now take a break of 30 minutes and  
37 resume at 5 p.m. to continue to hear the final speaker of Ghana for today.  
38

39 (Break)  
40

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<sup>40</sup> See Witness Statement of Thomas Manu, Ghana National Petroleum Corporation (GNPC) (19 July 2016), Appendix I, Attachment 2, RG, Vol. IV, Annex 168.

<sup>41</sup> See RCI, paras 6.63-6.65.

<sup>42</sup> Letter from Agent of Côte d'Ivoire to Agent of the Republic of Ghana, No. 068 MPE/CAB (27 July 2015), CMCI, Vol. IV, Annex 54.

<sup>43</sup> Government of Ghana and Government of Côte d'Ivoire, *Minutes of the Meeting of the Two Agents of Côte d'Ivoire and Ghana* (10 Sept. 2015), CMCI, Vol. IV, Annex 55.

<sup>44</sup> See Letter from Adama Toungana, Minister of Petroleum and Energy of Côte d'Ivoire, to Marietta Brew Appiah-Opong, Attorney General of Ghana (4 July 2016), p. 2. RCI, Vol. III, Annex 202.

1   **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): The  
2   hearing will now resume. I will now give the floor to Ms Macdonald. Ms Macdonald,  
3   you have the floor.

4  
5   **MS MACDONALD:** Mr President, Members of the Special Chamber, it is a privilege  
6   for me to appear before you today on behalf of Ghana, last but I hope not least.  
7   Mr Alexander has just addressed Ghana's compliance with the Order for Provisional  
8   Measures, and my task is to deal with the other respects in which Côte d'Ivoire says  
9   that Ghana has violated international law.<sup>1</sup>

10  
11   Côte d'Ivoire argues that Ghana's activities have violated Côte d'Ivoire's sovereign  
12   rights and, further, that Ghana has breached article 83 of the Convention.

13  
14   Before I turn to the legal principles which apply here, it is important to remind  
15   ourselves of the factual background. At the heart of Côte d'Ivoire's allegations is their  
16   repeated attempt to characterize Ghana's activities as "unilateral".<sup>2</sup> This is crucial to  
17   their legal argument, for the simple reason that it is very difficult for a State to say  
18   that its rights have been violated by things which another State has done with its  
19   consent.

20  
21   However, as you have heard in Ghana's presentations on the facts, it is impossible  
22   to apply the term "unilateral" to Ghana's activities in this area. As my colleagues  
23   have demonstrated, Ghana's activities have been conducted openly and with Côte  
24   d'Ivoire's cooperation, on the basis of, until recently, a common understanding of the  
25   location of the customary equidistance boundary.

26  
27   Ghana did not undertake these activities in order to *claim* this territory; rather, it  
28   undertook them because of the two States' shared understanding that the territory  
29   belonged to Ghana.

30  
31   This factual background is essential when one turns to consider the legal obligations  
32   which Côte d'Ivoire says that Ghana has breached. I will deal first with the issue of  
33   sovereign rights, before turning to article 83 of the Convention.

34  
35   On the question of sovereign rights, Côte d'Ivoire claims that there is a rule against  
36   activities in a disputed area pending final delimitation.<sup>3</sup>

37  
38   It is rather unclear whether Côte d'Ivoire is relying on an alleged rule against  
39   activities in a disputed area *per se* – in other words, regardless of which State is  
40   ultimately held to possess that area – or whether this argument relates only to any  
41   part of the area which is eventually held to form part of the territory of Côte d'Ivoire.  
42   The first argument or possibility overlaps entirely with Côte d'Ivoire's case on  
43   article 83. Therefore, I will deal with it in that context and for now will concentrate on  
44   the second option, namely the proposition that, if Ghana has undertaken so-called  
45   unilateral activities in *any* area, however small, which is ultimately awarded to Côte  
46   d'Ivoire, then the Special Chamber should not be content with declaring the location

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<sup>1</sup> Counter-Memorial of Côte d'Ivoire (4 Apr. 2016) (hereinafter "CMCI"), paras 9.1-9.57; Rejoinder of Côte d'Ivoire (14 Nov. 2016) (hereinafter "RCI"), paras 6.1-6.40.

<sup>2</sup> See for example, CMCI, paras 5.27; 9.3; 9.40; 9.42; 9.65.

<sup>3</sup> *Ibid.*, para. 9.15.

1 of the maritime boundary, but should go on to hold that Ghana has violated  
2 international law by the activities that it conducted in that area before the Tribunal's  
3 eventual award.

4  
5 There is a simple answer to this argument, namely that, given the agreement of the  
6 Parties on the location of the maritime boundary, established through half a century  
7 of consistent mutual practice, Ghana has only ever been operating on its own  
8 territory. If you accept that the boundary lies where Ghana says it does, for the  
9 compelling reasons that my colleagues have outlined, then this part of Côte d'Ivoire's  
10 argument simply does not arise and there can be no question of any violation of Côte  
11 d'Ivoire's sovereign rights.  
12

13 Even assuming, for the sake of argument, that Côte d'Ivoire's rights were engaged,  
14 there is another fundamental answer to their points, namely that none of Ghana's  
15 activities in the relevant area have, in fact, been unilateral, for the reasons which  
16 others before me have outlined. So even if there were, as Côte d'Ivoire alleges, a  
17 rule against unilateral activity in a disputed area, that is not the sort of activity that we  
18 are dealing with here.  
19

20 This is a very important point when we look at the sovereign rights argument,  
21 because it can hardly be said that State A violates State B's sovereign rights by  
22 undertaking activities in a maritime area which both States treated as belonging to  
23 State A, even if some of the area is later awarded to State B. To put it in more  
24 domestic terms, Mr President, if I accompany someone into a house which we both  
25 treat for many years as theirs and by some strange turn of events the house later  
26 turns out to belong to me, I cannot suddenly accuse my companion of trespass.  
27

28 However, this is how Côte d'Ivoire asks you to interpret the law. It asks you to make  
29 serious findings against Ghana in respect of peaceful economic activities that Ghana  
30 has carried out with Côte d'Ivoire's full knowledge in a process stretching back for  
31 decades. Côte d'Ivoire asks you to find that articles 77, 81 and 193 of UNCLOS are  
32 automatically violated by this sort of activity in any area that eventually turns out to  
33 belong to another State.<sup>4</sup> If we step back for a moment, if this were correct, then one  
34 would expect to see international courts finding violations in every boundary case in  
35 which any activities have been undertaken in the disputed area; and yet no court or  
36 tribunal has ever done so.  
37

38 One has to think about the practical implications of Côte d'Ivoire's argument. If it is  
39 right, it means that the mere advancement of a claim by one State against its  
40 neighbour, however unjustified or even unarguable, would oblige the neighbour to  
41 cease all activities in the supposedly disputed territory until the claim had been  
42 resolved.  
43

44 This would have radical consequences. A State could acquiesce in its neighbour's  
45 economic activity and then, later on when that activity looked rather profitable,  
46 effectively hold its neighbour hostage, causing grave economic damage by suddenly  
47 throwing the area of production into dispute by a claim, however spurious, to some of  
48 its neighbour's maritime territory. In this case, it would have been incredibly difficult

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<sup>4</sup> CMCI, paras 9.3-9.25.

1 for Ghana to work out where, in Côte d'Ivoire's opinion, it was not allowed to work,  
2 as the no-go area which Côte d'Ivoire claims has shifted around so much over the  
3 years. Here on the screen we can see the customary equidistance boundary and, to  
4 the east, the various boundaries which Côte d'Ivoire proposed between 2009 and  
5 2014. Was Ghana really expected to shift its oil production around every time Côte  
6 d'Ivoire shifted its line? So in 2009 it would have had to down tools in *this* area; in  
7 2010 in *this* area; in 2011 in *this* area; and, from 2014 onwards, in *this* area. We say  
8 that a nation's oil industry cannot be expected to shift around in this arbitrary fashion.  
9

10 When one thinks through the consequences of Côte d'Ivoire's argument, it is not  
11 surprising, we say, that this is a path which no previous Tribunal has wished to tread.  
12 Côte d'Ivoire's argument, if it were correct, would allow States to act utterly  
13 inconsistently with their claimed sovereign rights and then belatedly assert them,  
14 with severe financial consequences. It would encourage them to overreach in their  
15 claims, exactly as Côte d'Ivoire has done. Perversely, it would penalize States that  
16 act reasonably and with restraint. It would actively encourage unjustified claims.  
17

18 Côte d'Ivoire, in support of this ambitious argument, relies heavily on the case of  
19 *Guyana v. Suriname*.<sup>5</sup> However, this decision does not help them, either on their  
20 sovereign rights argument or on article 83. On the sovereign rights argument, the  
21 Special Chamber will bear in mind that Suriname was advancing the extreme  
22 proposition that no claim for reparation can be advanced in respect of the use or  
23 threat of force in territory which is the subject of a boundary dispute.<sup>6</sup> Not  
24 surprisingly, the Tribunal declined to, in its words, "create a large and dangerous  
25 hole in a fundamental rule of international law."<sup>7</sup> There the Tribunal was purely  
26 concerned to ensure that the rules on the use of force were not somehow disapp lied  
27 to a territory simply because it is the subject of a boundary dispute. Such a situation  
28 is, of course, very different from the long-standing and peaceful economic activity  
29 that we have in Ghana's case.  
30

31 When one goes on to think about the result in *Guyana v. Suriname*, the case actually  
32 offers powerful support for Ghana's position. Although the Tribunal declared  
33 Guyana's claims relating to the use of force admissible, it went on to decide that  
34 there was no need to rule on whether Suriname's responsibility was actually  
35 engaged, or to award Guyana any compensation.<sup>8</sup>  
36

37 In reaching this decision, the Tribunal relied<sup>9</sup> on, we say, a highly relevant passage  
38 from the ICJ's decision in *Cameroon v. Nigeria*. There, the Court held that:  
39

40 By the very fact of the present Judgment and of the evacuation of the  
41 Cameroonian territory occupied by Nigeria, the injury suffered by Cameroon  
42 by reason of the occupation of its territory will in all events have been  
43 sufficiently addressed. The Court will not therefore seek to ascertain whether

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<sup>5</sup> CMCI, paras 9.12-9.14.

<sup>6</sup> *Delimitation of the Maritime Boundary between Guyana and Suriname (Guyana v. Suriname)*, Award of 17 September 2007, 30 UNRIAA 1 (2007) (hereinafter "*Guyana v. Suriname*, Award"), para. 423.

<sup>7</sup> *Ibid.*(citing *Federal Democratic Republic of Ethiopia and the State of Eritrea*, Eritrea-Ethiopia Claims Commission, Partial Award, *Jus Ad Bellum*: Ethiopia's Claims 1-8 (19 Dec. 2005), para. 10).

<sup>8</sup> *Guyana v. Suriname*, Award, paras 423-4, 450.

<sup>9</sup> *Ibid.*, para. 450.

1 and to what extent Nigeria's responsibility to Cameroon has been engaged as  
2 a result of that occupation.<sup>10</sup>  
3

4 The Court reached that conclusion despite the fact that, in light of the land boundary  
5 fixed by the Court, Nigerian armed forces were stationed on territory belonging to  
6 Cameroon. If Côte d'Ivoire's approach is correct, then it is hard to fathom why the  
7 Court did not go on to rule that there had been a serious violation of Cameroon's  
8 sovereign rights. But, as we have set out in our written pleadings,<sup>11</sup> the case law on  
9 this point is quite consistent – the fixing of a boundary, land or maritime, is a  
10 sufficient remedy. There is no need to, it is not fair to, punish a State for conduct  
11 which it undertook when it genuinely believed that it had sovereign rights over  
12 particular territory. The ICJ, and Annex VII tribunals, have not treated maritime  
13 boundary awards as rendering the Parties liable for activities in the area when it was  
14 disputed, and the Special Chamber should not, we say, be the first to take this  
15 serious step, one that would have grave and far-reaching consequences.  
16

17 Côte d'Ivoire goes on to claim various remedies for the alleged breach of its  
18 sovereign rights. For the reasons I have just explained, there is no basis for the  
19 Special Chamber to hold Ghana to be in violation of international law, so the  
20 question of remedies does not arise. But for the sake of completeness, Ghana has  
21 addressed Côte d'Ivoire's claimed remedies in its written submissions,<sup>12</sup> and I will  
22 also do so briefly at this point in my submissions.  
23

24 Côte d'Ivoire makes two claims: firstly, a claim for *restitutio in integrum* by way of an  
25 order requiring Ghana to hand over information relating to economic activity in the  
26 relevant area<sup>13</sup> and, secondly, a claim for financial compensation.<sup>14</sup>  
27

28 Looking first at the claim to information, Ghana has drawn attention, both at the  
29 provisional measures stage and in the Reply, to Côte d'Ivoire's failure to cite any  
30 legal authority for its claimed right to information – let alone a right to the sort of  
31 commercially sensitive information which we are dealing with here.<sup>15</sup> The cases  
32 which it cites are not on point, and there is, we say, simply no legal basis for the  
33 Special Chamber to order Ghana to provide the very extensive list of information  
34 which Côte d'Ivoire now seeks.  
35

36 The lack of any legal basis for this request is reason enough for the Special  
37 Chamber to refuse it; but even if Côte d'Ivoire could establish the existence of this  
38 novel right, there are further barriers, we say, to making the order it seeks.  
39

40 For one thing, it is remarkable that Côte d'Ivoire only asked for this information for  
41 the first time in its application for provisional measures. The activities in question are  
42 longstanding, and one would expect that if Côte d'Ivoire genuinely needed, and  
43 thought it was entitled to, such information it might have asked for it sooner.

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<sup>10</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 303, para. 319.

<sup>11</sup> Reply of Ghana (25 July 2016) (hereinafter "RG"), paras 5.10-5.18.

<sup>12</sup> *Ibid.*, paras 5.22-5.30.

<sup>13</sup> CMCI, paras 9.27-9.32.

<sup>14</sup> *Ibid.*, paras 9.33-9.39.

<sup>15</sup> RG, paras 5.23-5.24.

1  
2 Here, of course, I should make clear that, as Ghana assured the Special Chamber at  
3 the provisional measures hearing,<sup>16</sup> it is carefully recording a range of information  
4 about activities in the relevant area – as it would have done in any event as a  
5 responsible State. But this does not mean that Ghana should be ordered to hand this  
6 material over – far from it. This is commercially sensitive material which Ghana and  
7 its operators have spent considerable time, effort and money on gathering – from  
8 territory legitimately believed to belong to Ghana, with the knowledge and consent of  
9 Côte d'Ivoire. This information is protected by international and domestic laws,  
10 including intellectual property laws, in the hands of those responsible technically and  
11 commercially for generating it. It is not simply a matter of ordering Ghana to hand it  
12 over, and the Special Chamber, we submit, should simply refuse this over-broad and  
13 legally unfounded request. It would provide Côte d'Ivoire with an unmerited windfall  
14 for which it would not have paid.  
15

16 Moving from there to the question of compensation, it is not entirely clear whether  
17 Côte d'Ivoire claims compensation purely for the loss of oil revenues from any part of  
18 the disputed area which the Special Chamber's judgment may award to it, or  
19 whether it also claims compensation above and beyond that.<sup>17</sup> Ghana submits that  
20 there is no basis for the second option. It would be absurd to compensate Côte  
21 d'Ivoire, for example, for physical changes to the seabed brought about by oil  
22 production works which Côte d'Ivoire itself wants to pursue in the very same way, in  
23 the very same area, and which it has done on its side of the customary boundary.  
24 The only financial loss which could realistically be said to have occurred if the  
25 Special Chamber departed from the customary equidistance boundary, and  
26 depending on what the Chamber were to order in its place, is the loss of oil revenue  
27 from any area awarded to Côte d'Ivoire; and in respect of those revenues Ghana  
28 would, of course, honour the commitments which it made to the Special Chamber at  
29 the provisional measures hearing. The basis and terms of compensation, if any were  
30 appropriate, would themselves be complex issues and, as Mr Alexander has  
31 mentioned, would also require consideration of losses caused to Ghana by its  
32 compliance with the Special Chamber's Order for Provisional Measures. The parties  
33 agree that these issues would have to be dealt with later on, if they arise at all,  
34 following the Special Chamber's award.  
35

36 I turn now, finally, to the question of article 83 of the Convention. Côte d'Ivoire claims  
37 that this article means that unilateral economic activities are prohibited in a zone  
38 under litigation.<sup>18</sup>  
39

40 There is a fundamental difference between the Parties on this point. As before, the  
41 first answer to this is that Ghana's activities cannot meaningfully be described as  
42 unilateral, but leaving aside that basic answer to Côte d'Ivoire's argument, and as  
43 Ghana has set out in detail in the Reply,<sup>19</sup> there is no basis at all for the claim that  
44 article 83 requires a complete moratorium on economic activity in an area in dispute.  
45 Such a moratorium was proposed during the negotiation of the Convention, received  
46 very little support, and the proposals were abandoned. The *travaux* show that the

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<sup>16</sup> As recorded in the Order of the Special Chamber, 25 April 2015, para. 92.

<sup>17</sup> CMCI, paras 9.33-9.39.

<sup>18</sup> *Ibid.*, para. 9.45.

<sup>19</sup> RG, para. 5.37.

1 framers of the Convention were concerned to ensure that it did not interfere with  
2 economic development in areas under dispute,<sup>20</sup> and understandably so: otherwise a  
3 State could, for example, shut down its neighbour's activity by abruptly stating that it  
4 no longer agreed with a long-observed maritime boundary – just as Côte d'Ivoire  
5 seeks to do in this case.

6  
7 So the *travaux* do not support Côte d'Ivoire's case on article 83, and nor does the  
8 leading decision on that article in *Guyana v. Suriname*. The Tribunal in that case  
9 considered that article 83 "constitutes an implicit acknowledgment of the importance  
10 of avoiding the suspension of economic development in a disputed maritime area, as  
11 long as such activities do not affect the reaching of a final agreement."<sup>21</sup>

12  
13 The touchstone is whether any particular activity jeopardizes or hampers the  
14 reaching of a final agreement. The Tribunal drew a rough-and-ready distinction  
15 between acts which cause a physical change to the marine environment and those  
16 which do not, considering that acts which cause a physical change "may jeopardize  
17 or hamper the reaching of a final delimitation agreement as a result of the perceived  
18 change to the *status quo* that they would engender."<sup>22</sup>

19  
20 Ghana draws particular attention to the reference to the *status quo*. This is a highly  
21 fact-specific test: the Tribunal wisely refrained from doing anything so mechanical as  
22 to draw up a checklist of prohibited and permitted activities in a disputed area. It  
23 could not have done so, of course, because article 83 clearly and deliberately  
24 refrains from doing so – the question is always what disturbs the *status quo* and  
25 hampers the reaching of agreement. The list of State practice cited by Côte d'Ivoire<sup>23</sup>  
26 is therefore of no assistance at all – what different States choose to do in different  
27 circumstances cannot help us here, and in any event there is nothing to say that any  
28 restraint demonstrated by those States in their particular circumstances was based  
29 on what they considered to be their obligations under article 83. In this case, rather  
30 than changing the *status quo*, Ghana's activities in the relevant area are the *status  
31 quo*. We say that in those circumstances it is impossible to see how they jeopardize  
32 or hamper the reaching of a final agreement.

33  
34 Côte d'Ivoire also seems to argue that Ghana has failed, as article 83 also requires,  
35 to make every effort to enter into provisional arrangements of a practical nature. This is,  
36 essentially, an allegation of failure to cooperate and to comply with Côte d'Ivoire's  
37 requests for information, and the only example given in the Counter-Memorial<sup>24</sup>  
38 dates back to a meeting on 2 November 2011, the fifth meeting between the Parties  
39 on the maritime boundary.

40  
41 Mr President, Members of the Special Chamber, we simply invite you to read the  
42 minutes of that meeting in full.<sup>25</sup> This was the meeting at which Côte d'Ivoire  
43 announced its switch from a meridian to a bisector approach. This was the first time  
44 that Côte d'Ivoire had ever even mentioned the bisector. It was coupled with a

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<sup>20</sup> See the analysis at RG, para. 5.37.

<sup>21</sup> *Guyana v. Suriname*, Award, para. 4.60.

<sup>22</sup> *Ibid.*, para. 4.80.

<sup>23</sup> CMCI, paras 9.46-9.48; RCI, para. 5.22.

<sup>24</sup> CMCI, para. 9.55.

<sup>25</sup> Memorial of Ghana (4 Sept. 2015) (hereinafter "MG"), Vol. V, Annex 53.

1 blanket demand for Ghana to suspend all economic activity in the area newly thrown  
2 into dispute, and it came a month after Côte d'Ivoire had written to Ghana's  
3 operators, out of the blue, demanding that they halt all operations in activities in an  
4 area that Côte d'Ivoire marked out on a map, covering waters hitherto recognized by  
5 all as belonging to Ghana. If either State has jeopardized or hampered the reaching  
6 of a final agreement, it is Côte d'Ivoire, we sadly suggest, by behaving in this  
7 fashion.

8  
9 In the circumstances, Ghana's careful response at the meeting, and the thoughtful  
10 and considered proposals produced later on by the Boundary Commission,<sup>26</sup> reflect  
11 extremely well on a State which was, essentially, being held to ransom by the abrupt  
12 decision of its neighbour to depart from the long-established maritime boundary. The  
13 record shows, we submit, that Ghana has acted throughout in a constructive spirit, in  
14 good faith and as a good neighbour.

15  
16 In the Rejoinder, Côte d'Ivoire also complains that Ghana did not respond to a very  
17 extensive request for technical information relating to the drilling schedule in the TEN  
18 area.<sup>27</sup> Ghana did, of course, comply promptly when the Special Chamber asked it to  
19 provide this voluminous material – and, as the Special Chamber will have seen, the  
20 material takes matters no further forward. Precisely all that Côte d'Ivoire has been  
21 able to find is confirmation of the fact that well Nt-07 was, as Mr Alexander has  
22 explained, drilled out to its final depth following the Provisional Measures Order – a  
23 matter which Ghana was entirely clear about in its Reply<sup>28</sup> and which, as  
24 Mr Alexander has explained, is fully compliant with the Special Chamber's Order.  
25 The Chamber will judge for itself whether any of these matters could possibly  
26 constitute non-cooperation.

27  
28 Mr President, Members of the Special Chamber, by way of very brief conclusion,  
29 there is, we suggest, no basis for any finding that Ghana has violated either general  
30 international law, the Convention, or your Provisional Measures Order. At all times,  
31 Ghana has acted responsibly, with restraint, and with respect for both the letter and  
32 the spirit of the law. And, really, the allegations which Mr Alexander and I have dealt  
33 with in our speeches are a distraction from your task. That task, as others before me  
34 have explained, is to indicate the precise coordinates of the customary equidistance  
35 boundary which has long been observed by the two States, or alternatively to apply  
36 equidistance methodology, which in this case reaches the same equitable result in  
37 the same long-established location.

38  
39 Mr President, Members of the Special Chamber, with that, it is my privilege to  
40 conclude Ghana's first round of submissions. Thank you for your attention and I ask  
41 you to draw today's proceedings to a close.

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

44 Thank you, Ms Macdonald. Your presentation brings to an end the first round of  
45 Ghana's submissions. Tomorrow, on Wednesday 8<sup>th</sup>, the Special Chamber is not  
46 scheduled to sit. We will meet for the beginning of the first round of Côte d'Ivoire's  
47 submissions on Thursday from 10 a.m. to 1 p.m.

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<sup>26</sup> *Ibid.*, Annex 54.

<sup>27</sup> RCI, paras 6.63-6.65.

<sup>28</sup> RG, para. 5.52.

- 1
- 2   Have a pleasant evening.
- 3
- 4                     *(The sitting closed at 5.30 p.m.)*