

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



2017

Public sitting

held on Thursday, 9 February 2017, at 10 a.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

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**Verbatim Record**

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

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

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1 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): Good  
2 morning, ladies and gentlemen. After a well-deserved rest yesterday, we will now  
3 resume proceedings this morning with Côte d'Ivoire. Côte d'Ivoire will present the  
4 first round of its oral pleadings.

5  
6 This hearing, as usual, will last until one o'clock, and there will be a thirty-minute  
7 break between 11.30 and midday.

8  
9 Without further ado, I will give the floor to the Agent for Côte d'Ivoire, Minister Adama  
10 Toungara. Minister, you have the floor.

11  
12 **MR TOUNGARA** (*Interpretation from French*): Mr President, Members of the Special  
13 Chamber, it is an honour and a privilege for me to take the floor before you this  
14 morning, as Agent of the Republic of Côte d'Ivoire, at the beginning of this first round  
15 of oral pleadings for my country.

16  
17 I would like to express my thanks and gratitude to the Members of the Special  
18 Chamber and to the staff of the Tribunal for the exemplary nature of these  
19 proceedings, for their attentiveness and professionalism shown to both Parties over  
20 the last two years.

21  
22 I would also like to express my immense pride in seeing this dispute being settled by  
23 your eminent Court, Côte d'Ivoire and Ghana having agreed to bring the case before  
24 you in order to delimit our maritime boundary, which has never been delimited. On  
25 behalf of the Ivorian people, I would like to reiterate all the confidence that my  
26 country has in your knowledge and great experience in order to rule on this dispute.

27  
28 We have had the opportunity to assess your exceptional qualities during the  
29 incidental proceedings brought by Côte d'Ivoire two years ago. Whilst the sovereign  
30 rights of Côte d'Ivoire were under threat, you understood the urgency of the situation  
31 and opted to make use of your exceptional power to order provisional measures.

32  
33 The dispute relating to the delimitation of the maritime boundary between Côte  
34 d'Ivoire and Ghana in the Atlantic Ocean is an exceptional case in several respects:

35  
36 First, this is a dispute involving key issues that have divided our two countries for  
37 several decades;

38  
39 Second, a fair settlement of this dispute will set a precedent for the sub-region and  
40 will contribute to consolidating peace, fraternity and good neighbourliness. In this  
41 regard, allow me to greet, most warmly, the delegations from Benin and from Togo,  
42 whose presence here today in this room testifies to the influence that your decision  
43 will have on the delimitation of maritime boundaries in the Gulf of Guinea;

44  
45 Third, settling this case will help to develop international law, as did the Order  
46 prescribing provisional measures that you delivered on 25 April 2015.

47  
48 Mr President, Members of the Special Chamber, Ghana has given you a version of  
49 history that is not in line with the actual facts. Even if Côte d'Ivoire and Ghana have  
50 concluded an agreement on their land boundary, Côte d'Ivoire and Ghana have

1 never concluded an agreement on their common maritime boundary, despite ten or  
2 so meetings of the Ivorian-Ghanaian Commission on delimitation of the maritime  
3 boundary, despite secret meetings between ministers entrusted with these matters,  
4 and despite summit meetings between heads of State. The State I represent has  
5 constantly repeated over the years, since 1988 - the date of the consensual  
6 demarcation of the land boundary - that Côte d'Ivoire and Ghana have never arrived  
7 at an agreement on the delimitation of their maritime boundary.

8  
9 What else could Côte d'Ivoire have done without running the risk of jeopardizing  
10 peace and good neighbourliness?

11  
12 Côte d'Ivoire has made peace its second religion and has always preferred  
13 negotiation and dialogue to conflict.

14  
15 The maritime boundary between Côte d'Ivoire and Ghana remains to be delimited.

16  
17 The purported imaginary customary boundary invoked by Ghana does not alter the  
18 fact that there is an urgent need to address this issue.

19  
20 Despite circumstantial, economic and even occasional disagreements, Côte d'Ivoire  
21 and Ghana remain two fraternal countries whose history is based on fraternity,  
22 friendship and cooperation. This common history is enshrined in the bilateral Treaty  
23 for Friendship and Cooperation dated 8 May 1970, through which the two States  
24 agreed to maintain in all circumstances the bonds of friendship and fraternity that  
25 unite them. I believe that Côte d'Ivoire and Ghana have respected this text on  
26 boundary issues by setting up a joint commission for the re-demarcation of their land  
27 boundary between 1963 and 1988. There was a second joint commission on related  
28 negotiations, namely delimitation of their common maritime boundary. Unfortunately,  
29 this commission met without success, which further proves that the maritime  
30 boundary between our two countries remains to be delimited.

31  
32 Mr President, Members of the Special Chamber, I have trust in the strength of  
33 relations between Côte d'Ivoire and Ghana, and have trust in your wisdom to help us  
34 overcome the problem in this particular dispute.

35  
36 Mr President, Members of the Special Chamber, I would like to thank you for your  
37 courteous attention. I now request that you give the floor to Maître Pitron, who will  
38 present the main outline of the case and the structure of our pleadings, which, today  
39 and tomorrow, will form the first round of Côte d'Ivoire's pleadings.

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

42 Thank you, Minister Toungara, Agent for Côte d'Ivoire. I now give the floor to Maître  
43 Michel Pitron.

44  
45 Maître Pitron, you have the floor.

46  
47 **MR PITRON** (*Interpretation from French*): Mr President, gentlemen, it is an honour  
48 for me and for our entire team to represent the interests of Côte d'Ivoire and to speak  
49 on its behalf before your eminent Chamber in the dispute between Côte d'Ivoire and  
50 Ghana on the delimitation of their common maritime boundary.

1  
2 For the next 20 minutes I will give an overview of Côte d'Ivoire's arguments in this  
3 case, which, Mr President, Members of the Special Chamber, is of particular  
4 importance, as Mr Toungara has explained, as is the decision that you will be  
5 required to take. Two sovereign States have entrusted you with the task of delimiting  
6 their respective maritime areas. They have conflicting positions and a very different  
7 approach to the matter in hand. One is claiming, against all the odds, a unilaterally  
8 proclaimed *de facto* situation, which it is seeking to turn into a *de jure* situation. The  
9 other, by contrast, has undertaken genuine maritime delimitation work and has  
10 immersed itself in the study of decisive circumstances and appropriate methods to  
11 assist you in finding an equitable solution.

12  
13 This case came into its own from the beginning of its judicial phase. Almost two  
14 years ago we met for the oral pleadings in incidental proceedings brought by Côte  
15 d'Ivoire to guarantee the preservation of its rights until the end of the dispute.

16  
17 On 25 April 2015, in an innovative and much discussed order, the Special Chamber  
18 ordered Ghana to comply with various measures in order to preserve the rights of  
19 Côte d'Ivoire up until the end of the dispute in the area claimed by the two States.  
20 You held inter alia that the unilateral oil exploration and exploitation activities  
21 undertaken by Ghana in the disputed area were likely to result in a significant and  
22 permanent modification of the physical characteristics of that area and likely to cause  
23 irreparable prejudice to the sovereign rights of Côte d'Ivoire.

24  
25 When that decision became public, it attracted the attention of a number of States in  
26 the sub-region. Today, Togo and Benin, fully aware of the detrimental effects that the  
27 application of the equidistance method would have on their own boundaries with  
28 Ghana, as is also claimed by Ghana in respect of its immediate neighbour Togo,  
29 gained access, with your agreement, Mr President, to the documents in the  
30 proceedings. Their concern persists. Their representatives are present in this  
31 Chamber today.

32  
33 The case before you is that of two States which have never succeeded in agreeing  
34 on a common maritime boundary, their respective positions being irreconcilable.

35  
36 Ghana adheres to the claim of an equidistance line, described in 2011 for the first  
37 time as a tacit agreement between the two States. Today, it also uses the more  
38 general and imprecise term "customary equidistance line",<sup>1</sup> repeated as a mantra  
39 with the apparent objective of enchanting its audience. Côte d'Ivoire, for its part,  
40 which has never agreed to the establishment of such a line, under any of the forms  
41 of agreement recognized by international law, strives to achieve an equitable  
42 solution in accordance with international law.

43  
44 Therein lies a major difference, because an agreement in international law is not to  
45 be presumed. The same holds, *a fortiori*, where the purpose of the agreement is to  
46 draw a line determining where the respective maritime areas of two neighbouring  
47 States begin and end, areas over which they will exercise exclusive sovereign rights.  
48 To presume it or consider it to exist in the absence of conclusive evidence would be

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<sup>1</sup> See, inter alia, RG, paras 1.5, 1.14, 2.94; see also, inter alia, ITLOS/PV.17/C23/1, p. 16, line 23.



1 a sign of great legal uncertainty. With regard to the tacit agreement in particular, your  
2 Tribunal agreed on this when the first delimitation dispute was referred to it in the  
3 case between Bangladesh and Myanmar. You shared the view of the ICJ, holding  
4 that “evidence of a tacit legal agreement must be compelling”.<sup>2</sup>  
5

6 In the present case, you will be able to note that the arguments put forward by  
7 Ghana seeking to establish the existence of a tacit agreement on a common  
8 maritime boundary for the two States cannot be compelling. In truth, however often  
9 they are rehearsed, these arguments only ever concern one area, the oil practice of  
10 the Parties. Their number does not result in their quality, and they cannot under any  
11 circumstances have probative value for the establishment of a maritime boundary  
12 between two sovereign States.  
13

14 The argument of tacit agreement is not viable, especially since Ghana conveniently  
15 omits two key elements of the history of this dispute. You will have noted that I spoke  
16 of “omission”, and not of “manipulation” or “invention”,<sup>3</sup> terms which are, to say the  
17 least, inappropriate to characterize relations between States in this Chamber.  
18

19 Two elements, I said. First, official recognition – often reiterated by the two States,  
20 including by their respective leaders – of the absence of delimitation of a common  
21 maritime boundary.  
22

23 Second, the systematic refusal of Côte d'Ivoire, as from 1970-1975, to recognize the  
24 western limit of the Ghanaian oil concessions as a boundary. This clear position is  
25 completely incompatible with the existence of such an agreement. Ghana's reliance  
26 on the tacit agreement is merely an attempt to ascribe a semblance of legal support  
27 to its unilateral and hegemonic oil practice. Your Chamber will be convinced of this  
28 from the factual and legal arguments which will be presented to it this morning,  
29 following this statement, by Mr Kamara, Sir Michael Wood and Professor Miron  
30 respectively. Mr Kamara will give you an overview of the relations between the  
31 Parties over the last 50 years, which is essential to an objective understanding of the  
32 historical reality. Sir Michael Wood, for his part, will demonstrate how nothing in  
33 those relations suggests the existence of a tacit agreement on the maritime  
34 boundary between the two States. Lastly, Professor Miron will rebut recourse to the  
35 estoppel theory.  
36

37 Mr President, Members of the Special Chamber, do not be content with taking the  
38 role of a scribe, as Ghana proposes to you, being called to confirm on parchment the  
39 existence of an agreement (is that, moreover, what is asked of Judges such as  
40 yourselves with an *imperium?*); but you will perform the role for which the Parties, or  
41 rather Ghana, initially submitted the matter to you, that is to say to delimit an  
42 equidistance maritime boundary between the two States.  
43

44 To this effect, Côte d'Ivoire will begin by setting out the evidence which is of crucial  
45 importance in the approach you adopt.

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<sup>2</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, para. 117, citing *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007*, p. 659, at p. 735, para. 253.

<sup>3</sup> ITLOS/PV.17/C23/1, p. 17, lines 23-24.

1  
2 There are geographical circumstances. I myself will present these to you tomorrow  
3 morning. There are five of them:

- 4  
5 - the straightness of this segment of the coast, which governs the construction of  
6 the provisional equidistance line and which explains the concentration of base  
7 points on a tiny portion of coastline;  
8  
9 - the opposite direction of that segment to the general direction of the two States;  
10  
11 - the existence of the Jomoro Peninsula, a Ghanaian protuberance that blocks the  
12 seaward projection of a substantial part of the Ivorian land mass;  
13  
14 - the instability of the coasts, automatically giving rise to the instability of the base  
15 points situated thereon, which has a direct and significant effect on the reliability  
16 of the boundary line drawn using them;  
17  
18 - finally, the fifth and last of these circumstances, the exceptional concentration of  
19 hydrocarbon resources in the disputed area and to the east of it.

20  
21 As we will demonstrate, these circumstances have a two-fold effect, not only on the  
22 choice of delimitation method to be favoured in order to arrive at an equitable  
23 solution, but also on the course of the delimitation line.  
24

25 In the light of these elements, Côte d'Ivoire has tried to find the method which allows  
26 an equitable solution to be achieved in this particular case. The equitable solution is  
27 the primordial objective, the fundamental principle,<sup>4</sup> as is stated in the *Tunisia v.*  
28 *Libya* judgment, of any maritime delimitation operation. The Tribunal constituted to  
29 hear the dispute between Bangladesh and India stated that it was “the paramount  
30 objective”<sup>5</sup> of any delimitation. This objective of equity cannot be achieved without  
31 taking into account all the circumstances of each case, which can lead to a choice of  
32 different methods of delimitation. That is the applicable law in this case, and  
33 Professor Pellet will recall it briefly. It is your task and your honour, I believe, to  
34 pursue this approach, and I have to admit that I do not understand Ghana, which,  
35 through its Counsel, threatens you – yes, I really did hear and read this – with losing  
36 your powers because you will have exercised them.  
37

38 In this case, Members of the Special Chamber, a number of the circumstances which  
39 I have just mentioned call for the application of the angle bisector method, as I will  
40 demonstrate.  
41

42 First, the tiny segment on which the base points selected by the Parties are located.  
43 The straightness of the segment located close to boundary post 55 gives rise to the  
44 selection of base points on a tiny portion of the coastline, representing less than 1%  
45 of the total coast of the two States. Constructing a maritime boundary on such a

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<sup>4</sup> *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 18, at p. 47, para. 62.

<sup>5</sup> *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 339.

1 small segment would not reflect the general configuration of the coasts of the States  
2 in a maritime delimitation operation.

3  
4 There is also coastal instability. A line constructed from points situated on an  
5 unstable segment would become “arbitrary and unreasonable in the near future”,<sup>6</sup> as  
6 the International Court of Justice ruled in *Nicaragua v. Honduras*.

7  
8 Finally, consideration must be given to the effects of your decision on the rights of  
9 third States in the sub-region.

10  
11 Given these circumstances, the solution that combines the two advantages of  
12 reliability and equity is to draw the bisector of the angle formed by the general  
13 direction of the coasts of the two States. In this particular case, this leads to an  
14 azimuth line of 168.7 degrees. As I will have the honour to explain, this angle  
15 bisector method is not only fully established in case law but is also used by States in  
16 similar geographical situations to that of Côte d’Ivoire and Ghana.

17  
18 In the alternative, but in no contradiction with the angle bisector method – because,  
19 after all, it is no contradiction to envisage an alternative, should a first argument fail,  
20 without denying that argument or acquiescing in principle to the second, as Ghana  
21 has done, moreover, by successively relying on the tacit agreement on the maritime  
22 boundary and then its delimitation by the three-stage method – Professors Miron and  
23 Pellet will explain, in succession, how your Tribunal could, should it so wish, also  
24 come to an equitable solution – the same, in fact – by applying the equidistance and  
25 relevant circumstances method, adjusting the line in light of the geographic  
26 circumstances of the specific case.

27  
28 The adjustment is made in light of the straight segment and the opposite direction to  
29 the general direction of the coast, which governs the course of the provisional  
30 equidistance line. The adjustment of the equidistance line would remedy the cut-off  
31 effect caused by the line constructed from that segment.

32  
33 It also follows from consideration of the Jomoro Peninsula and the blocking of the  
34 Ivorian land mass to which it gives rise.

35  
36 Lastly, the adjustment of the line should be appropriate in the light of one last  
37 geographical circumstance, namely the exceptional presence of hydrocarbons in the  
38 disputed area and to the east of it.

39  
40 These are the main circumstances which have to be taken into account in making an  
41 adjustment of the line if the equidistance/relevant circumstances method is applied,  
42 to the exclusion of the *modus vivendi* claimed by Ghana, which, as we will  
43 demonstrate tomorrow, does not in fact exist.

44  
45 The decisive geographical circumstances which, for delimitation of the maritime  
46 boundary within 200 nautical miles, militate in favour of the application of the angle  
47 bisector method in this case or the adjustment of the provisional equidistance line

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<sup>6</sup> *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, at p. 742, para. 277.

1 have the same effect as for delimitation of the boundary beyond the 200-nautical-  
2 mile limit. There is nothing in the conduct of the Parties, including their respective  
3 submissions for extension to the Commission on the Limits of the Continental Shelf,  
4 that attests to any kind of agreement on the line beyond 200 nautical miles. Sir  
5 Michael Wood will demonstrate this tomorrow.

6  
7 I will also show you, lastly, that the single azimuth line of 168.7 degrees thus drawn  
8 divides the maritime areas between the two States equitably, whatever method is  
9 chosen. This line takes into account the overall coastal geography of the two States,  
10 corrects the cut-off effect generated by the equidistance line and is equitable in the  
11 regional context of the Gulf of Guinea.

12  
13 Finally, Côte d'Ivoire, represented by Professor Miron and Mr Kamara, will show, to  
14 conclude the first round of oral pleadings, the infringements of its obligations by  
15 Ghana which justify the engagement of its international responsibility and the award  
16 of appropriate reparation to Côte d'Ivoire. We will demonstrate, as we have done in  
17 our written pleadings, that Ghana has infringed the sovereign rights of Côte d'Ivoire  
18 by undertaking unilateral activities in the maritime area disputed between the two  
19 States, despite Côte d'Ivoire's firm and repeated opposition to those activities. These  
20 activities also constitute a serious failure by Ghana to comply with its obligations of  
21 restraint and cooperation under article 83, paragraph 3, of the United Nations  
22 Convention on the Law of the Sea.

23  
24 Members of the Tribunal, it also falls to you to sanction the infringements by Ghana  
25 of the obligations which you imposed on it in your Order for the prescription of  
26 provisional measures of 25 April 2015. Ghana has breached its obligation to carry  
27 out no new drilling in the disputed area prescribed by paragraph 108(1)(a) of the  
28 Order and its obligation of cooperation under paragraph 108(1)(e). The terms of the  
29 decision of the Chamber deserve to resonate with the strength you wished to give  
30 them.

31  
32 I would like to thank you for your kind attention and would request that you be so  
33 kind as to give the floor to Mr Kamara, who will present to you the historical  
34 background to the dispute.

35  
36 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

37 Thank you, Maître Pitron, for your submission. I would now like to give the floor to  
38 Maître Adama Kamara.

39  
40 **MR KAMARA** (*Interpretation from French*): Mr President, Members of the Special  
41 Chamber, it is an honour for me to come before your eminent court today to  
42 represent my country. This morning I shall be focusing on giving you a general  
43 presentation of the historical context of this dispute with Ghana relating to the  
44 delimitation of the common maritime boundary.

45  
46 A State generally starts negotiations on delimitation of its maritime boundary with a  
47 neighbour when there is an economic interest to do so, when the domestic political  
48 context so permits, and when bilateral relations with that neighbour are favourable.

49

1 When it comes to this delimitation, various factors come into play: the history of  
2 bilateral relations between the Parties, their internal political and institutional history,  
3 or their macroeconomic history, of which the oil industry is but one part. Each of  
4 these histories can only be understood in the light of the others, so that none of them  
5 can be properly understood in isolation, contrary to what Ghana is trying to  
6 encourage you to do.

7  
8 Ghana in fact has restricted itself almost obsessively to addressing just one aspect  
9 of the history of the Parties, namely, their oil history. Indeed, it focuses even more on  
10 the granting and the outline of the concessions in the border area. That is what it  
11 uses as a basis for banging on about the existence of a *customary equidistance*  
12 *boundary*. This is a very partial and biased presentation of the facts because we  
13 have to look at the picture as a whole. It is minimising, even ignoring, certain  
14 fundamental aspects of our bilateral relations and of the internal history of the  
15 Parties. This needs to be rectified because it distorts that oil history by taking it out of  
16 context.

17  
18 My pleadings will be focusing on these aspects, so as to give you an overall  
19 presentation. It will not be exhaustive in view of the time afforded to me, but it will at  
20 least be objective and show the dispute in a factual context.

21  
22 The Parties, Ghana and Côte d'Ivoire, are two countries in West Africa which gained  
23 their independence in 1958 and 1960, respectively. In the following 33 years, Côte  
24 d'Ivoire was presided over by President Félix Houphouët-Boigny, until his death in  
25 1993.

26  
27 This political stability allowed Côte d'Ivoire to focus on its economic development,  
28 which was so dear to the "father of the nation", and focused in particular on  
29 agriculture, the cultivation of coffee and cocoa, and forestry.<sup>1</sup> Even though offshore  
30 oil exploration began towards the end of the Fifties, the Ivorian oil industry until just  
31 recently only played a minor role in the economic development of the country.

32  
33 The political stability under the presidency of Houphouët-Boigny allowed Côte  
34 d'Ivoire to develop peaceful bilateral relations with its Ghanaian neighbour, nurturing  
35 relations of friendship and fraternity between the two countries.

36  
37 It is within this context that the Parties established in 1963 a bilateral commission  
38 entrusted with looking at the delimitation of the land boundary between the two  
39 States, respecting the principle of the inviolability of borders. This operation was  
40 intended to facilitate forestry in that area, because it had been agreed that forestry  
41 operations would be suspended until redemarcation was completed.<sup>2</sup>

42  
43 In the Seventies, during the work of that bilateral commission, Côte d'Ivoire became  
44 aware of the need to have a policy for managing and developing its maritime areas  
45 as well, in light of the constant developments in the international law of the sea. This  
46 policy began in 1977 with the adoption of a law laying down the limits of the Ivorian  
47 territorial sea to 12 nautical miles, proclaiming an exclusive economic zone

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<sup>1</sup> CMCI, Vol. I, paras 2.3-2.7.

<sup>2</sup> CMCI, Vol. I, para. 2.30.

1 extending up to 200 nautical miles off the Ivorian coast. This law laid the foundations  
2 for the delimitation of Côte d'Ivoire's maritime boundaries, establishing the principle  
3 according to which this should be achieved through agreement with neighbouring  
4 countries.<sup>3</sup>

5  
6 The second stage of this assertive action took place 11 years later, in 1988, when  
7 the issue of delimitation of the maritime boundary between Côte d'Ivoire and Ghana  
8 was put on the agenda of the bilateral discussions between the Parties during the  
9 work of the commission for redemarcation of the land boundary, which was coming  
10 to an end.

11  
12 During that meeting, Côte d'Ivoire, which was thus the applicant party in the  
13 delimitation of a non-existent maritime boundary, suggested that the straight line  
14 between BPs 54 and 55 be extended seaward, which led to a line being drawn in a  
15 south-south-east direction.<sup>4</sup> Ghana refused to follow up on the Ivorian proposal on  
16 the grounds that its delegation did not have an appropriate mandate.<sup>5</sup>

17  
18 This meeting, Mr President, Judges, is a significant event, because this was the first  
19 official bilateral contact on delimitation of the maritime boundary. The tenor of this  
20 meeting attests to the fact that at that time there was no maritime boundary, and that  
21 Côte d'Ivoire was even then proposing a maritime boundary which was not based on  
22 equidistance. This was in 1988, almost 20 years before the first significant oil find in  
23 the maritime border area. We are far away from the "ocean grab" that Ghana was  
24 going on about on Tuesday.<sup>6</sup>

25  
26 Ghana adopted a similar approach four years later, when it came back to Côte  
27 d'Ivoire in February 1992, requesting that a bilateral meeting be held in order to  
28 discuss, in its words, "the question of boundary delimitation".<sup>7</sup>

29  
30 Ghana's request, according to information from the Côte d'Ivoire Ambassador in  
31 Accra, was motivated by the "many ongoing drilling projects [being carried out by  
32 Ghana] in the maritime boundary zone".<sup>8</sup>

33  
34 At this time, when its offshore oil industry was in its infancy, Ghana refused to  
35 envisage a major drilling campaign in the maritime boundary zone, part of which,  
36 moreover, had also been claimed by Côte d'Ivoire four years earlier, without having

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<sup>3</sup> Loi n°77-926 portant délimitation des zones maritimes placées sous la juridiction nationale de la République de Côte d'Ivoire (Law delimiting the maritime zones placed under the national jurisdiction of the Republic of the Ivory Coast), CMCI, Vol. III, Annex 2; see also CMCI, Vol. I, paras 4.30-4.32.

<sup>4</sup> Compte-rendu des réunions de la Commission nationale de réajournement des frontières (Minutes of the meetings of the National Commission on Boundary Redemarcation), 12 and 19 March 1992, CMCI, Vol. III, Annex 13.

<sup>5</sup> Procès-verbal de la 15<sup>ème</sup> session ordinaire de la Commission mixte de réajournement de la frontière ivoiro-ghanéenne (Minutes of the 15th ordinary session of the Joint Commission on Redemarcation of the Ivoiro-Ghanaian maritime boundary, 18-20 July 1988, CMCI, Vol. III, Annex 12; see also CMCI, Vol. I, paras 3.34-3.37 and RCI, Vol. I, paras 4.9-4.10.

<sup>6</sup> ITLOS/PV.17/C23/2, 07/02/2017, p. 20, lines 13-16 (Prof. Sands).

<sup>7</sup> Ghanaian fax No 233-21-668 262 from the Ghanaian Secretariat for Energy, February 1992, see Note Verbale from Ministry of Foreign Affairs of the Republic of Côte d'Ivoire to Ministry of Foreign Affairs of the Republic of Ghana, No. 2678/AE/AP/RM-13 (Apr. 1992), RG, Vol. III, Annex 112; see also CMCI, Vol. I, paras 2.38-2.40.

<sup>8</sup> CMCI, Vol. III, Annex 17.

1 previously delimited its maritime boundary with its Ivorian neighbour through any  
2 written agreement.

3  
4 In the hope that the boundary issue could be settled, Côte d'Ivoire welcomed this  
5 proposal from Ghana to meet and welcomed the fact that

6  
7 the Ghanaian Government, which chose not to react to its proposed maritime  
8 boundary delimitation first presented in 1988 at the 15<sup>th</sup> session of the Joint  
9 Ivoirian-Ghanaian Commission, no doubt now believes it an opportune time to  
10 carry out the delimitation of that boundary.<sup>9</sup>

11  
12 Like the moratorium on forestry issues agreed at the time, Côte d'Ivoire expressly  
13 urged Ghana to refrain, pending the organization of the meeting, from any drilling  
14 activity in the area to be delimited.<sup>10</sup> For Côte d'Ivoire it was a question of making  
15 sure that no irreparable physical damage would be caused to part of the continental  
16 shelf which might be deemed to be Ivorian once the boundaries had been delimited.  
17 This was at a time, I repeat, when there had been no significant oil finds in the  
18 boundary area.

19  
20 However, this invitation to negotiate from Côte d'Ivoire was not replied to by  
21 Ghana,<sup>11</sup> and in fact Ghana abandoned its drilling projects in the disputed area.<sup>12</sup>

22  
23 As from 1993, the question of delimitation of the maritime boundary was hampered  
24 by successive military, social and political crises in Côte d'Ivoire, which considerably  
25 weakened its state apparatus. During this period Côte d'Ivoire had a number of  
26 compelling priorities: reunifying the country, restoring peace, organizing free  
27 elections as exhorted by the international community, stabilizing institutions; in short,  
28 trying to make sure that the crisis was overcome, and indeed, this was a process in  
29 which Ghana was closely involved.<sup>13</sup>

30  
31 This period of torment began in 1993, when there was a historical turning point in the  
32 form of the death of President Houphouët-Boigny. That became a full-blown crisis  
33 after the military coup in December 1999, which plunged Côte d'Ivoire into a long  
34 period of political, military and institutional instability, with frequent riots and several  
35 hundreds of deaths.<sup>14</sup>

36  
37 In 2002 there was again an attempted coup d'état in the country, which was so  
38 severe that the United Nations deployed a military contingent in the zone separating  
39 the two warring parties.<sup>15</sup>

40  
41 These events plunged Côte d'Ivoire into a profound and unprecedented crisis, from  
42 which it only emerged as of 2007, after several years of negotiations between the  
43 parties to this domestic conflict, under the aegis of the United Nations, the African  
44 Union, ECOWAS, and other friendly countries, primary amongst them Ghana.

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<sup>9</sup> CMCI, Vol. III, Annex 16.

<sup>10</sup> CMCI, Vol. I, paras 2.41-2.42, and RCI, Vol. I, paras 4.11-4.12.

<sup>11</sup> CMCI, Vol. I, paras 2.43-2.47, and RCI, Vol. I, para. 4.13.

<sup>12</sup> CMCI, Vol. I, para. 2.45.

<sup>13</sup> CMCI, Vol. I, paras 2.8-2.20; see also RCI, Vol. I, paras 4.14-4.19.

<sup>14</sup> CMCI, Vol. I, paras 2.10-2.13.

<sup>15</sup> CMCI, Vol. I, para. 2.14.

1 Between 2002 and 2004, Ghana organized a number of meetings and negotiating  
2 sessions, which were difficult, but led to three peace agreements being concluded,<sup>16</sup>  
3 Accra 1, 2 and 3. Ghana was therefore particularly *au fait* with the domestic situation  
4 in Côte d'Ivoire because it played a very active part in the resolution of the crisis.

5  
6 Despite these efforts, the crisis lasted for several more years because of the tense  
7 political climate, which made it impossible to hold elections. It was only in 2007, after  
8 the Ouagadougou Agreements were signed, that the domestic situation gradually  
9 improved.<sup>17</sup>

10  
11 During these 14 years of instability, interrupted by a number of serious crises,  
12 between 1993 and 2007, whereas our neighbours were enjoying political stability  
13 conducive to their economic development, the Ivorian State apparatus was seriously  
14 impaired, when it was not simply non-existent, during the most serious stages of the  
15 crisis. Even if the continued existence of purely administrative bodies, such as the  
16 directorate general of hydrocarbons, meant that there could be day-to-day  
17 management of Ivorian oil activities, this internal situation nevertheless explains the  
18 fact that, during these years, Côte d'Ivoire's attention was distracted from the  
19 problems of maritime delimitation and from Ghana's conduct in the boundary areas,  
20 which really did require action at the highest levels of the State.

21  
22 Negotiations pertaining to the delimitation of the maritime boundary were only able to  
23 resume as of 2008, once the domestic Ivorian situation became stabilized.

24  
25 During the six subsequent years, the Parties met on ten occasions<sup>18</sup> within a joint  
26 commission whose aim was to "deliberate on the delimitation of [their] international  
27 maritime boundaries". I quote here the wording employed by Ghana in its note  
28 verbale dated 20 August 2007, inviting Côte d'Ivoire to the negotiating table.<sup>19</sup> The  
29 purpose of these bilateral talks thus set out by Ghana was clear: on the day talks  
30 opened, to seek to agree on the non-existent maritime boundary.

31  
32 This objective was furthermore clearly recalled in November 2009, during a bilateral  
33 meeting between the Ivorian and Ghanaian heads of State in Ghana, according to  
34 which they publicly called for a swift conclusion to the negotiations with a view to  
35 "the delimitation of the maritime border".<sup>20</sup> During the ten meetings of this  
36 Commission, Ghana in fact did not really negotiate. According to the International  
37 Court of Justice, "negotiate" implies that the Parties "conduct themselves [such] that  
38 the negotiations are meaningful, which will not be the case when either of them  
39 insists upon its own position without contemplating any modification of it."<sup>21</sup>

40  
41 Specifically, instead of negotiating, Ghana obstinately sought to impose on Côte  
42 d'Ivoire a boundary following the western limit of oil blocks that it had unilaterally

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<sup>16</sup> CMCI, Vol. I., paras 2.15-2.19.

<sup>17</sup> CMCI, Vol. I, para. 2.20.

<sup>18</sup> CMCI, Vol. I, paras 2.48-2.82; see also RCI, Vol. I, paras 4.23-4.32.

<sup>19</sup> Note verbale No LE/IL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Ivory Coast, 20 August 2007, CMCI, Vol. III, Annex 25.

<sup>20</sup> Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, Vol. III, Annex 34.

<sup>21</sup> *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, at p. 47.



1 granted to its operators and from which it never considered departing. To that end,  
2 during the negotiations, Ghana called upon various legal and geographic arguments.  
3 It first of all maintained, in 2008, that the boundary should follow a strict equidistance  
4 line,<sup>22</sup> then, as of 2011, realising that that line did not reflect its oil line, claimed an  
5 adjusted equidistance line.<sup>23</sup> Ghana in fact only once took up the idea of tacit  
6 agreement, in August 2011, which it subsequently abandoned, before it appeared  
7 once again suddenly in its arbitration notification, and then during the course of the  
8 present case.<sup>24</sup> In any event, never did the boundary it proposed change.

9  
10 Côte d'Ivoire, for its part, formally rejected the Ghanaian proposal of a boundary that  
11 followed the lines of its concessions, however it was presented, and, on several  
12 occasions, asked Ghana to desist from oil activity in the disputed area.<sup>25</sup> This  
13 position adopted by Côte d'Ivoire at the outset of the negotiations was fully  
14 consistent with what it had adopted back in 1988 and 1992. During negotiations,  
15 Côte d'Ivoire furthermore proposed in good faith to Ghana several lines resulting  
16 from the application of different delimitation methods, as it refined the knowledge it  
17 acquired and tools available to it, with a view to better ascertaining the coastal  
18 geography and thereby achieve an equitable solution.<sup>26</sup> It first of all proposed, in  
19 February 2009, that the boundary be delimited according to the method of the  
20 geographic meridian.<sup>27</sup> In May 2010, Côte d'Ivoire proposed another line, also based  
21 on the meridian method, starting this time from BP 55.<sup>28</sup> In November 2011, the  
22 Ivorian side once again formulated an alternative delimitation proposal based on the  
23 angle bisector method,<sup>29</sup> to which it still lays claims today. Ghana made snide  
24 remarks about these various proposals from Côte d'Ivoire. It was wrong to do so  
25 because that reflects the spirit of compromise that only the latter displayed.

26  
27 These proposals were invariably rejected by Ghana. It is under these conditions that  
28 it abruptly put an end to negotiations by delivering without prior notice to Côte  
29 d'Ivoire an arbitration request barely ten days before the 11<sup>th</sup> meeting of the Joint  
30 Commission, having simultaneously withdrawn its declaration under article 298 of  
31 UNCLOS that it had made in 2009.<sup>30</sup>

32  
33 Discussions during these six years of negotiations thus focused on the delimitation  
34 method, the relevant circumstances of the case, and the location of BP 55 and base  
35 points. In spite of Ghana's convolutions, the content of these negotiations clearly  
36 shows, Mr President, Judges - were that still required - that their purpose was the

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<sup>22</sup> Minutes of the fourth meeting between Ghana and Ivory Coast on maritime boundary delimitation, held in Accra, 27-28 April 2010, CMCI, Vol. III, Annex 37.

<sup>23</sup> Ghana's Response towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, Vol. III, Annex 39.

<sup>24</sup> CMCI, Vol. I, para. 2.67 and RCI, Vol. I, para. 4.30.

<sup>25</sup> Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, Vol. III, Annex 30; Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, CMCI, Vol. III, Annex 40; CMCI, Vol. I, paras 2.55, 2.71 and 4.23.

<sup>26</sup> CMCI, Vol. I, paras 2.56, 2.65 and 2.70.

<sup>27</sup> CMCI, Vol. I, para. 2.56.

<sup>28</sup> CMCI, Vol. I, para. 2.65.

<sup>29</sup> CMCI, Vol. I, para. 2.69.

<sup>30</sup> CMCI, Vol. I, paras 21 and 2.81.

1 delimitation of a non-existent maritime border and not to “confirm” or “affirm” an  
2 existing boundary.<sup>31</sup>

3  
4 That is, Mr President, Judges, the historical context of the maritime boundary  
5 delimitation dispute between the Parties. In summary, it is the history of a discussion  
6 that was broken off in 1988, then in 1992; of negotiations that were prevented  
7 between 1993 and 2007; and negotiations that at last took place between 2008 and  
8 2014, but to no avail, because of Ghana’s behaviour that sought to impose a  
9 boundary exclusively favouring its economic interests, without taking into account  
10 applicable legal rules.

11  
12 Ghana today seeks to present a totally different story – its history. That of oil  
13 activities allegedly undertaken hand-in-hand, since their independence, by two  
14 friendly, neighbouring States. That of a tacit agreement on the course of a maritime  
15 boundary of which this oil activity is said to be both the basis and the proof. In  
16 addition to the fact that this oil history is only one component of the historical context  
17 of the dispute, the reality is very different and must be set out again. To that end, it is  
18 important to distinguish between the creation of oil concessions and activities,  
19 essentially the drilling that was carried out there. Professor Miron will return in detail  
20 to these various aspects.

21  
22 The first oil blocks off the Ghanaian and Ivorian coasts were created at the end of  
23 the colonial period, in 1956 and 1957, respectively. Ghana believes this is indicative  
24 of a tacit agreement on delimitation that was established before the Parties gained  
25 independence, without ever giving a single indication as to the conditions under  
26 which it was established.

27  
28 Two years after Ghana, in 1970, Côte d’Ivoire in turn established its first offshore oil  
29 block, granted to Esso. Ghana referred on several occasions during its oral  
30 pleadings to the decree that established this block,<sup>32</sup> presenting it as the cornerstone  
31 of its demonstration, claiming that its eastern limit is characterized as “the boundary  
32 line with Ghana”. Ghana, however, deliberately omits to state that, from this first act  
33 of its offshore oil exploration policy, the Ivorian State in full responsibility took care to  
34 introduce an express and unequivocal reservation, stating that its western and  
35 eastern limits were “given by way of indication” and could in no way prejudice  
36 maritime delimitation.<sup>33</sup>

37  
38 Furthermore, Côte d’Ivoire restated its position in 1975 by setting out unambiguously  
39 and explicitly, in an oil contract in January and a decree in October, that “[t]he  
40 coordinates [of the eastern limit of the oil block] are given by way of indication and  
41 cannot in any case be regarded as being the national jurisdiction boundaries.”<sup>34</sup>  
42 Thus, how can Ghana present these decrees as the basis of the agreement of the  
43 Parties on the delimitation of their maritime boundary?!

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<sup>31</sup> ITLOS/PV.17/C23/1, 06/02/2017, p. 10, line 2 (Prof. Sands); *ibid.*, p. 38, line 26 (Mr Reichler); *ibid.*, p. 8, line 7 (Agent of Ghana).

<sup>32</sup> Examples include: ITLOS/PV.17/A23/2, 06/02/2017, p. 24, lines 24-27 (Prof. Sands); ITLOS/PV.17/C23/1, 06/02/2017, p. 12, line 38; *ibid.*, p. 18, lines 2-6; ITLOS/PV.17/C23/2, 07/02/2017, p. 9, line 49.

<sup>33</sup> CMCI, Vol. I, paras 2.96-2.113 and 4.53-4.59.

<sup>34</sup> CMCI, Vol. IV, Annexes 60 and 61.

1  
2 Furthermore, oil activities undertaken in these oil blocks located in the disputed area  
3 in no way constitute a historical fact that is significant for the dispute. Ghana only  
4 carried out three drilling operations before resumption of negotiations in 2008,  
5 without the prior authorization of Côte d'Ivoire or informing it beforehand: the first in  
6 1989, to the west of the line claimed as the maritime boundary in the previous year  
7 by Côte d'Ivoire within the Joint Redemarcation Commission; the second in 1999,  
8 barely ten days prior to the military coup that struck Côte d'Ivoire; and the third in  
9 2002, barely a few weeks before the first crisis resolution meeting held in Accra.<sup>35</sup>  
10 Three drilling operations too many, because Côte d'Ivoire had expressly requested  
11 Ghana to refrain back in 1999. But only three drilling operations in over 40 years of  
12 offshore activity in a very troubled Ivorian context that easily accounts for the  
13 absence of a diplomatic reaction on its part.

14  
15 As of 2008, having noticed that from the beginning of negotiations Côte d'Ivoire was  
16 not going to comply with its wishes as regards delimitation, Ghana stepped up  
17 exponentially its drilling activities in the disputed area, thereby breaking with the  
18 *status quo* that prevailed there. Whereas only three drilling operations had been  
19 carried out during the previous 50 years, Ghana performed no fewer than 31 in the  
20 six years between 2008 and 2014.<sup>36</sup> In order to fulfil its strategy to impose a *fait*  
21 *accompli* on Côte d'Ivoire, Ghana protected itself against all remedies that could  
22 disrupt these operations by invidiously filing in 2009 a declaration of exclusion  
23 pursuant to article 298 of the Convention. This declaration was withdrawn only on  
24 22 September 2014, once the drilling operations necessary to the production of the  
25 TEN field had been carried out,<sup>37</sup> in order to implement the present procedure that it  
26 introduced by serving Côte d'Ivoire, on 19 September 2014, with an arbitration  
27 notification.

28  
29 You will observe, Mr President and Judges, that, contrary to what Ghana has  
30 endlessly repeated, the oil history is not one of intense and continuous activity over  
31 50 years conducted with the assent of both Parties. Two periods are to be  
32 distinguished. The first, which goes from independence up until 2007, during which  
33 the disputed area was the subject only of scattered activities, including only three  
34 drilling operations, and a second period of intense activity during 2008 that Ghana  
35 stepped up as of 2009 when it realized that it would not be able to impose its oil line  
36 on Côte d'Ivoire amicably, whilst taking care to preserve this unilateralism from all  
37 judicial interference by filing a declaration under article 298 of the Convention.

38  
39 Mr President, Judges, contrary to what Ghana maintains, we are not in the presence  
40 of a smooth and uniform historical context in which the Parties agreed on a maritime  
41 boundary that they had respected for over 50 years before Côte d'Ivoire did an  
42 about-turn. Rather, the historical background is more complex, one during which  
43 Côte d'Ivoire, when it had to, when it could, affirmed its sovereign rights in maritime  
44 matters and sought to resist, with the weapon of the strong, that is, peaceful  
45 dialogue, Ghana's endeavour to impose upon it as boundary the oil line which it had  
46 drawn unilaterally.

47

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<sup>35</sup> CMCI, Vol. I, para. 2.91 and RCI, Vol. I, para. 4.42.

<sup>36</sup> CMCI, Vol. I, paras 2.92-2.94 and RCI, Vol. I, 4.44-4.50.

<sup>37</sup> Second statement of Paul Macdade, 11 July 2016, RG, Vol. IV, Annex 166, Appendix A.

1 Mr President, that is the historical context of the dispute submitted to you by the  
2 Parties.

3  
4 Mr President, I would ask you to kindly give the floor to Sir Michael Wood. Thank  
5 you.

6  
7 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*):

8 Thank you, Mr Kamara, for your presentation. (*Continued in English*) I give the floor  
9 to Sir Michael Wood.

10

11 **MR WOOD:** Mr President, Members of the Special Chamber, it is a great honour to  
12 appear before you and to do so once again on behalf of Côte d'Ivoire.

13

14 I shall begin with some general comments on Ghana's tacit agreement/customary  
15 equidistance boundary argument. I shall then address points made by our friends  
16 opposite earlier this week. I shall not, of course, repeat all that we said on the subject  
17 in our Counter-Memorial and Rejoinder, which we maintain in their entirety.

18

19 Mr President, we heard again and again in Ghana's oral pleadings earlier this week  
20 references to a customary equidistance boundary or a customary boundary based  
21 on equidistance (which may or may not be the same thing). Such repetition brings to  
22 mind the words of the Bellman in Lewis Carroll's poem *The Hunting of the Snark*:  
23 "What I tell you three times is true." In our case it seems more like 300 times.

24

25 We have been told time and again that this argument is central to Ghana's case.  
26 The distinguished Attorney General of Ghana, in introducing Ghana's pleadings on  
27 Monday, went so far as to assert that "the central task that the Special Chamber  
28 faces is ... quite simple. Ghana respectfully asks you to affirm the customary  
29 equidistance boundary as our maritime boundary."<sup>1</sup>

30

31 Yet Ghana seems uncertain of succeeding with its central argument that there is a  
32 tacit agreement. Its lines of argument are constantly shifting. Sometimes it seems to  
33 be saying that the so-called customary equidistance boundary arises out of a tacit  
34 agreement; sometimes it seems to be referring to its customary boundary as though  
35 that were some new category of maritime boundary agreement; and then it invokes  
36 estoppel. But even Ghana's estoppel argument seems to be based on acceptance of  
37 a tacit agreement. Professor Miron will address the estoppel argument following this  
38 statement.

39

40 Mr President, Members of the Special Chamber, I would like first to say a word about  
41 Ghana's notion of a customary equidistance boundary. The expression "customary  
42 equidistance boundary" is not a term of art in international law. It has no particular  
43 meaning. Ghana has not sought to explain it, even after we questioned it in the  
44 Counter-Memorial.<sup>2</sup> It seems to be an invention of Ghana's ever inventive lawyers,  
45 conceived for the purposes of the present dispute.

46

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<sup>1</sup> ITLOS/PV.17/C23/1, p. 8, lines 7-8 (Akuffo).

<sup>2</sup> CMCI, para. 3.23.

1 I shall make three points about the use of the term “customary equidistance  
2 boundary”:

3  
4 First, by referring to an equidistance boundary, Ghana’s newly minted expression  
5 assumes the result that Ghana wishes to achieve. Even where the three-stage  
6 methodology is chosen as the way to achieve an equitable solution, the construction  
7 of a provisional equidistance line – line, not boundary – is but the first stage. An  
8 adjusted equidistance line may result from the second stage when relevant  
9 circumstances are taken into account. An equidistance boundary may or may not be  
10 the final outcome where the three-stage or indeed any other appropriate  
11 methodology is chosen.

12  
13 Second, using the word “customary” to qualify a supposed equidistance boundary  
14 simply muddies the waters, if I can put it that way. The word seems to have been  
15 included simply to dignify Ghana’s chosen expression, perhaps to give it the  
16 appearance of some spurious legal worth. It may bring to mind customary  
17 international law, but clearly Ghana’s notion has nothing to do with that: “Ghana has  
18 never argued that this “customary equidistance line” reflects a bilateral custom.”<sup>3</sup>  
19

20 We have heard nothing about two elements, about general practice (State practice),  
21 about *opinio juris*, or the notion of particular custom.<sup>4</sup> Presumably, Ghana here  
22 attempts to escape the law: the law on international custom, which would require it to  
23 produce evidence of both a general practice and of acceptance as law, and the law  
24 relating to tacit agreement, which imposes upon Ghana the burden of producing  
25 compelling evidence.<sup>5</sup>  
26

27 My third point is that Ghana’s use of the term adds nothing to its arguments except  
28 confusion. It adds nothing to its argument that there has somehow come into  
29 existence a tacit agreement between the two States or that Côte d’Ivoire is somehow  
30 estopped from denying the existence of an all-purpose maritime boundary out to  
31 200 nautical miles and beyond.  
32

33 In short, Mr President and Members of the Special Chamber, the term “customary  
34 equidistance boundary” is no more than a name dreamt up by Ghana’s lawyers for  
35 the line that they urge you to adopt. It has no legal meaning or effect. Perhaps  
36 Ghana hopes that it will be reassuring to the Members of the Chamber, but we are  
37 confident that it will not affect your application of the law of maritime delimitation in  
38 order to achieve an equitable solution in the present case.  
39

40 Mr President, Members of the Special Chamber, it is important at the outset to stress  
41 that the onus is on Ghana to establish the existence of a tacit agreement between  
42 the Parties on a maritime boundary. Ghana argues as though the burden is on Côte  
43 d’Ivoire to show that there is no tacit agreement. That is simply not the case. The  
44 burden – and, as the case law indicates, it is a heavy burden – lies on Ghana.

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<sup>3</sup> RG, para. 2.5.

<sup>4</sup> International Law Commission, Draft conclusions and commentaries on the topic of “*Identification of customary international law*” adopted on first reading, 68th session (2016), U.N. doc. A/71/10, at p. 114-117 (draft conclusion 16); *Case concerning Right of Passage over Indian Territory (Merits)*, Judgment of 12 April 1960, I.C.J. Reports 1960, p. 6, at p. 39.

<sup>5</sup> *Maritime Dispute (Peru v. Chile)*, Judgment, I.C.J. Reports 2014, p. 3, at p. 38, para. 91.

1  
2 Ghana's attempt to reverse the burden of proof has another dimension. On Monday  
3 Ghana suggested that Côte d'Ivoire claimed to have demonstrated a "constant  
4 opposition" [*opposition continue*] to Ghana's claimed line.<sup>6</sup> This, of course, is not  
5 what we are saying. A constant opposition is not required to defeat a claim to the  
6 existence of a tacit agreement. On the contrary, it is for the Party invoking a tacit  
7 agreement to show that the other Party has consistently accepted such an  
8 agreement. In fact, Ghana's preferred line only emerged as a boundary proposal in  
9 2008, and Côte d'Ivoire, as we have already heard this morning, immediately  
10 rejected it.

11  
12 You will also have noted that Ghana is quite unspecific about the subject matter of its  
13 so-called tacit agreement. Sometimes its lawyers talk about an agreement on what  
14 they call the equidistance method; sometimes they claim there is an agreement on a  
15 specific line, most often a petroleum line, though the actual line they have in mind  
16 seems to shift as and when that suits their purpose. We dealt with this at some  
17 length in our Counter-Memorial.<sup>7</sup> Also, they extrapolate such lines far beyond any  
18 alleged practice. Indeed, on Monday you were shown a line from 1957 extending  
19 eight kilometres from the coast, but on Ghana's own sketch it was prolonged out to  
20 200 nautical miles.<sup>8</sup>

21  
22 Ghana's explanation of the origin of the so-called tacit agreement in a 1957 Decree  
23 issued in Paris by the then French colonial power<sup>9</sup> is hardly convincing.<sup>10</sup> That  
24 Decree did not mention the eastern limit of the concession. The subsequent map of  
25 1959<sup>11</sup> was prepared by a private company. The 1957 Decree did mention a total  
26 surface area for the concession. Our friends opposite claim that "[o]nly a maritime  
27 boundary following an equidistance line produces that surface area."<sup>12</sup> With respect,  
28 that assertion is self-serving and speculative. The calculation could be done quite  
29 differently. It cannot seriously be argued that the 1957 Decree establishes that the  
30 eastern limit of the concession followed an equidistance line.

31  
32 Mr President, Members of the Special Chamber, as Côte d'Ivoire has shown at  
33 length in its written pleadings, the claim that there is a tacit agreement is simply  
34 untenable. In fact, it was only in August 2011, a mere three years before it  
35 commenced the present proceedings, that Ghana first came up with the notion that  
36 the Parties had somehow entered into a tacit agreement. It did so, curiously, in the  
37 middle of ongoing negotiations aimed at reaching agreement on the delimitation of a  
38 maritime boundary, which Maître Kamara described earlier this morning. Up until  
39 then, and thereafter, the conduct of both Parties clearly indicated the absence of any

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<sup>6</sup> ITLOS/PV.17/C23/1, p. 14, line 41; p. 15, line 1 (Sands).

<sup>7</sup> CMCI, paras 3.11-3.17.

<sup>8</sup> Sketch Map: Côte d'Ivoire Exploration Concession 1957, Judges' Folder (Ghana), tab 1(f), Sands 1-3a (6 February 2017).

<sup>9</sup> Portions of Ivory Coast and Ghana (Fig. 7) in H.D. Hedberg et al., "Petroleum Developments in Africa in 1958", *Bulletin of the American Association of Petroleum Geologists*, Vol. 43, No. 7 (July 1959).

<sup>10</sup> ITLOS/PV.17/C23/1, p. 12, lines 12-13 (Sands).

<sup>11</sup> Portions of Ivory Coast and Ghana (Fig. 7) in H.D. Hedberg et al., "Petroleum Developments in Africa in 1958", *Bulletin of the American Association of Petroleum Geologists*, Vol. 43, No. 7 (July 1959), MG, Annex M53.

<sup>12</sup> ITLOS/PV.17/C23/1, p. 12, lines 12-13 (Sands).

1 such tacit agreement. It is of particular note that in 2009 and again in 2015 the  
2 Presidents of Côte d'Ivoire and Ghana agreed that maritime boundary negotiations  
3 were needed. It was Ghana that commenced arbitration under Annex VII of  
4 UNCLOS in September 2014 seeking the delimitation of a maritime boundary  
5 between the Parties. Ghana's Notification and Statement of Claim read: "Ghana  
6 requests that the Tribunal delimit, in accordance with the principles and rules set  
7 forth in UNCLOS and international law, the complete course of the single maritime  
8 boundary."<sup>13</sup> That was in their application instituting proceedings.

9  
10 My friend and colleague Maître Kamara has just described the main aspects of the  
11 relations between the two Parties relevant to this case. In particular he has described  
12 the efforts to negotiate in 1988, in 1992 and finally between 2008 and 2014. As he  
13 has demonstrated, these show clearly that both Parties understood that there was no  
14 existing delimitation in place.

15  
16 Mr President, Members of the Special Chamber, I shall now turn to some particular  
17 matters which show that Ghana's assertion that there is a tacit agreement on  
18 delimitation of the maritime boundary (or as Ghana also puts it, a customary  
19 equidistance boundary) is wholly unfounded.

20  
21 First, I shall say a very brief word about the law on tacit agreements. You are very  
22 familiar with this, but, as Ghana has signally failed to deal with it, so I shall recall it  
23 briefly. The case-law of ITLOS and the ICJ has consistently stated that the existence  
24 of a tacit agreement relating to maritime delimitation needs to be demonstrated by  
25 clear and convincing evidence. This morning Maître Kamara took you to the relevant  
26 passage. As the International Court stated in *Nicaragua v. Honduras*, "[e]vidence of  
27 a tacit legal agreement must be compelling. The establishment of a permanent  
28 maritime boundary is a matter of grave importance and agreement is not easily to be  
29 presumed."<sup>14</sup>

30  
31 This essential principle has been endorsed in subsequent cases, by the International  
32 Court in the *Black Sea* case,<sup>15</sup> and by ITLOS in the case of *Bangladesh/Myanmar*.<sup>16</sup>

33  
34 Mr President, Members of the Special Chamber, this may be a convenient moment  
35 to respond to the question that the Chamber put to the Parties on Monday. As you  
36 will recall, the question read as follows: "Could the Parties provide information on  
37 any arrangements which could exist between them on fisheries matters or with  
38 respect to other uses of the maritime area concerned?"

39  
40 Mr President, our answer to this question is as follows: The Parties signed an  
41 agreement on fishing and oceanographic research on 23 July 1988.<sup>17</sup> We have

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<sup>13</sup> Notification under article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the claim and grounds on which it is based, 19 September 2014, para. 35.

<sup>14</sup> *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, at p. 735, para. 253.

<sup>15</sup> *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Reports 2009, p. 61, at p. 86, para. 68.

<sup>16</sup> *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, ITLOS Reports 2012, p. 4, at p. 36, para. 95.

<sup>17</sup> Accord de pêche entre la République du Ghana et la République de Côte d'Ivoire (Fisheries Agreement between the Republic of Ghana and the Republic of Côte d'Ivoire), 23 July 1988.

1 included a copy in your folders at tab 6. We do also have a copy of the Decree  
2 published in the Official Journal of Côte d'Ivoire ratifying the agreement, and we will  
3 provide copies of that to the Special Chamber and to our colleagues opposite. Under  
4 the treaty, the Parties authorize fishing boats and oceanographic vessels to operate  
5 in each other's territorial sea and exclusive economic zones. Article 12, which is now  
6 on the screen, provides – and this is our translation – that “[t]his Agreement shall not  
7 affect the rights, claims or views of either Contracting Party with regard to the limits  
8 of its territorial waters or its fisheries jurisdiction.”  
9

10 It is clear from this provision that in 1988 the negotiating States contemplated that  
11 there could be differing rights, claims and views on limits and jurisdiction over  
12 fisheries. Incidentally, this agreement was signed just five days after the 1988  
13 meeting of the Joint Commission at which Côte d'Ivoire proposed negotiations on the  
14 maritime boundary.  
15

16 Mr President, Members of the Special Chamber, on Tuesday Mr Tsikata replied to  
17 your question saying that, within the time available, Ghana's summary response was  
18 that “[t]here are no arrangements between Ghana and Côte d'Ivoire with respect to  
19 fisheries.”<sup>18</sup> However, he also referred to possible arrangements with a private  
20 company while informing you about what he had been told about a map, but he did  
21 not produce any documents. Obviously that matter cannot be of assistance to the  
22 Special Chamber.  
23

24 Mr Tsikata also took the opportunity to refer at some length to Côte d'Ivoire's  
25 Fisheries Partnership Agreement with the European Union. He mentioned in  
26 particular a map which is to be found in a report funded by the European  
27 Commission but written by private experts. What Mr Tsikata did not draw to your  
28 attention, however, was that the experts' report says that the map merely indicates  
29 the limits used by Community ship-owners “in the absence of official limits”. We  
30 would say that this has no probative value.<sup>19</sup>  
31

32 As for the map from a website of the Food and Agriculture Organization, also  
33 invoked by Mr Tsikata, this was prepared by private experts and contains the usual  
34 disclaimer.<sup>20</sup> It too is of no probative value.  
35

36 Mr President, Members of the Special Chamber, mention of these fishery and  
37 oceanographic arrangements reminds us that Ghana is seeking to construct a tacit  
38 international maritime boundary agreement, out to 200 nautical miles and beyond, on  
39 the shaky foundation of limited petroleum conduct. This attempt is defective in many  
40 respects. It is based on petroleum activities the most distant of which is a mere  
41 87 nautical miles from the coast. The conduct itself is by no means as clear as  
42 Ghana would have you believe, and has been contested by Côte d'Ivoire; and,  
43 above all, the conduct upon which Ghana relies is exclusively related to petroleum.

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<sup>18</sup> ITLOS/PV.17/C23/2, p. 2, lines 37-39 (Tsikata).

<sup>19</sup> Ex-post evaluation of the current Protocol to the Fisheries Partnership Agreement between the European Union and Côte d'Ivoire, CIV98R02F (28 June 2012), p. 59 (available at [http://ec.europa.eu/fisheries/documentation/studies/cote\\_ivoire\\_2012\\_en](http://ec.europa.eu/fisheries/documentation/studies/cote_ivoire_2012_en)).

<sup>20</sup> Profil des pêches et de l'aquaculture par pays – La République de Côte d'Ivoire (Fishery and Aquaculture Country Profiles – The Republic of Côte d'Ivoire), available at <http://www.fao.org/fishery/facp/CIV/fr>.



1 Ghana seeks to extrapolate from this limited petroleum conduct an all-purpose  
2 maritime boundary dividing the seabed and the water column of the exclusive  
3 economic zones and the continental shelf. Such a delimitation would cover the whole  
4 range of rights, jurisdiction and duties of the coastal State in the EEZ, set forth in  
5 article 56 of UNCLOS, and over the continental shelf as set out in Part VI of  
6 UNCLOS.

7  
8 Mr President, that may be a convenient time at which to take the usual break, if that  
9 is acceptable to the Special Chamber.

10  
11 **THE PRESIDENT OF THE SPECIAL CHAMBER:** (*Interpretation from French*):  
12 Thank you, Sir Michael Wood. You have saved me the painful duty of having to  
13 interrupt you. We will take a coffee break, slightly ahead of time, and we will resume  
14 at 11.55 a.m. Thank you.

15  
16 (Break)

17  
18 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): We  
19 will now resume our proceedings until 1.00 p.m. and I give the floor to Sir Michael  
20 Wood.

21  
22 **MR WOOD:** Mr President, Members of the Special Chamber, before the break I had  
23 offered some comments in light of the Tribunal's question, for which we were very  
24 grateful.

25  
26 I shall now turn to the impression of continuity and agreement between the two  
27 States in relation to their maritime boundary that Ghana seeks to create. As  
28 Maître Kamara demonstrated this morning, this impression is false. There has been  
29 joint conduct of the Parties that directly contradicts the existence of any agreement.  
30 There have been acts by Côte d'Ivoire protesting Ghana's unilateral acts in the  
31 disputed zone or that are otherwise incompatible with any idea of agreement on  
32 maritime delimitation; and there have been acts by Ghana itself amounting to an  
33 admission of the absence of any agreement.

34  
35 Mr President, Members of the Special Chamber, among Ghana's many omissions is  
36 a failure to acknowledge that, on two recent occasions, in 2009 and again in 2015,  
37 the Presidents of Côte d'Ivoire and Ghana issued joint statements reaffirming their  
38 determination to find a negotiated delimitation of the maritime boundary.<sup>21</sup> The joint  
39 statement dated 4 November 2009 is at tab 7. It affirmed, and this is our translation,  
40 that

41  
42 the land boundary has been delimited whereas discussions aiming at the  
43 delimitation of the maritime boundary had been initiated by the two countries.

---

<sup>21</sup> Joint communiqué issued at the end of the official visit to Ghana of His Excellency Laurent Gbagbo, President of the Republic of Côte d'Ivoire, 3-4 November 2009, CMCI, Annex 34, at para. 8; Joint communiqué issued following the meeting between the President of the Republic of Côte d'Ivoire, the President of the Republic of Ghana and His Excellency Mr Kofi Annan, Geneva, 11 May 2015, RCI, Annex 201 (also in Rapport de la Côte d'Ivoire sur le suivi de l'application des mesures conservatoires (Report from Côte d'Ivoire on the follow-up to the implementation of provisional measures), 25 May 2015, CMCI, Annex 52).

1 The two leaders called upon the competent authorities of the two countries to  
2 proceed further with the discussions in order to reach a quick outcome.  
3

4 A further joint statement was issued on 11 May 2015. It is at tab 8. In its  
5 paragraph 3, it recalls (and again this is our translation) that “[t]he delimitation of the  
6 maritime boundary remains an objective of the Parties.” Such statements, made at  
7 the highest State level, are compelling evidence of the absence of an agreement on  
8 delimitation.  
9

10 I now turn briefly to the bilateral negotiations within the framework of the Mixed  
11 Commission between 2008 and 2014,<sup>22</sup> which Maître Kamara has described already  
12 this morning. As we have already set out in our written pleadings, the various steps  
13 in the negotiations confirm the absence of any agreement on delimitation.<sup>23</sup> Ghana’s  
14 July 2008 contention that its claimed line had been used by the Parties for a long  
15 time was rejected by Côte d’Ivoire in February 2009.<sup>24</sup> Côte d’Ivoire then recalled  
16 that delimitation was yet to be agreed upon. It was only in August 2011 that Ghana,  
17 for the first time, asserted that there was a tacit agreement between the Parties  
18 delimiting their maritime boundary.<sup>25</sup> The expression “customary equidistance  
19 boundary” seems first to have been used by Ghana during a meeting in November  
20 2011<sup>26</sup> and that was only a few weeks after Côte d’Ivoire warned the businesses  
21 operating under Ghanaian licenses in the disputed zones. The expression then  
22 featured prominently, of course, in Ghana’s written and oral pleadings.<sup>27</sup> Ghana’s  
23 last move was to abruptly interrupt the negotiations; withdraw its UNCLOS  
24 article 298 declaration, which precluded access to courts and tribunals under  
25 Part XV, in September 2014; and then immediately initiated arbitration proceedings  
26 seeking a delimitation of the boundary.<sup>28</sup>  
27

28 In the *Gulf of Maine* case, the Chamber declined to recognize the existence of a tacit  
29 agreement or a situation of estoppel in circumstances where the granting of  
30 concessions by Canada had met with no reaction by the United States for several  
31 years.<sup>29</sup> In our case, by contrast, Ghana’s conduct in the undelimited area has  
32 indeed regularly met with protests from Côte d’Ivoire. In *Guinea/Guinea-Bissau*, the  
33 Arbitral Tribunal stated that “the conflicting nature of the Parties’ claims and of their  
34 measures of application is enough to exclude any notion of implicit agreement on

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<sup>22</sup> CMCI, at paras 2.48-2.82 and related annexes.

<sup>23</sup> CMCI, at paras 2.48-2.82; RCI, at paras 4.23-4.32.

<sup>24</sup> CMCI, at para. 4.23; Communication from the Ivorian Party, Second meeting of the Joint Ivoirian-Ghanaian Commission on the Demarcation of the Maritime Border between Côte d’Ivoire and Ghana, 23 February 2009, CMCI, Annex 30; RCI, para. 4.71.

<sup>25</sup> Ghana Boundary Commission, Response to Côte d’Ivoire’s proposals towards the 5th Côte d’Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, Annex 39.

<sup>26</sup> Government of Ghana and Government of Côte d’Ivoire, Minutes Côte d’Ivoire/Ghana Maritime Boundary Negotiation (Fifth Meeting) (2 November 2011), MG, Annex 53.

<sup>27</sup> This expression, or variants of it, was used 304 times in Ghana’s Memorial: CMCI, para. 3.23, footnote 167.

<sup>28</sup> Letter from the Ambassador of Ghana to Côte d’Ivoire to the Ministry of Foreign Affairs of Côte d’Ivoire, no. ABJ/HMFA/COR.VOL.I8, 19 September 2014, CMCI, Annex 50; Notification under article 287 and Annex VII, Article 1 of UNCLOS and the Statement of the claim and grounds on which it is based, 19 September 2014.

<sup>29</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment*, I.C.J. Reports 1984, p. 246, at p. 307, para. 138.

1 any lateral delimitation of the maritime zones.”<sup>30</sup> In our case, the conflicting nature of  
2 the Parties’ claims has been evident throughout.

3  
4 As you heard this morning, during the 15th meeting of the Mixed Commission in  
5 July 1988, Côte d’Ivoire proposed to Ghana to extend the discussions to the  
6 question of maritime delimitation. That proposal confirms that there was then no  
7 agreement between the Parties as to the delimitation of the maritime boundary.  
8 Ghana seems now to be trying to question the very existence of the Ivorian proposal  
9 on the ground that it is difficult to ascertain its content. But what matters is not the  
10 content but the very fact that Côte d’Ivoire proposed to include the issue of  
11 delimitation talks on the agenda, and Ghana’s reaction. The record of the meeting,  
12 which was signed by each Party, expressly confirms that the proposal was made by  
13 Côte d’Ivoire, and discussed by the Parties. The relevant passage is now on the  
14 screen. It reads: “Following the presentation made by the Ivorian Party on the issue  
15 of the delimitation of the maritime boundary, the Ghanaian delegation took note of  
16 the inclusion of this item on the agenda.”<sup>31</sup>

17  
18 Ghana’s subsequent refusal to pursue discussions on the matter was based on the  
19 inadequacy of the mandate of the delegation to the Commission,<sup>32</sup> not on an  
20 assertion that there was already an existing tacit agreement or so-called “customary  
21 equidistance boundary” that would render delimitation talks pointless.

22  
23 Mr President, Members of the Special Chamber, I now turn to some of Ghana’s  
24 conduct that indicates its acceptance that the maritime border has yet to be  
25 delimited. As we have just seen, Ghana took note of Côte d’Ivoire’s 1988 proposal to  
26 hold negotiations on maritime delimitation. It was only because of the Ghanaian  
27 delegation’s limited mandate that Ghana ultimately declined to proceed further with  
28 the question within the framework of the Mixed Commission. From this episode it is  
29 not possible to deduce a general refusal by Ghana to examine the issue of  
30 negotiations based on the principled position that the maritime border had already  
31 been delimited.

32  
33 Early in 1992, Ghana itself proposed that the Parties engage in negotiations on  
34 maritime delimitation.<sup>33</sup> Côte d’Ivoire’s reaction to this proposal in April 1992 is now  
35 on the screen. It is also in your folders at tab 10. The relevant part of the note  
36 begins – and I shall try to read it in the original French: (*Interpretation from French*)  
37 “The Ghanaian Government proposed the holding, on 12 February 1992 at Abidjan,

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<sup>30</sup> *Delimitation of the maritime boundary between Guinea and Guinea-Bissau, Arbitral Award of 14 February 1985, R.I.A.A. Vol. XIX, p. 149, at p. 175, para. 66; 25 I.L.M. 252 (1986) p. 252, at p. 282, para. 66.*

<sup>31</sup> Minutes of the 15th regular session of the Joint Commission on Redemarcation of the Boundary between Côte d’Ivoire and Ghana, 18-20 July 1988, CMCI, Annex 12 (at p. 5).

<sup>32</sup> CMCI, para. 2.37; Minutes of the 15th regular session of the Joint Commission on Redemarcation of the Boundary between Côte d’Ivoire and Ghana, 18-20 July 1988, CMCI, Annex 12.

<sup>33</sup> Minutes of the meetings of the Technical Committee responsible for gathering and updating data on delimitation of the maritime boundary between Ghana and Côte d’Ivoire, 16 and 18 March 1992, CMCI, Annex 14; Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d’Ivoire in Accra, 1 April 1992, CMCI, Annex 16.

1 of a meeting of Ghanaian and Ivorian experts charged with discussing the issue of  
2 border demarcation ... between Côte d'Ivoire and Ghana."<sup>34</sup>

3  
4 (*Continued in English*) The following paragraph of the note recalls Côte d'Ivoire's  
5 1988 proposal. It confirms Ghana's favourable position as to engaging in delimitation  
6 negotiations. Thus, within a reasonably short period of time (three and a half years  
7 between 1988 and 1992), each of the Parties proposed negotiations with the clear  
8 objective of delimiting their common maritime border. Côte d'Ivoire's reaction to  
9 Ghana's 1992 request is telling. Côte d'Ivoire welcomed Ghana's proposal and  
10 requested that the two States abstain from any invasive activities (drillings) in the  
11 disputed area pending a final settlement.<sup>35</sup> Ghana did not react to such explicit  
12 language, yet it is now trying to use Côte d'Ivoire's failure to follow up with a  
13 negotiation proposal in its attempt to show that the boundary was in fact delimited in  
14 Côte d'Ivoire's view.<sup>36</sup>

15  
16 In 2009, Côte d'Ivoire rejected<sup>37</sup> Ghana's claim to an equidistance line allegedly  
17 defined by the Parties' long-term conduct.<sup>38</sup> This Communication was made on  
18 23 February 2009 ahead of the second meeting of the Mixed Commission. It clearly  
19 states that – and this is our translation:

20  
21 [t]his proposed line of the Ghanaian Party does not constitute an official  
22 agreement between our two countries, following from bilateral negotiations for  
23 the delimitation of the maritime boundary between Côte d'Ivoire and Ghana,  
24 as recommended by articles 15, 74 and 83 of the Montego Bay Convention.<sup>39</sup>

25  
26 This communication reminded Ghana that, in 2009, a delimitation had yet to be  
27 agreed between the Parties. The communication also recalled Côte d'Ivoire's 1988  
28 and 1992 requests for the suspension by Ghana of any unilateral steps in the  
29 disputed area. Ghana did not react to this statement,<sup>40</sup> let alone challenge it. Instead

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<sup>34</sup> Note Verbale from Ministry of Foreign Affairs of the Republic of Côte d'Ivoire to Ministry of Foreign Affairs of the Republic of Ghana, No 2678/AE/AP/RM-13 (April 1992), RG, Annex 112. The English translation of the original French text is not accurate. See also Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, Annex 16.

<sup>35</sup> Telegram from the Ivorian Ministry of Foreign Affairs for the attention of the Ambassador of Côte d'Ivoire in Accra, 1 April 1992, CMCI, Annex 16; MG, Annex 66.

<sup>36</sup> RG, para. 2.53.

<sup>37</sup> Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, Annex 30. For the English version of this document, see Government of Côte d'Ivoire, Second Meeting of the Joint Ivoir-Ghanaian Commission on the Demarcation of the Maritime Border Between Côte d'Ivoire and Ghana: Presentation by the Ivorian Side (23 February 2009), MG, Annex 48.

<sup>38</sup> Government of Ghana and Government of Côte d'Ivoire, Minutes of the Maiden Meeting Between the Delegations of Ghana and Côte d'Ivoire on the Delineation of the Maritime Boundary Between Both Countries (16-17 July 2008), MG, Annex 45; Opening statement of Ghana, maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17-18 July 2008, CMCI, Annex 28.

<sup>39</sup> Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, Annex 30 (at para. 7). The English translation of the original French text is not accurate.

<sup>40</sup> CMCI, at para. 2.57.

1 it simply proceeded with its inflexible position culminating in its first claim to tacit  
2 agreement, in August 2011.<sup>41</sup>

3  
4 In September 2011, as Professor Miron will explain, Côte d'Ivoire issued a warning  
5 letter to the businesses operating under Ghanaian licence in the disputed area,<sup>42</sup>  
6 and Côte d'Ivoire repeated this warning in 2014. After the warning, in a letter dated  
7 19 October 2011 Ghana's Minister of Energy responded to a request for clarification  
8 from Tullow (copying the letter to Ghana's Attorney General and Foreign Minister).  
9 This letter is at tab 12. In the letter, Ghana's Minister confirmed the absence of  
10 agreement on the maritime boundary in the clearest terms. The third paragraph  
11 reads:

12  
13 As regards the maritime boundary, as you are aware, it has always been  
14 publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire  
15 have not yet delimited their maritime boundary. It is also publicly known that in  
16 the recent years the two Governments have met in an effort to negotiate their  
17 maritime boundary in accordance with international law. Those negotiations  
18 remain ongoing.<sup>43</sup>

19  
20 Mr President, this could not be clearer. It is another explicit acknowledgement by  
21 Ghana of the Parties' diverging views on the maritime boundary and the absence of  
22 any agreement, tacit or otherwise.

23  
24 The 2008-2014 bilateral negotiations within the Mixed Commission were also  
25 initiated by Ghana. On 20 August 2007 Ghana sent a note to Côte d'Ivoire calling for  
26 delimitation negotiations.<sup>44</sup> This note may be found at tab 13. In the second  
27 paragraph, you will see that there is a reference to articles 74 and 83 of UNCLOS. In  
28 the third paragraph that is now on the screen the note states: "The Ministry is  
29 proposing a joint Ghana Ivory Coast team to deliberate on the delimitation of our  
30 international maritime boundaries to enable Ghana to make its claim to the UN  
31 Commission on the Limits of the Continental Shelf."

32  
33 The very fact that Ghana made this new proposal for negotiations (the second one  
34 by Ghana and the third one between the Parties within two decades) confirms  
35 Ghana's awareness that there was no agreement, tacit or otherwise, on the  
36 delimitation of the maritime boundary.

37  
38 In its opening statement at the first meeting of the Mixed Commission in 2008,  
39 Ghana stated that "any agreement reached here would have to be approved by the  
40 Legislature and/or the Executive of both countries."<sup>45</sup> The aim was clearly not the  
41 mere formalization of an existing agreement.

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<sup>41</sup> CMCI, at para. 2.67; Ghana Boundary Commission, Response to Côte d'Ivoire's proposals towards the 5th Côte d'Ivoire/Ghana maritime boundary delimitation meeting, 31 August 2011, CMCI, Annex 39.

<sup>42</sup> CMCI, Annex 71.

<sup>43</sup> Letter from the Ministry of Energy of Ghana to Tullow, 19 October 2011, CMCI, Annex 78.

<sup>44</sup> CMCI, at para. 16; Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d'Ivoire in Accra, 20 August 2007, CMCI, Annex 25.

<sup>45</sup> Government of Ghana, Maiden Meeting Between Ghana and Côte d'Ivoire on the Delineation of the Ghana/Côte d'Ivoire International Maritime Boundary: Opening Statement by the Ghana National Continental Shelf Delineation Project (17-18 July 2008), MG, Annex 46.

1  
2 In short, Mr President, the 2008-2014 negotiations reflect Ghana's commitment to  
3 negotiating the delimitation and thus confirms the absence of an agreement.<sup>46</sup>  
4

5 Mr President, taken individually, and taken together, this conduct shows clearly that  
6 Côte d'Ivoire openly and consistently rejected any suggestion that the Parties'  
7 common maritime boundary had been delimited by tacit agreement, or that there  
8 existed a so-called "customary boundary". Côte d'Ivoire's position has been clear  
9 and consistent throughout. This conduct also points unmistakably to Ghana's  
10 awareness and acceptance of the absence of agreement and of the undelimited  
11 character of the disputed area.  
12

13 Mr President, I now turn to certain matters invoked by Ghana in its efforts to  
14 construct a case for a tacit agreement. These are matters particularly relating to  
15 petroleum.  
16

17 I begin by saying that the case-law has consistently confirmed the irrelevance of  
18 petroleum conduct for the purpose of maritime delimitation unless such conduct  
19 clearly reflects a tacit agreement between the Parties. A leading case is  
20 *Cameroon v. Nigeria*,<sup>47</sup> which Professor Pellet will come to when he touches on  
21 Ghana's *modus vivendi* argument. The Court in that case based itself on previous  
22 consistent case law.<sup>48</sup> In accordance with the case law, the petroleum conduct of the  
23 Parties in our case is irrelevant for the purpose of maritime delimitation unless such  
24 conduct clearly and unambiguously reflects a tacit agreement. That cannot be the  
25 case here: as I have just recalled, Côte d'Ivoire has regularly repeated its objection  
26 to Ghana conducting invasive activities in the undelimited area, and Ghana's own  
27 behaviour, for instance proposing negotiations and indeed engaging in negotiations,  
28 clearly indicates that the maritime boundary has not yet been delimited.  
29

30 The petroleum conduct invoked by Ghana in the present case cannot be expressive  
31 of a tacit agreement between the Parties on delimitation of their maritime boundary.  
32 Ghana appears to attach great importance to the seismic requests and  
33 authorizations that passed between the Parties in the disputed area.<sup>49</sup> However,  
34 occasional requests and authorizations for one Party's seismic missions do not  
35 amount to mutual recognition of the existence of a delimited boundary. The wording  
36 of the various requests and authorizations was vague and did not make express  
37 mention of a boundary line, with precise coordinates.<sup>50</sup> Rather, such requests and

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<sup>46</sup> Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d'Ivoire in Accra, 20 August 2007, CMCI, at para. 16; Annex 25.

<sup>47</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, p. 303, at p. 447-448, para. 304.

<sup>48</sup> *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, Judgment, I.C.J. Reports 1984, p. 246, at p. 310-311, paras 149-152; *Delimitation of maritime areas between Canada and France*, Arbitral Award of 10 June 1992, R.I.A.A. Vol. XXI, p. 265, at p. 295-296, paras 89-91; *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, R.I.A.A. Vol. XXVII, p. 147, at p. 241-242, paras 363-366; *Arbitration regarding the delimitation of the maritime boundary between Guyana and Suriname*, Arbitral Award of 17 September 2007, R.I.A.A. Vol. XXX, p. 1, at p. 108, para. 390.

<sup>49</sup> MG, paras 3.71-3.76, 5.13-5.17; RG, paras 2.104-2.105.

<sup>50</sup> See inter alia Letter from N.B. Asafu-Adjaye, Exploration Manager, Ghana National Petroleum Corporation (GNPC), to The President, UMIC Côte d'Ivoire (31 October 1997), MG, Annex 67; Letter

1 authorizations refer to approximate geographic zones where the seismic missions  
2 were operating. They reflect caution in a context of uncertainty relating to an  
3 undelimited area rather than a formal request or authorization to cross a delimited  
4 boundary.

5  
6 Ghana also seeks to rely on the Parties' bilateral cooperation and joint projects in an  
7 attempt to suggest the existence of a tacit agreement.<sup>51</sup> As Côte d'Ivoire has shown  
8 in its written pleadings, the examples invoked by Ghana do not evidence a tacit  
9 agreement on delimitation.<sup>52</sup> None of these examples relates to delimitation. Some  
10 of the projects, such as a linguistic programme and an agreement on the use of the  
11 Takoradi base, do not even refer to the disputed area.<sup>53</sup>

12  
13 Ghana then seeks to rely on the Parties' petroleum-related legislation and contracts  
14 in relation to the undelimited area; but again, in our submission, this is to no avail.  
15 The activities that actually took place in the disputed area under such legislation  
16 were neither invasive nor even called for a reaction. These activities, as we have  
17 heard today, remained sparse at the time and were not such as to call for the other  
18 Party's reaction. Moreover, in the case of the Ivorian decrees, it must be questioned  
19 how far mere legislative action, not accompanied by actual implementation of the  
20 national law, may be held against the State. In any event, as is shown in our written  
21 pleadings, the Parties' conduct demonstrates the absence, rather than the existence,  
22 of a tacit agreement.

23  
24 Professor Miron will deal with Côte d'Ivoire's decrees from the 1970s. I will just say a  
25 word about article 8 of Côte d'Ivoire's Law of 17 November 1977.<sup>54</sup> I hope you can  
26 now see article 8 of the Law on the screen. The Law itself is at tab 14. The 1977  
27 Law settles the principles to be used by Côte d'Ivoire in delimiting its maritime  
28 boundaries with its neighbours. In English translation it reads: "With respect to  
29 adjoining coastal States, the territorial sea and zone referred to in article 2 of this  
30 Law" that is, the exclusive economic zone "shall be delimited by agreement in

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from M. Lamine Fadka, Minister of Petroleum Resources, Republic of Côte d'Ivoire, to F. Ohene-Kena, Minister of Mines and Energy, Republic of Ghana, No. 0907 MIRMP/CAB/dh (28 November 1997), MG, Annex 68; 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 Mar. 2007), RG, Annex 137; Email from Boblai Victor Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI), to Thomas Manu, Ghana National Petroleum Corporation (GNPC) (13 Mar. 2007), RG, Annex 138; Letter from Thomas Manu, Ghana National Petroleum Corporation (GNPC), to the Minister of Energy, Republic of Ghana (19 Mar. 2007), RG, Annex 139; Fax from Thomas Manu, Ghana National Petroleum Corporation (GNPC) to Boblai V. Glohi, Société Nationale d'Opérations Pétrolières de la Côte d'Ivoire (PETROCI) (22 Mar. 2007), RG, Annex 140; Letter from F.K. Owusu-Adjapong (MP), Minister, Ministry of Energy, Republic of Ghana, to The Minister, Ministry of Mines & Petroleum Resources, Republic of Côte d'Ivoire (3 November 2008) and Letter from F. Kadio Morokro, Director of Cabinet for the Minister of Mines and Energy, Republic of Côte d'Ivoire, to The Minister, Ministry of Energy, Republic of Ghana (11 December 2008), MG, Annex 69.

<sup>51</sup> RG, para. 2.108.

<sup>52</sup> RG, para. 2.108; RCI, paras 4.43, 6.29-6.30.

<sup>53</sup> RG, para. 2.108; RCI, paras 6.29-6.30.

<sup>54</sup> Loi n°77-926 portant délimitation des zones marines placées sous la juridiction nationale de la République de Côte d'Ivoire (Law no. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast), 17 November 1977, CMCI, Annex 2.

1 conformity with equitable principles and using, if necessary (*le cas échéant*) the  
2 median line or the equidistance line, taking all pertinent factors into account.”<sup>55</sup>

3  
4 The Law indicates the methodology endorsed by Côte d’Ivoire in view of future  
5 delimitations with its two neighbours. It is clearly consistent with international law.  
6 Properly read, including the reference to equitable principles and the words “*le cas*  
7 *échéant*”, which Ghana slides over, it most certainly does not require the application  
8 of any so-called principle of equidistance.

9  
10 The 1977 Law was adopted several years after the first decrees granting petroleum  
11 concessions in the area adjacent to the disputed zone. If the relevant boundaries  
12 were delimited already as of 1977, it would be difficult to understand the *raison d’être*  
13 of such legislation. The 1977 Law was of course envisaging future delimitations. This  
14 is evident from the text, which expresses the need for an agreement on delimitation  
15 of the maritime boundary, thus confirming the absence of such agreement with Côte  
16 d’Ivoire’s two neighbours.

17  
18 The insistence in the 1977 Law on the need for an agreement also excludes any  
19 delimitation that would be effected by way of unilateral acts such as Ghana’s  
20 activities in the disputed area.<sup>56</sup> In the absence of delimited maritime boundaries, the  
21 rationale of the 1977 Law was to state Côte d’Ivoire’s understanding of relevant  
22 principles of the international law of maritime delimitation. They are very clearly  
23 expressed in article 8: maritime delimitation is to be effected by means of agreement  
24 in conformity with equitable principles. These principles reflected customary  
25 international law at the time of the 1977 Law, and they have since been consecrated  
26 by articles 74 and 83 of UNCLOS.

27  
28 It is clear from the wording of article 8 that the use of the equidistance or median line  
29 is only relevant “if necessary” – “*le cas échéant*” – meaning that the use of such line  
30 will be dependent on the circumstances of the case. Moreover, it is clear from  
31 article 8 that an equidistance line, where it is to be used, is only a provisional  
32 equidistance line, to be adjusted “taking into account all relevant factors”. In short,  
33 Mr President, Ghana’s heavy reliance upon the Law of 1977 is simply not supported  
34 by the text of the law.

35  
36 Côte d’Ivoire’s petroleum contractual practice confirms the position reflected in its  
37 legislation. With the uncertainties surrounding an undelimited boundary, as you will  
38 have seen, Côte d’Ivoire developed a practice of including a model clause reserving  
39 Côte d’Ivoire’s position as to the limits of its jurisdiction. Such wording would have  
40 had no *raison d’être* if there were already a delimited maritime boundary. The details  
41 of such practice have been set out at length in our written submissions.<sup>57</sup>

42  

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<sup>55</sup> Republic of Côte d’Ivoire, Law No. 77-926 on Delimiting the Maritime Zones placed under the National Jurisdiction of the Republic of Ivory Coast, adopted on 17 November 1977, reprinted by United Nations DOALOS/OLA - National Legislation, MG, Annex 24. For the original French version, see Loi n°77-926 portant délimitation des zones marines placées sous la juridiction nationale de la République de Côte d’Ivoire, 17 novembre 1977, CMCI, Annex 2.

<sup>56</sup> *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment of 2 February 2017*, at para. 90.

<sup>57</sup> CMCI, at paras 4.67-4.68; RCI, paras 4.35-4.39.



1 Mr President, Members of the Special Chamber, on Tuesday Professor Klein  
2 developed two legal points concerning the alleged tacit agreement. I can be brief in  
3 response.

4  
5 First, he suggested that the fact (which he accepts) that PETROCI is not empowered  
6 to commit the Republic of Côte d'Ivoire in matters concerning frontiers was of no  
7 importance.<sup>58</sup> Of course, it is important in the present context, when Ghana asserts  
8 that PETROCI's publications, its maps, somehow commit the State to a certain  
9 delimitation. Moreover, Professor Klein omitted to draw your attention to the very  
10 next paragraph in our Rejoinder,<sup>59</sup> where we make a number of other important  
11 points about PETROCI, in particular that it is not an emanation of the State, the very  
12 point that Professor Klein seems to accept is crucial.<sup>60</sup>

13  
14 Second, Professor Klein took us to task for relying on a series of cases that he tried  
15 to say were totally different from the present one. I do not have time today to  
16 respond in detail to his lengthy and learned efforts to distinguish these cases (in a  
17 truly common law manner, which I greatly respect). Of course, the circumstances of  
18 each case turn on their own particular facts, and we certainly did not intend to  
19 suggest otherwise. What these cases do show is the great caution with which  
20 international courts and tribunals approach "evidence" put forward to establish a tacit  
21 agreement, and the very high threshold that must be met, especially where a  
22 maritime border is concerned.

23  
24 Ghana refers to certain maps in an attempt to shore up its claim to a customary  
25 equidistance boundary. We have dealt with these at length in our written pleadings,<sup>61</sup>  
26 and, as we have shown, these maps do not evidence the course of the maritime  
27 boundary or the existence of a tacit agreement that would support such course.  
28 Almost all the maps relied on by Ghana are those of petroleum concessions, many  
29 of them produced by private actors not representing or engaging either State.  
30 Moreover, such maps stand alone, without any accompanying text or explanation.

31  
32 As the Members of the Special Chamber are aware, international courts and  
33 tribunals have consistently shown great caution in dealing with maps as evidence of  
34 a party's claims. International case law confirms the general view that maps can  
35 provide evidence only in certain circumstances, and in any case can only serve as  
36 subsidiary evidence, meaning an element confirming conclusions that have been  
37 reached by other means.

38  
39 In *Burkina Faso/Mali*, the ICJ made this very clear: maps, it said, can "have no  
40 greater legal value than that of corroborative evidence endorsing a conclusion at  
41 which a court has arrived by other means unconnected with the maps."<sup>62</sup> This has  
42 been confirmed in other instances, such as in *Indonesia/Malaysia* and *Nicaragua v.*  
43 *Colombia*.<sup>63</sup>

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<sup>58</sup> ITLOS/PV.17/C23/2, p. 6, lines 4-5 (Klein).

<sup>59</sup> RCI, para. 4.61.

<sup>60</sup> ITLOS/PV.17/C23/2, p. 6, lines 4-5 (Klein).

<sup>61</sup> CMCI, at paras 4.92-4.110; RCI, paras 2.127-2.136.

<sup>62</sup> *Frontier Dispute (Burkina Faso/Mali)*, Judgment, I.C.J. Reports 1986, p. 554, at p. 583, para. 56.

<sup>63</sup> *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, p. 625, at p. 668, para. 90; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*,

1  
2 The maps put forward by Ghana were prepared and used either by private  
3 companies or by public bodies with a limited, technical mandate. These maps did  
4 not purport to express a view engaging the State on the position of the maritime  
5 border, nor could they have done so. As a result, such maps cannot be a “physical  
6 expression of the will of the State”, to quote the formula used by the International  
7 Court in *Burkina Faso/Mali*, and “they cannot in themselves alone be treated as  
8 evidence of a frontier [and] they cannot be given the character of a rebuttable or *juris*  
9 *tantum* presumption such as to effect a reversal of the onus of the proof.”<sup>64</sup>

10  
11 Mr President, Members of the Chamber, I now turn to the Parties’ 2009 submissions  
12 to the Commission on the Limits of the Continental Shelf (CLCS). Ghana seems to  
13 rely heavily on these.<sup>65</sup> As Côte d’Ivoire explained in its written pleadings, these  
14 submissions do not provide any evidence of a tacit agreement between the Parties  
15 on the delimitation of their maritime boundary; quite the contrary.

16  
17 First, the limits of the areas respectively claimed by each Party were determined only  
18 by the technical information available to it, not by agreement. Second, the limits of  
19 the Parties’ respective claims in their submissions do not, as Ghana contends, follow  
20 a single line. Third, contrary to what Ghana may suggest,<sup>66</sup> the submissions explicitly  
21 state that there is a boundary dispute. Section 5 of each submission contains a  
22 standard without-prejudice clause that clearly distinguishes between delineation of  
23 the outer limits of the continental shelf of a State and delimitation of the maritime  
24 boundary between two or more States.<sup>67</sup> It is particularly inappropriate for Ghana to  
25 claim otherwise, since it attended, together with other States in the region, an  
26 ECOWAS meeting in 2009, where all these States agreed that:

27  
28 [i]ssues of the limits of adjacent/opposite boundaries shall continue to be  
29 discussed in a spirit of cooperation to arrive at a definite delimitation even after  
30 the presentation of the preliminary information/submission. Member States  
31 should therefore write “**no objection**” Note to the submission of their  
32 neighbouring States.<sup>68</sup>

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*Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 832, at p. 868, para. 118; *Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012*, p. 624, at p. 661, para. 100. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303, at p. 345, para. 58, and p. 383, para. 144; *Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014*, p. 3, at p. 64, para. 170; *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh/India), Arbitral Award of 7 July 2014*, at p. 51, para. 184.

<sup>64</sup> *Frontier Dispute (Burkina Faso/Mali), Judgment, I.C.J. Reports 1986*, p. 554, at p. 583, para. 56. See also *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984*, p. 246, at p. 307-308, para. 139.

<sup>65</sup> MG, paras 2.9-2.16 and 3.78; RG, at paras 4.2-4.3.

<sup>66</sup> RG, para. 4.16.

<sup>67</sup> Submission by the Government of Côte d’Ivoire 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, CMCI, Annex 175; Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74.

<sup>68</sup> Minutes of the Experts Meeting of ECOWAS member States on the outer limits of the continental shelf, Accra, 25-26 February 2009, CMCI, Annex 31.

1 The Chairman of the CLCS, as well as Ghana itself in its initial submission,  
2 confirmed and accepted this view.<sup>69</sup> In its 2009 submission, Ghana expressly  
3 acknowledged that it “has overlapping claims with adjacent States in the region, but  
4 has not signed any maritime boundary delimitation agreements with any of its  
5 neighbouring States to date.”<sup>70</sup>

6  
7 Mr President, Members of the Chamber, to conclude: for the reasons given in our  
8 written pleadings, and again at this hearing, it is, in our submission, clear that Ghana  
9 has not established that there is a tacit agreement between the Parties delimiting  
10 their common maritime boundary, even out as far as where there has been some  
11 petroleum activity. Ghana is far from meeting the high threshold laid down in the  
12 case law of the ITLOS and the ICJ for the establishment of a tacit maritime boundary  
13 agreement. The absence of a tacit agreement is manifest. It is confirmed by Côte  
14 d’Ivoire’s conduct, reflecting its position that the maritime boundary has yet to be  
15 delimited, and protesting Ghana’s intrusive activities in the disputed area. All such  
16 conduct was well known to Ghana and was not contested by it. The absence of a  
17 tacit agreement is further confirmed by Ghana’s own conduct, amounting to an  
18 admission that the maritime boundary has yet to be delimited. The absence of tacit  
19 agreement is further confirmed by the joint conduct of the Parties, including the joint  
20 statements of the two Presidents, to which I referred you, clearly indicating the  
21 undelimited character of the maritime boundary, and by initiating and participating in  
22 delimitation negotiations over an extended period of time.

23  
24 For all these reasons, we respectfully submit that the Chamber should conclude that  
25 there is no tacit agreement on the delimitation of the Parties’ common maritime  
26 boundary.

27  
28 Mr President, Members of the Chamber, before concluding, I feel obliged to say that  
29 I was somewhat surprised that in his introductory speech Professor Sands saw fit to  
30 suggest that all roads led to a customary equidistance boundary, and that if the  
31 Special Chamber took any other approach, the International Tribunal for the Law of  
32 the Sea would “disqualify itself from settling disputes of this kind”.<sup>71</sup> Such language  
33 is, to put it mildly, out of place. We are confident that you will approach this case with  
34 an open mind, with the sole aim of achieving an equitable solution in accordance  
35 with the law.

36  
37 Mr President, this concludes what I have to say. I thank you all for your attention,  
38 and I request that you now give the floor to Professor Miron.

39  
40 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank you, Sir Michael, for your  
41 statement. (*Interpretation from French*) Professor Alina Miron, you have the floor.  
42

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<sup>69</sup> CMCI, paras 4.119-4.122; Statement by the Chairman of the Commission on the Limits of the Continental Shelf on the progress of work, document CLCS/64, 1 October 2009, p. 25, para. 118, CMCI, Annex 178; Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74, p. 5, at para. 5.3.

<sup>70</sup> Republic of Ghana, Submission for the Establishment of the Outer Limits of the Continental Shelf of Ghana pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea, Executive Summary (28 April 2009), MG, Annex 74, p. 4, at para. 4.1.

<sup>71</sup> ITLOS/PV.17/C23/1, p. 10, line 32 (Sands).

1 **MS MIRON** (*Interpretation from French*): Mr President, Members of the Special  
2 Chamber, it is a great honour for me to appear once again before you. This is due to  
3 the confidence shown in me by the authorities of Côte d'Ivoire, for which I thank  
4 them.

5  
6 To close this morning's session, I would like to present an alternative history of  
7 estoppel; a history where essential documents are not shrouded in silence; a history  
8 where five years of Ghanaian unilateral oil activities do not become five decades of  
9 "effectivités" consented to by Côte d'Ivoire; a history where the protests of Côte  
10 d'Ivoire are not characterized as hopes dashed by its neighbour; a history where  
11 economic benefits are not depicted as apocalyptic prejudice.

12  
13 It is a history of the oil activities of the Parties, activities in the primary meaning of the  
14 word, which is a "real deployment, a tangible manifestation of power".<sup>1</sup>

15  
16 With regard to oil, this means invasive drilling activities, as opposed to simply  
17 mapping out oil blocks on paper for commercial purposes. It means sustained and  
18 irreversible activities, unlike seismic surveys carried out by transient vessels. You  
19 noted in your Order of 25 April 2014 that this type of activity "results in significant  
20 and permanent modification of the physical character of the area in dispute."<sup>2</sup>

21  
22 When these activities are spread out over time, they can lead to a draining of  
23 resources. In short, they are activities which modify the status quo.<sup>3</sup>

24  
25 In reality, this is the history of the unilateral activities in the disputed area not carried  
26 out by the Parties but by Ghana alone. I am going to keep to the disputed area. This  
27 clarification would be wholly axiomatic were it not for the unfortunate tendency of the  
28 other side to make repeated incursions outside the disputed area.

29  
30 On Monday we heard Professor Philippe Sands count hundreds of wells drilled by  
31 the two States between 1970 and 1990.<sup>4</sup> Mr Tsikata presented a sketch map, which  
32 you can currently see on screen, as illustrating the offshore drilling activities up to the  
33 end of 2009.<sup>5</sup> What our esteemed opponents failed to say is that before 2009 only  
34 four wells had been completed in the disputed area, and in fairly dubious  
35 circumstances, which I will come back to. The others? A smokescreen intended to  
36 create the impression that the development of the oil industry of the two States  
37 hinged on the recognition of the western limits of the Ghanaian concessions as the  
38 maritime boundary. Let us blow away the smoke, Mr President, and concentrate on  
39 the activities in the disputed area.

40  
41 Briefly, Ghana's argument relating to estoppel is as follows. To undertake its  
42 activities it relied on representations – "assurances" in French – from Côte d'Ivoire to  
43 the effect that the maritime boundary followed an equidistance line. Ghana was all  
44 the more entitled to do so because we did not protest. Stopping these activities

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<sup>1</sup> <http://www.cnrtl.fr/definition/activit%C3%A9>.

<sup>2</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, para. 89.

<sup>3</sup> See *contra* ITLOS/PV.17/C23/3, 07/02/2017, p. 29, lines 30-42 (Ms Macdonald).

<sup>4</sup> ITLOS/PV.17/A23/1, 06/02/2017, p. 14, lines 9-22 and 38-40 (Prof. Sands).

<sup>5</sup> ITLOS/PV.17/C23/1, 06/02/2017, p. 37, line 9 (Mr Tsikata).

1 would cause it considerable prejudice.<sup>6</sup> I will in turn examine these three elements,  
2 which constitute the three cumulative conditions for estoppel.<sup>7</sup>

3  
4 Ghana repeats *ad nauseam* the refrain of Côte d'Ivoire's acceptance, over decades,  
5 of a boundary following the equidistance line. Sir Michael has just demonstrated that  
6 there never was any acceptance. The estoppel argument, which based entirely on  
7 this, is as doomed to failure as the tacit agreement argument.

8  
9 It is therefore very easy for me to rebut each of the examples of so-called  
10 representations given by Professor Klein. The first of these was the 1970 decree.<sup>8</sup>  
11 Mr Kamara and Sir Michael have shown how Ghana takes this out of its broader  
12 context but, over and above this, what does the text say? It grants an exclusive  
13 concession to Esso and Shell in Ivorian territorial waters, specifying that coordinates  
14 A, B, K, L, M and T are approximate.

15  
16 In 1975 another decree issued by President Houphouët-Boigny very clearly  
17 separates the oil concessions from the maritime boundary: "The coordinates of  
18 reference points M, L and K separating Côte d'Ivoire and Ghana are given by way of  
19 indication and cannot in any case be considered as being the national jurisdiction  
20 boundaries of Côte d'Ivoire."<sup>9</sup>

21  
22 If Ghana had really interpreted the 1970 decree as – and I quote Professor Klein – “a  
23 representation likely to create legal effects”,<sup>10</sup> even though this is not confirmed by  
24 any activity in the disputed area, in any event the 1975 decree dissipates any false  
25 impression. It is hardly surprising then that Professor Klein opted to forget it.

26  
27 Our opponents make much of the authorizations for seismic surveys,<sup>11</sup> once again  
28 failing to place them in their context. In reality, they are part of broader cooperation,  
29 as requested by article 83, paragraph 3, of the Convention. PETROCI and GNPC  
30 undertook to exchange data collected, be it from the boundary area or elsewhere. In  
31 addition, it is in keeping with this collaboration, “without prejudice to the final  
32 delimitation”,<sup>12</sup> that, moreover, Ghana proposed an exchange of seismic data for the  
33 preparation of submissions to the Commission on the Limits of the Continental  
34 Shelf.<sup>13</sup>

35  
36 This leads me to say a few words about those submissions.<sup>14</sup> Without batting an  
37 eyelid, Professor Klein interprets them as an *urbi et orbi* proclamation of Côte  
38 d'Ivoire's recognition of the existence of a delimited maritime boundary following an

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<sup>6</sup> ITLOS/PV.17/A23/3, 07/02/2017, p. 12, line 23 (Prof. Klein).

<sup>7</sup> CMCI, Vol. I, paras 5.2-5.7; RCI, Vol. I, paras 5.38 and 5.

<sup>8</sup> Decree n° 70-618 granting an oil exploration licence to the companies ESSO, SHELL and ERAP,  
14 October 1970 (CMCI, Annex 59).

<sup>9</sup> Decree n° 75-769 renewing oil exploration licence no. 1, 29 October 1975 (CMCI, Annex 61).

<sup>10</sup> ITLOS/PV.17/A23/3, 07/02/2017, p. 15, lines 9-12 (Prof. Klein).

<sup>11</sup> TIDM/PV.17/A23/1, p. 15, line 21 *et seq.*, p. 16, line 6 *et seq.* (Prof. Sands); TIDM/PV.17/C23/1,  
p. 37, line 6 *et seq.*, p. 39, line 19 (Tsikata); TIDM/PV.17/C23/2, pp. 1 and 2 (Tsikata);  
TIDM/PV.17/A23/2, p. 7, line 15 *et seq.*, p. 10, line 32 (Prof. Klein); TIDM/PV.17/A23/3, p. 14, line 11,  
p. 17, lines 8 and 42 (Prof. Klein).

<sup>12</sup> Article 83, paragraph 3 of UNCLOS.

<sup>13</sup> RCI, Vol. I, para. 6.33.

<sup>14</sup> ITLOS/PV.17/C23/3, p. 14 (Prof. Klein).

1 equidistance line.<sup>15</sup> Really? How does Ghana reconcile this interpretation with its  
2 position in 2007, when Ghana itself was proposing to Côte d'Ivoire to settle the  
3 dispute on the maritime boundary<sup>16</sup> on the pretext that it was an obstacle to filing the  
4 submission to the CLCS? Or with the fact that in 2008, during the first meeting of the  
5 Joint Commission, it reasserted the same point of view?<sup>17</sup> Thus, in 2007-2008  
6 Ghana considered, without a shadow of a doubt, that the boundary was not  
7 delimited. Today Ghana swears, and urges you to believe, that back then Ghana  
8 was convinced, in all good faith, that the boundary had been drawn for more than 50  
9 years.

10  
11 The last example of representations given by Professor Klein concerns the absence  
12 of concessions or Ivorian activities in the disputed area.<sup>18</sup> In short, Ghana  
13 reproaches us for having shown restraint, as is required by the Convention. The  
14 mere act of making this complaint attests to its derisory nature.

15  
16 Mr President, I have just demonstrated that the first condition for estoppel is not met.  
17 I am not therefore required, *a priori*, to dwell on the other two, but I will do so *ex*  
18 *abundante cautela*.

19  
20 Ghana asserts that it invested in the area relying on the purported Ivorian  
21 representations, but nothing is further from the truth. On the contrary, the most  
22 substantial investments – those relating to drilling – were made in disregard of Côte  
23 d'Ivoire's protests and at the cost of the failure of the negotiations.

24  
25 It should be recalled that in 1988 the Parties dealt with the question of delimitation of  
26 the maritime boundary for the first time. At that time the disputed area was virgin  
27 territory; it had never been drilled. Ghana did not respond to the invitation but in  
28 1989<sup>19</sup> it drilled its first well in the Tano North West field, without having informed  
29 Côte d'Ivoire in any fashion.

30  
31 When it received confirmation of the Ghanaian drilling, Côte d'Ivoire protested  
32 against this kind of invasive activities, and I quote from the letter of 1992:

33  
34       The Ivorian Government ... therefore hopes that whilst awaiting the meeting  
35       of the Joint Border Redemarcation Commission, the two countries shall  
36       abstain from all operations or drilling works in the Zone whose status remains  
37       to be determined.<sup>20</sup>

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15 *Ibid.*

16 Note verbale no. LE/TL/2 from the Ministry of Foreign Affairs of Ghana to the Embassy of Côte d'Ivoire in Accra, 20 August 2007, CMCI, Annex 25.

17 Opening statement of Ghana, maiden meeting of the Ivorian-Ghanaian Joint Commission for the Delimitation of the Maritime Boundary, 16 and 17 July, CMCI, Annex 28.

18 TIDM/PV.17/A23/3, p. 11, line 2 (Prof. Klein).

19 See also State of activities in the oil blocks granted by Ghana in the disputed area, 27 February 2015, CMCI Vol. IV, Annex 83.

20 *Note Verbale* from Ministry of Foreign Affairs of the Republic of Côte d'Ivoire to Ministry of Foreign Affairs of the Republic of Ghana, No. 2678/AE/AP/RM-13 (Apr. 1992), RG, Vol. III, Annex 112 [tab 10 of the Judges' folder].

1 For Professor Sands, this note verbale, sent by the Ivorian Minister for Foreign  
2 Affairs to his Ghanaian opposite number, is “an expression of hope [which] faded  
3 away and was dropped.”<sup>21</sup>

4  
5 So does Ghana interpret a formal protest, admittedly made in subdued diplomatic  
6 language, as mere inconsequential gesture?  
7

8 Mr President, this “hope” was surely dashed, but it was not dropped. On the  
9 contrary, Côte d’Ivoire reiterated its opposition, in any event when it was aware of  
10 Ghana’s unilateral activities and when its government apparatus was in a position to  
11 react.  
12

13 Our opponents make a great deal of our silence during the period 1992-2002.<sup>22</sup>  
14 What really happened in the disputed area during this period of lengthy domestic  
15 crises in Côte d’Ivoire?  
16

17 In 1999 and then in 2002, Ghana drilled two wells.<sup>23</sup> These activities took place  
18 when the Ivorian civil war was at its height. The two wells are located in the Tano  
19 West 1 field, which straddles the provisional equidistance lines, whether Ghana’s line  
20 or ours.<sup>24</sup> If at that time Ghana thought that the boundary followed the equidistance  
21 line, should it not at least have informed Côte d’Ivoire of the configuration of this  
22 deposit? It did not do so, and in any event these wells were quickly abandoned.<sup>25</sup>  
23

24 Mr President, that was the status quo in the disputed area in 2007-2008 when the  
25 negotiations on the boundary resumed. What happened then? In June 2007 Tullow  
26 discovered the Jubilee field,<sup>26</sup> which lies outside the disputed area, but close to it.  
27 This discovery heralded significant resources further to the west.  
28

29 On 20 August 2007, Ghana contacted Côte d’Ivoire with a view to resolving the  
30 question of maritime delimitation.<sup>27</sup> Côte d’Ivoire responded immediately, all the  
31 while expressing concern about the invasive activities in the disputed area, as can  
32 be seen from an internal note that defines the terms of reference of the Ivorian  
33 negotiators: “In order to avoid any conflict between the two countries on the issue of  
34 oil exploitation, it would be highly desirable for the ... Joint Commission ... to  
35 consider this matter as well.”<sup>28</sup>  
36

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<sup>21</sup> TIDM/PV.17/A23/1, p. 18, line 7 (Prof. Sands).

<sup>22</sup> RCI, Vol. I, para. 2.58 *et seq.*; TIDM/PV.17/C23/1, p. 39, line 2 (Tsikata); TIDM/PV.17/A23/3, p. 15, line 40 (Klein).

<sup>23</sup> See State of activities in the oil blocks granted by Ghana in the disputed area, 27 February 2015, CMCI Vol. IV, Annex 83, p. 4.

<sup>24</sup> See also TIDM/PV.17/A23/1, p. 15, line 39 (Sands).

<sup>25</sup> IHS Energy Group, *Ghana Coastal Zone* (December 2014), MG, Vol. II, M49.

<sup>26</sup> CMCI, para. 2.90.

<sup>27</sup> Note verbale from the Embassy of Côte d’Ivoire in Accra to the Minister for Foreign Affairs of Côte d’Ivoire, 24 August 2007, CMCI, Vol. III, Annex 26.

<sup>28</sup> Letter from the Ambassador of Côte d’Ivoire in Accra to the Ivorian Minister for Foreign Affairs, 9 May 2008, CMCI, Vol. III, Annex 27.

1 While the Commission was being set up, Ghana authorized Tullow to drill a well in  
2 the Ebony field. This quickly proved to be non-viable and Tullow therefore sold its  
3 licences for the block.<sup>29</sup>

4  
5 The Joint Commission met in February 2009 and Côte d'Ivoire quite normally took  
6 the opportunity to reaffirm its opposition to the drilling: "Côte d'Ivoire reiterates its  
7 request to Ghana in respect of any unilateral activity in the neighbouring maritime  
8 zone until a determination by consensus of the maritime border between the two  
9 countries."<sup>30</sup>

10  
11 What does Ghana do? It authorizes Tullow to drill two further wells in the Tweneboa  
12 field, located close to the equidistance lines and doubtless linked to the Enyenra  
13 field, which straddles those lines. The commercial viability of the field is confirmed at  
14 the end of 2009. Does Ghana inform Côte d'Ivoire about it? Absolutely not. On  
15 15 December 2009 Ghana makes its declaration under article 298.

16  
17 Now, sheltered from all judicial supervision, Ghana gives the green light to the  
18 drilling of a number of wells in the disputed area. You can see on the screen the  
19 statistics showing the acceleration of invasive activities and the build-up of heavy  
20 installations in an area whose delimitation was *a priori* at the heart of the  
21 negotiations between the two States.

22  
23 On Tuesday Mr Alexander perfectly illustrated this unstoppable dynamic of Ghana's  
24 *fait accompli* in the TEN field: two wells in 2010, five in 2011, two in 2012, three in  
25 2013, two in 2014, and so on.

26  
27 Côte d'Ivoire's protests did nothing to hamper this irresistible acceleration. In 2011  
28 Côte d'Ivoire renewed its appeal to Ghana. "[The Côte d'Ivoire] negotiator went on to  
29 *ask Ghana to suspend all economic activities* in the areas concerned until the  
30 boundary issue was resolved."<sup>31</sup>

31  
32 We know what happened next. Ghana turned a deaf ear and Côte d'Ivoire  
33 addressed the oil companies directly, cautioning them against the risks caused by  
34 continuing their activities.<sup>32</sup> It is this attitude that Ghana today characterizes as  
35 "surprising"<sup>33</sup> or even "threatening".<sup>34</sup>

36  
37 Mr President, I have just shown that all the significant investments in the disputed  
38 area have been made despite the protests of Côte d'Ivoire and in disregard of the  
39 negotiation process. Against this background, Ghana is particularly ill advised to

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<sup>29</sup> Tullow report, *2008 – Full Year Results*, undated, CMCI, Vol. IV, Annex 75; Website of the Ghana National Petroleum Corporation, *History of Exploration in Ghana*, undated, CMCI, Vol. IV, Annex 88.

<sup>30</sup> Communication from the Ivorian Party, second meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 23 February 2009, CMCI, Vol. III, Annex 30 [tab 11 of the Judges' folder].

<sup>31</sup> Minutes of the Côte d'Ivoire/Ghana maritime boundary negotiation [fifth meeting], 2 November 2011, CMCI, Vol. III, Annex 40 [tab 26 of the Judges' folder].

<sup>32</sup> Letter from Tullow to Ghana, 14 October 2011, CMCI, Vol. III, Annex 77 [tab 12 of the Judges' folder]. See also RCI, paras 6.31-6.34.

<sup>33</sup> ITLOS/PV.17/C23/2, p. 17, lines 5-7.

<sup>34</sup> RG, p. 149, para. 5.33.



1 complain about any damage which the cessation of the unlawful activities might  
2 cause it.

3  
4 However, beyond this, one might wonder what is the basis for Ghana's catastrophic  
5 forecasts. Throughout the entire proceedings our opponents have merely advanced  
6 these forecasts without ever supporting them: during the provisional measures  
7 phase,<sup>35</sup> in the Memorial,<sup>36</sup> in the Reply, and on Monday and Tuesday.<sup>37</sup> In our  
8 Counter-Memorial we demonstrated that these figures and claims were to be taken  
9 with precaution.<sup>38</sup> But as Ghana persists in dodging the issue, it is difficult to engage  
10 in any kind of adversarial debate on this subject. So let me just briefly summarize our  
11 factual arguments.

12  
13 With regard to prejudice to Ghana, it should be noted that the oil concessions gave  
14 rise to payment of taxes and fees to Ghana. Evidently, these can hardly be seen as  
15 damage;<sup>39</sup> and, moreover, Ghana states that its economy has profited from them.<sup>40</sup>  
16 Given the state of the case, it is impossible to establish to what extent those profits  
17 have been derived from the disputed area. On the other hand, it is certain that Côte  
18 d'Ivoire, for its part, has been deprived of all those profits.<sup>41</sup>

19  
20 With regard to prejudice suffered by the British company Tullow, let me just make a  
21 few remarks in shorthand by way of conclusion. First, Tullow is not a party to these  
22 proceedings and Ghana does not exercise diplomatic protection. Second, Tullow  
23 presents its investments as dead losses,<sup>42</sup> but they are not, because for a company  
24 specializing in oil exploration they are part and parcel of the risk calculation. Third,  
25 the confirmation of the commercial viability of the wells in the TEN field generated  
26 considerable revenues for Tullow, derived, inter alia, from the increase in its stock  
27 market value. Last, but not least, Tullow has made these investments despite Côte  
28 d'Ivoire's cautions. Indeed, in 2011, when Côte d'Ivoire contacted the company  
29 directly, its investments amounted to USD 630 million, so the 4 billion about the  
30 potential loss of which Tullow complains were spent only after 2011.<sup>43</sup>

31  
32 Mr President, Members of the Special Chamber, the facts being what they are, I do  
33 not think it is really necessary to quibble over the greater or lesser similarities

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<sup>35</sup> TIDM/PV.15/A23/2, p. 6, lines 37-46; TIDM/PV.15/A23/2, p. 6, lines 39-43; TIDM/PV.15/A23/2, pp. 16-21.

<sup>36</sup> MG, Vol. I, paras 1.30, 2.122, 2.125, 3.89-3.90 and 5.30.

<sup>37</sup> TIDM/PV.17/A23/3, p. 12, lines 19-36; p. 13, lines 1-5; p. 15, lines 20-23; p. 18, lines 19-24.

<sup>38</sup> CMCI, 5.34-5.54.

<sup>39</sup> See Ghana, Ministry of Finance and Economic Planning, *Report on the Aggregation and Reconciliation of Oil & Gas, Sector Payments and Receipts, 2010-2011*, CMCI, Vol. IV, Annex 76; Tullow report, *Tullow in Ghana, 2014*, pp. 6-7, CMCI, Vol. IV, Annex 80. More generally, see Tullow report, *Payments to Governments – Ghana*, undated, CMCI, Vol. IV, Annex 89.

<sup>40</sup> *Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, *Provisional Measures*, Written Statement of Ghana, 23 March 2015, paras 48-57.

<sup>41</sup> CMCI, paras 5.41-5.42.

<sup>42</sup> CMCI, para. 5.52; project CMCI, Vol. IV, Annex 91; see also London Stock Exchange, Statistical table for 2006-2013 on Tullow stocks, CMCI, Vol. IV, Annex 91, and J. P. Wilhelmsen and M. Lorentzen, "Investment Case (Tullow Oil Plc.)", Master Thesis, Copenhagen Business School, June 2012, CMCI, Vol. V, Annex 102.

<sup>43</sup> CMCI, paras 5.53-5.54.

1 between our case and all the others in which international courts or tribunals rejected  
2 estoppel.

3  
4 Let me conclude by stating that international law does not include the concept of  
5 delimitation by estoppel. In reality, Ghana relies on this argument to give a  
6 semblance of legal justification to unlawful, unilateral activities which engage its  
7 international responsibility.

8  
9 That concludes my presentation and that of Côte d'Ivoire for today and I would like to  
10 thank you for your kind attention.

11  
12 **THE PRESIDENT OF THE SPECIAL CHAMBER** (*Interpretation from French*): I  
13 would like to thank Professor Alina Miron. Her statement concludes our session this  
14 morning. The oral pleadings of Côte d'Ivoire will resume tomorrow morning at  
15 10 o'clock.

16  
17 *(The sitting closed at 12.55 p.m.)*