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President of the Special Chamber, Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

Verbatim Record

Special Chamber

of the International Tribunal for the Law of the Sea

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	Judges	Rüdiger Wolfrum
		Jin-Hyun Paik
	Judges *ad hoc*	Thomas A. Mensah
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THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Ladies and gentlemen, the Special Chamber is back in session this morning. It will hear the continuation of Côte d'Ivoire's first round of submissions. As usual, this session will last until 1 p.m. with a 30-minute break at 11.30, before resuming at noon.

I would now like to give the floor to Me Michel Pitron, who will open the debate. Me Pitron, you have the floor.

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

Mr President, Judges, I have the honour of coming before you this morning as the first speaker of the day to talk about the geographical context of this dispute.

Yesterday, Côte d'Ivoire took care to show there was no agreement between Côte d'Ivoire and Ghana as to the course of their maritime boundary. It is up to you now to proceed to that delimitation according to the principles laid down by the Convention of Montego Bay and in the light of the case law of the international courts.

Delimitation is there in order to lead to a result which, in light of the circumstances of the case, is considered fair. The process of delimitation cannot therefore be properly proceeded to until proper identification of those circumstances has taken place.

These circumstances are in the main of a geographical nature. Ghana does not dispute the existence of most of these circumstances. However, Ghana feels they should not be taken into consideration when delimiting its boundary with Côte d'Ivoire. As we have an opposing view, I shall begin this morning by identifying these geographical circumstances, which we will use as a basis later on today to talk about delimitation of the maritime boundary.

Let us then have a look at the general geographical context, beginning with a largescale approach.

The regional context can be illustrated using three segments. This is on the map shown: two segments in a generally south-easterly direction between Senegal and Liberia, on the one hand, and between Lekki Lagoon in Nigeria and Gabon, on the other; and a central segment in a generally east-north-east direction between Cap des Palmes in Liberia and Lekki Lagoon in Nigeria.

Let us now focus on that central segment, because it is on the basis of this segment that we see the coasts of Côte d'Ivoire and Ghana, and it will be the starting point for their future maritime boundary.

This segment which you have before you now has two main features:

- as I have just said, it is in a generally east-north-east direction. In fact, as you can see, this segment has a double concavity. Both the Ivorian coasts and the coasts of Togo and Benin are concave. Ghana is the only State in this segment whose coasts are not concave and this is a circumstance which, as you will see later, plays in its favour;

- the second feature of this segment is that the States situated on this segment are very unequal when it comes to the length of the coastline. Côte d'Ivoire and Ghana have a coastal façade which is virtually the same, around the 500 kilometres, whereas Benin and Togo have a coastal façade which is ten times shorter, and therefore they have far more restricted access to the high seas and they have a reduced entitlement to their maritime areas. We will come back to this later.

Let us now zoom in on the coastlines of the Parties. Côte d'Ivoire and Ghana are in a virtually identical geographical situation from several points of view.

- As we have just seen, their coastlines are virtually of the same length, 510 kilometres for Côte d'Ivoire and 536 kilometres for Ghana.

- Secondly, despite their opposite shapes, the coasts of the two States follow the same generally east-north-east direction as the central segment of western Africa which we have just mentioned.

So they are virtually identical geographically speaking, which is almost unheard of within the context of disputes about the delimitation of maritime boundaries. But there is one significant difference which both Parties acknowledge, and which will have a considerable influence over the course of the boundary: the Ivorian coast is concave whereas the Ghanaian coast is convex.

The Ivorian coast can be divided into three separate sectors in a generally north-east direction – as you can see on the map – between the border with Liberia and Sassandra, and in an east-north-east direction between Sassandra and Abidjan, and finally in an east-south-east direction between Abidjan and the Ivorian-Ghanaian border. This coast therefore can be shown as a concave arc.

Ghana, however, has three segments of coast in a generally east-south-east direction between the border with Côte d'Ivoire and Cape Three Points and an east-north-east direction between Cape Three Points and Cape St Paul – at the very top to the east –, and in a north-easterly direction between Cape St Paul and Togo. This is illustrated by a convex arc.

Let us zoom in even more now and focus on the area around the endpoint of the Ivorian-Ghanaian border, which is boundary post 55. The sketch map shown on the screen illustrates the 15 or so kilometres of coast on which we find the base points identified by the Parties with a view to drawing the provisional equidistance line.

This segment has a number of features:

- it is at the end of the Ivorian concavity and at the beginning of the Ghanaian convexity, and is in a generally east-south-east direction, and therefore quite the opposite of those of the Parties, which is in a generally east-north-east direction – the red line;

- it is perfectly straight;

- third, it is situated on the coast, which is a coastal strip separating the Aby Lagoon from the Atlantic Ocean. Buffeted by the ocean swells, these coasts, as we will see, are unstable;

- the fourth feature of the Ghanaian part of this segment, to the east, is in fact a thin strip of land – the Jomoro Peninsula – a legacy of agreements between colonial powers, and we will come back to that as well;

- finally, exceptional gas and oil resources are concentrated off the coast of the Ghanaian part of this segment.

I have just briefly described and in very general terms the geographical context of this dispute. Throughout my description, you will have seen the geographical circumstances which Côte d'Ivoire considers crucial for the delimitation of its maritime boundary with Ghana. I have deliberately omitted the word “relevant”.

In the instant case the question is not solely one of determining whether circumstances are relevant or not. The relevant nature or not of a geographical element is intrinsically linked to the application of the equidistance method or, to be more precise, the equidistance/relevant circumstances method, in particular with respect to its second stage - as you know, Mr President, Judges - which consists in adjusting a provisional equidistance line taking into account relevant circumstances.

My omission was deliberate, in that Côte d'Ivoire is in the main requesting application of the bisector method. These circumstances therefore are not just relevant; they are crucial, because they will help determine not just the course of the Ivorian-Ghanaian maritime boundary but above all will determine the method to be used to delimit that boundary.

In the next few minutes I will restrict myself to the issue of whether or not these circumstances exist, on the basis of a purely objective analysis, which is largely acknowledged by Ghana. This question is not the same as the question of the influence of those circumstances, which will be discussed later on today. That latter question will be intended to help determine whether or not the bisector or equidistance delimitation method is dependent on those circumstances, and, on the other hand, whether the course of the maritime boundary according to the chosen method is also.

Let us look at these circumstances in turn.

The first geographical circumstance is the rectilinear nature of the segment of the coast around BP55. Both Parties agree[1] that this segment is "remarkably straight". The rectilinear nature of this segment brings in two difficulties which will have serious consequences, as we shall see later on, when it comes to delimitation of the boundary:

[1] CMCI, Vol. I, p. 163, para. 6.22: "the portions of coast in question (8.7 km according to Côte d’Ivoire and 13.4 km according to Ghana) are perfectly straight"; RG, Vol. I, p. 85, para. 3.21 ("As shown in Figure 3.3, following page 86, the coastline located immediately on both sides of the land boundary terminus is remarkably straight").

- first of all, this segment is not representative of the coastal geography of the Parties, which, as I have shown, has concavity on the Ivorian side and convexity on the Ghanaian side, whereas in this segment it is straight;

- in applying the equidistance method which Ghana advocates, the provisional equidistance line would be totally determined by the low water line of that segment in the immediate vicinity of BP 55, because the two States have adjacent coasts.

Taking into account this straight segment when delimiting is crucial, because this will determine the choice of the delimitation method as well as the actual course of the boundary line, depending on the method used.

Let us look at the second circumstance, which also concerns the segment of coast on which we find the base points. Here it is not a question of the size; it is a question of direction, which is opposite to that of the general direction of the coastlines of the Parties.

As we have seen in the general presentation of the geographical context of the dispute, the general directions of the coasts of Côte d'Ivoire and Ghana are identical in the gulf. On the other hand – and this is really important – this segment of coasts used as a basis for drawing the equidistance line, on which we find the base points, is in the opposite direction, east-south-east.

On the sketch map shown on the screen now, you will see the segment of coast we are talking about. You can see the general east-north-easterly direction of the coasts of the States, shown in yellow arrows, then the opposite east-south-east direction of the segment of the coast, the mauve and green lines.

The opposite direction of this segment would necessarily have to be considered when determining the choice of delimitation and its application.

The third geographical circumstance is the Jomoro Peninsula, which takes its name from the district of Jomoro, located at the extreme south-west of Ghana, and whose chief town is Half Assini.

Before describing this strip of land, I would just like to revisit a point of detail. In its written pleadings Côte d'Ivoire has characterized this strip of land as a “cordon littoral”, which the translators of the Registry translated by “barrier beach”.[2] In French a “cordon littoral” is not necessarily sandy, so you should not have in mind when you think of “cordon littoral” an idea whereby this strip of land is wholly made up of beach. With all due respect to the excellent translation services of the Registry, maybe “land barrier” would be a better term than “beach barrier” for “cordon littoral”.

This peninsula has four characteristics which are such as to influence the course of the maritime boundary between the two States.

[2] CMCI, Vol. I, paras 1.23, 1.25, 1.27; DCI, Vol. I, paras 2.55-2.56.

First of all, the Jomoro Peninsula is indubitably located to the east of the land boundary, in Ghanaian territory. The two Parties agree on this.[3]

Furthermore, this peninsula is a bit of a geographic curiosity, inherited from the colonial powers. Ghana has described the conditions in which this land boundary was mapped out, and they speculated that this was in order to enable the two States to have access to the resources in the lagoon[4]. Let me give a little clarification about this last segment of the boundary – which is important. I am looking at the segment which goes across this strip of land to re-join the Atlantic Ocean, a little to the left in the diagram. The right angle of this last section, that is, which starts at the lagoon and goes as far as the sea, can be explained by the presence of an isolated house which was occupied in 1884 by the English commissioners, as attested to by the Arrangement of 1889 signed by the French and British powers.[5]

The land boundary, which follows a north-south direction over about 650 kilometres from the north – you can see the end of it on your map – abruptly deviates a few kilometres from the coast to follow an east-west direction over its last 42 kilometres, then once again a north-south direction over about 4 kilometres, to meet up with the starting point established in the 1889 Arrangement.

The third characteristic is that the Jomoro Peninsula is a very small strip of land; it is a land barrier. This peninsula has a surface area of 315 square kilometres and represents 0.1 per cent of Ghana's land territory. As you can see on the screen, the Jomoro Peninsula is in fact made up of two parts:

- in its western part it is a thin land barrier separating the Tendo Lagoon from the Atlantic Ocean. It is about 16 kilometres long at its longest and at its widest 5.5 kilometres. That represents 0.04 per cent of Ghana's land territory;

- in its eastern part, it is a land strip about 25 kilometres long and 14 kilometres wide at its widest point.

Finally – and you will have understood why I am drawing your attention to this particular point – this peninsula defines the entire course of the provisional equidistance line up to 220 nautical miles. If we have a look at the sketch maps of the base points selected by Côte d'Ivoire and by Ghana – and you can see the illustrations on the screen now – whatever the base points taken by the Parties, those situated on the Ghanaian coast are all located on the coastal façade of the Jomoro Peninsula alone, so it is this peninsula which defines the provisional equidistance lines of the Parties up to 220 nautical miles, yet, as we have seen, this is a very narrow land barrier, 5.5 kilometres wide.

The existence of this peninsula is indisputable and, moreover, it is not disputed.

[3] CMCI, Vol. I, paras 1.28-1.29; DCI, Vol. I, para. 2.52; ITLOS/PV.17/C23/1, p. 30, lines 2-3.
[4] ITLOS/PV.17/C23/1, p. 29, 39-45, p.30, lines 21-22.
[5] Arrangement relating to the delimitation of French and British possessions on the western coast of Africa, 10 August 1889, Article III, CMCI, Vol. III, Annex 3.

We come now to the fourth geographical circumstance: instability of the coasts. I do not want to dwell on this at too great a length but it is important because it is controversial, even parodied by Ghana.

There is a point where I would like to be very precise. Côte d'Ivoire does not argue that the coast around boundary pillar 55 is going to erode, contrary to what Ghana seems to want you to believe us to say. It maintains that this portion of the coast is unstable, which is very different.

Erosion is an effect whereby the coasts retreat as the ocean's swell nibbles away at the land. Instability, on the other hand, does not imply constant erosion but a combined effect of erosion and accretion which means that, over the seasons and the years, the shape of the coastal façade changes and hence all references to it change. That is the case on both sides of boundary pillar 55.

I am not going to run through all the scientific explanations which have been developed in our written pleadings and in our Counter-Memorial[6] but I would just like to revisit three points.

First of all, let me point out that the expert entrusted by Ghana with determining the low water line of Côte d'Ivoire says absolutely nothing about the instability of the Ivorian coastlines, even though he carried out the analysis of the Ivorian coastline using satellite imagery.[7]

Furthermore, one of the most striking examples of the instability of the Ivorian coasts is the mouth of the Aby Lagoon. I will demonstrate this.

I have chosen to analyse the mouth of the Aby Lagoon for two reasons:

- first of all, because I have satellite images over several decades, I can analyse the instability of the mouth of this lagoon, and this erosion can perfectly well be transposed to the area around BP55;

- secondly, because point C3 is located on this mouth, which is used for establishing the maritime boundary between Côte d'Ivoire and Ghana beyond 220 nautical miles.[8]

So let us analyse the instability of this lagoon in greater detail. Côte d'Ivoire has studied the modification of the mouth of the lagoon over 61 years, between 1953 and 2014, using satellite imagery.

You can see the upper part of the screen shows the satellite image of 1953 whereas the lower part from 2014 is shown on the lower image. In 1953 the mouth of the lagoon had a number of islands and washed the Assinie-Maffia peninsula, which you can see on the top left of the images on the screen. We are looking at the top image. To the south of Assinie-Maffia, you can see a land barrier – circled in red – of several

[6] CMCI, Vol. I, paras 1.20-1.23.
[7] EOMAP GmbH & Co., *Ghana-Côte d'Ivoire Coastline Analysis* (19 July 2016), RG, Vol. IV, Annex 167.
[8] CMCI, Vol. I, para. 8.37.

hundred metres' width, separating the lagoon from the Gulf of Guinea. At the south-east of the mouth you have the town of Assinie-France, which is located on a land barrier about one kilometre wide. I would like you to have a good look at what remains of this 61 years later. That is the bottom image.

The Assinie-Maffia peninsula has shifted southwards to join up with the land barrier separating the lagoon from the Atlantic Ocean. This is what you can see in blue, going northwards. The width of this land barrier first shrinks by some 100 metres before gaining width in its south-eastern extremity, where today it is over 500 metres wide. Finally, the Assinie-France peninsula has shifted about 200 metres towards the south-east and now is only about 100 metres wide, so it has lost about four-fifths of its surface area over this 60-year period.

What I am trying to show you with these images is that, even if overall there is no erosion or accretion of the coasts which make up the mouth of the lagoon, its shape has changed substantially over the years.

We are going to see later on this morning that the instability of a coast perforce engenders the instability of the base points on which it is situated, and this obviously has a direct and significant impact on the reliability of the boundary line thus created.

Finally – and this is the third point concerning this instability – I would note that Ghana has not always disputed the reality of coastal instability, unlike the position it adopts today. Counsel for Ghana has said: (*Continued in English)* “for five decades the Parties … had no problems with the stability of the coast”.[9]

(Interpretation from French) Instability of the coast around BP55 was discussed between the Parties during bilateral negotiations. At the second meeting of the Joint Commission, so back in 2009, Côte d’Ivoire said “littoral erosion … significantly alters the geometry of the coast with time”.[10]

That was repeated by Côte d'Ivoire within the framework of the tenth meeting of that Joint Commission in May 2014, and Ghana admitted "Furthermore, erosional effects have long time cycles."[11].

The two Parties thus minuted in contradictory fashion the existence and influence of this coastal instability on the course of their maritime boundary.

The last geographic circumstance, which brings me to the end of my presentation, is the exceptional concentration of hydrocarbons in the disputed area. The location of these resources, precisely in that area and to the east of it, can be explained by the geological history of the Gulf of Guinea.

[9] ITLOS/PV.17/C23/1, p. 27, lines 36-37.
[10] Communication from the Ivorian Party, 2nd 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.
[11] Minutes of the 10th meeting of the Côte d’Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d’Ivoire and Ghana, 26-27 May 2014, p.4, CMCI, Vol. II, Annex 48.

I am going to give you a little bit of prehistory here. The opening of the South American and African continents via continental drift led to the formation of fractures or faults during the Albian period, about 100 million years ago; in particular, as you can see on the map, the Romanche fracture, which is in white at the bottom left, and the St Paul fracture above, which border – and that is important – the Tano sedimentary basin off the Ivorian and Ghanaian coasts.

During the Albian period, the Romanche fracture continued to evolve and that led to the creation of two sea knolls – you can see them in red – we are to the east of these fractures as shown on the previous diagram. You have the South Tano Nose to the north and Dixcove Ridge in the south.

These are natural obstacles which played the role of a kind of geological trap, and over the centuries, and probably over thousands, even millions of years, there was an accumulation of sediments in a zone with a reduced area, in the form of a boomerang. You can see it here in purple on the screen.

Because of these ridges, fractures and knolls, you have a sort of precipitation of sediment over tens of millions of years in this particular zone, and because of that you have an exceptional concentration of hydrocarbons covering precisely the disputed area and which extends eastwards towards the Ghanaian coast. It is in these areas that the fields of Jubilee and TEN were discovered and, according to our expert – since it was obviously an expert who analysed all this data and whose conclusions and report you have – and, according to the expert instructed by Côte d'Ivoire – there are numerous potential reserves,[12] as you can see here. I have restricted myself to the disputed area, but you can see, all the areas in hatched yellow and green are potential reserves, as yet unexploited.

Ghana has not denied this geological reality during its first round of argument, and how could it? After all, it is their own economic operators who have spent their time drilling in this area and to the east and discovered oil there.

To conclude, whatever Ghana's position in the current proceedings, the circumstances that I have just shown you are part and parcel of the dispute. This is an objective component. Ghana has consistently denied them or even diminished their scope, sometimes even to the detriment of the position that Ghana itself adopted in bilateral negotiations. However, these circumstances are objective and indisputable.

Now, Côte d'Ivoire has to accomplish another task: not to establish their existence but their influence on the delimitation of the maritime boundary between the two Parties. As I recall it, this influence is a dual one. It relates first to the choice of the delimitation method and, second, to the course of the line chosen according to that method.

This mission is not so fraught with peril as Ghana would have you believe. The process of delimitation is framed by law that is modern, vibrant and evolutive – a law

[12] Report of the Earthmoves company, 9 November 2016, DCI, Vol. III, Annex 189.

which I leave to Professor Pellet to present, if you would be so kind as to give him the floor, Mr President. Thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Mr Pitron, for your presentation. I now give the floor to Professor Alain Pellet.

Professor Pellet, you have the floor.

MR PELLET (*Interpretation from French*)**:** Thank you, Mr President.

Mr President, Judges, our friends on the other side are perpetuating confusion over just about everything, including the subject of the dispute – they wish to have us forget that it concerns delimitation of the maritime boundary between the Parties – and including the applicable law, from which they are seeking to erase a key element: the role played by equity.

Since the aim is to delimit the boundary between the Parties, this Chamber must apply the law of maritime delimitation. After a lengthy period of uncertainty, this law of maritime delimitation is now reasonably fixed around a hard core: articles 15, 74 and 83 of the 1982 United Nations Convention on the Law of the Sea, to which both States present in this case are parties.[1] This means, in essence, that it is necessary to "achieve an equitable solution".

In this instance, Côte d'Ivoire and Ghana agree that you must determine a single delimitation line, which does have repercussions on the applicable law.

In *Qatar* v. *Bahrain*, the ICJ observed that

> the concept of a single maritime boundary does not stem from multilateral treaty law but from State practice, and that it finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various – partially coincident – zones of maritime jurisdiction appertaining to them.[2]

This objective applies equally to the delimitation of successive maritime areas for which the legal regime may vary (territorial sea/continental shelf-EEZ up to 200 nautical miles and continental shelf beyond that limit). It also applies to different overlapping areas (EEZ and continental shelf in particular). Whatever the situation faced – and here both the scenarios that I describe are present – the boundary line as a whole must constitute an equitable solution, it being understood that different delimitation methods can be used for different sections of the boundary to achieve that end.

What method should be used in this case? As these hearings continue, we will show that the most appropriate method is to draw a bisector of the angle formed by the general direction of the coasts of each State. It is that line which, in the simplest and

[1] *UNTS*, Vol. 1834, I-31363, p. 3.
[2] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001*, p. 40, para. 173.

most objective manner, makes it possible to achieve the equitable solution required by the cardinal principle of maritime delimitation law.

At this stage I will simply set out two general principles of the law of delimitation, the second of which follows from the first.

1. The equitable solution required by articles 74 and 83 of the Montego Bay Convention is not a legal guideline that is at best part of soft law, as our opponents seem to believe. It is a legally binding principle which constitutes the very foundation of the law of delimitation as a whole.

2. One of the consequences of this basic principle is that there cannot be one single method of delimitation. Depending on the circumstances of each specific case, it is necessary to select the most appropriate method for achieving this essential equitable solution. In this regard, the "shortest route" will very often be the three-stage method – commonly known as "equidistance/relevant circumstances". However, if this method proves not to be the most appropriate in the light of the circumstances of the specific case, international courts and tribunals may have recourse to a different method, and I am sure that the eminent Counsel for Bangladesh in the *Bay of Bengal* cases, who are representing Ghana today, will not contradict me on this point.[3]

These principles are so well established that it seems that they both warrant little elaboration, but I shall nevertheless say a few words on each.

As has been underlined by ITLOS, "the goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection."[4] It is not a matter of discarding the law in favour of an ajuridical or subjective notion of equity – which might be the case if you were called upon to judge *ex aequo et bono* – or of correcting a legal solution by applying non-legal considerations. Equity here is an integral part of the law. According to the famous formulation of the ICJ, which remains current despite the progress made in the law of maritime delimitation towards greater precision and predictability, "it is not a question of applying equity simply as a matter of abstract justice, but of applying a rule of law which itself requires the application of equitable principles."[5]

As the ICJ states in the same Judgment,

> it is precisely a rule of law that calls for the application of equitable principles. There is consequently no question in this case of any decision *ex aequo et bono*, such as would only be possible under the conditions prescribed by Article 38, paragraph 2, of the Court's Statute.[6]

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[3] See for example: ITLOS/PV.11/4/Rev.1, 12/09/2011, not. pp. 9-10 (Mr Sands); see also *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Memorial of Bangladesh, not. p. 7, para. 1.20; p. 63, para. 5.2; p. 81, para. 6.4; p. 111, para. 6.87; etc.

[4] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, p. 4, para. 235.

[5] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969,* p. 3, at p.47, para. 86.

[6] *Ibid.*, p. 48, para. 88. Similarly: *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002,* p. 303,

As an inevitable consequence of this "paramount objective", as defined by the Tribunal constituted in the *Bangladesh* v. *India* case,[7] the judicial or arbitral body enjoys broad discretion in this regard: within the limits imposed by a small number of mandatory rules with few constraints, judicial and arbitral bodies have, according to the Tribunal in *Barbados* v.*Trinidad and Tobago*:

> both the right and the duty to exercise judicial discretion in order to achieve an equitable result. There will rarely, if ever, be a single line that is uniquely equitable. The Tribunal must exercise its judgment in order to decide upon a line that is, in its view, both equitable and as practically satisfactory as possible, while at the same time in keeping with the requirements of achieving a stable legal outcome. Certainty, equity and stability are thus integral parts of the process of delimitation.[8]

From this broad discretion enjoyed by international judicial and arbitral bodies there stems a fundamental consequence which was underlined by ITLOS in paragraph 235 of its 2012 Judgment, which I cited partially a few moments ago and which, in full, reads as follows:

> The Tribunal observes that the issue of which method should be followed in drawing the maritime delimitation line should be considered in light of the circumstances of each case. The goal of achieving an equitable result must be the paramount consideration guiding the action of the Tribunal in this connection. Therefore the method to be followed should be one that, under the prevailing geographic realities and the particular circumstances of each case, can lead to an equitable result.[9]

Mr President, Côte d'Ivoire does not deny at all that, over the years, case law has forged a "standard method"[10] to which it refers principally – principally but not exclusively. That method, which comprises three stages, involves, first, drawing an equidistance line, if necessary corrected in light of the relevant circumstances of the case – that is the second stage – and, third, ensuring that the line drawn does not entail a marked disproportion between the maritime areas awarded to each of the Parties, on the one hand, and the length of their respective coasts, on the other.[11]

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para. 294, or Arbitral Award, 11 April 2006, *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, RIAA, Vol. XXVII,* p. 212*,* para. 243*.*

[7] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 339.

[8] Arbitral Award, 11 April 2006, *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, RIAA, Vol. XXVII,* p. 212*,* para. 244*.*

[9] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012,* para. 235.

[10] *Territorial and Maritime Dispute (Nicaragua* v*. Colombia), Judgment, I.C.J. Reports 2012*, p. 624, at p. 747, para. 4. See: ITLOS/PV.17/C23/2, 7 February 2017, p. 19, line 34 (Mr Sands).

[11] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 61 at pp. 99-100, para. 110; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 240; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of* 7 July 2014, para. 184.

However, the judgments most frequently cited in favour of this method have always taken care to point out that, although it was "usual", it was not exclusive.[12] This was the case, as we saw,[13] with the Judgment delivered by ITLOS in *Bangladesh* v. *Myanmar*, which noted "that, as an alternative to the equidistance/relevant circumstances method, where recourse to it has not been possible or appropriate, international courts and tribunals have applied the angle bisector method."[14]

After this, in the same case, the Tribunal cited several decisions which had recourse to the bisector, notably the 2007 judgment by the ICJ in *Nicaragua* v. *Honduras*,[15] where the Court held that "the equidistance method does not automatically have priority over other methods of delimitation and, in particular circumstances, there may be factors which make the application of the equidistance method inappropriate."[16]

In its 2012 Judgment in the *Territorial and Maritime Dispute* between Nicaragua and Colombia, the ICJ, echoing what it stated five years earlier, made a very sharp clarification: "The three-stage process is not, of course, to be applied in a mechanical fashion and the Court has recognized that it will not be appropriate in every case to begin with a provisional equidistance/median line."[17]

Although in that case it began by drawing a provisional equidistance line, the Court subsequently made a very considerable adjustment to that line.

This is also the position of ITLOS, which noted, again in the *Bay of Bengal* case, that "the use of equidistance alone could not ensure an equitable solution in each and every case." [18]

In a few moments Mr Pitron will demonstrate that in the present case it is not appropriate to have recourse to it and that in the geographical context and the specific circumstances of the case, recourse to the angle bisector method makes it possible to achieve an equitable solution more practically and objectively.

Even so, as had been noted by the Court of Arbitration in the *Anglo-French Continental Shelf* case in 1977, at a time when the equidistance/relevant circumstances method had not yet been formulated:

> it seems … to be in accord not only with the legal rules governing the continental shelf but also with State practice to seek the solution in a

[12] See, for example: p. 65, para. 180. *Maritime Dispute (Peru* v. *Chile), Judgment, I.C.J. Reports 2014*, p. 3.
[13] See *supra*, para. 9.
[14] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 234.
[15] *Ibid*.
[16] *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. 741, para. 272. See also *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014*, para. 345.
[17] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 624, at p. 695, para. 190, and p. 696, para. 194.
[18] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 228.

> method modifying or varying the equidistance method rather than to have recourse to a wholly different criterion of delimitation.[19]

This is because, although it can be appropriate or proper to depart from the equidistance/relevant circumstances method, one must not throw the baby out with the bath water and lose the advantages entailed by this method, which account for the favour that it enjoys.

The ICJ has given a good description of these advantages in particular in two judgments in which, for different reasons, it nevertheless rejected the application of this equidistance/relevant circumstances method, that is to say, the *North Sea Continental Shelf* case[20] and in *Nicaragua* v. *Honduras*. In the latter judgement, the Court explains:

> The jurisprudence of the Court sets out the reasons why the equidistance method is widely used in the practice of maritime delimitation: it has a certain intrinsic value because of its scientific character and the relative ease with which it can be applied.[21]

It is interesting to note that, in making this statement, the ICJ quotes verbatim, without citing its source – no comment – the words used by the arbitral tribunal in the case known as the "two Guineas" case,[22] another decision in which the equidistance/relevant circumstances method had been rejected in favour of the bisector. Let it be said in passing that, while it is true that this award, which is poorly reasoned in many respects, is not my cup of tea,[23] it is nevertheless part of the jurisprudence that my opponent and friend Professor Sands defines as being "*constant*".[24] And that is very significant, Mr President. It shows that in the minds of judges and arbitrators the two methods offer comparable advantages and can be used interchangeably, depending on which is more appropriate or proper for achieving an equitable solution (and not only where recourse to equidistance is impossible). Aside from the fact that it is more suitable here, the bisector method also has a scientific character and even greater ease of application than the equidistance/relevant circumstances method.

The development of jurisprudence relating to maritime delimitation can be explained, in the very apposite words of ITLOS, by the desire to reduce "the elements of

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[19] *Case concerning the delimitation of continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, 30 June 1977 - 14 March 1978, RIAA* Vol. XVIII, p. 254, para. 249.
[20] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3,* at p. 23, paras 22-23. See also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 18, at pp. 78-79, para. 109; *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984,* p. 38, p. 165, p. 297, para. 107; or *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993,* p. 38, at p. 66, para. 64.
[21] *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. 741, para. 272.
[22] *Case concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau, Decision of 14 February 1985, RIAA, Vol. XIX,* p. 186, para. 102.
[23] See ITLOS/PV.17/C23/2, 7 February 2017, p. 24, notes 67 and 68 (Mr Sands).
[24] *Ibid*., p. 22, line 31 (Mr Sands).

subjectivity and uncertainty in the determination of maritime boundaries and in the choice of methods employed to that end."[25]

And to quote the decision in *Barbados* v. *Trinidad and Tobago*, which stresses "the need to avoid subjective determinations [which] requires that the method used start with a measure of certainty that equidistance positively ensures, subject to its subsequent correction if justified."[26]

That is the case with the bisector method which, according to the ICJ, "may be seen as an approximation of the equidistance method"[27] or as a variant[28] of it:

> Like equidistance, the bisector method is a geometrical approach that can be used to give legal force to the "criterion long held to be as equitable as it is simple, namely that in principle, while having regard to the special circumstances of the case, one should aim at an equal division of areas where the maritime projections of the coasts of States … converge and overlap".[29]

In both cases, if circumstances so require, courts and tribunals may "adjust the line so as to achieve an equitable result" in accordance with a rule – a legal rule – laid down out in articles 74, paragraph 1, and 83, paragraph 1, of the Convention on the Law of the Sea.[30]

In light of the circumstances of the present case, we are convinced, Judges, that, like the Chamber of the ICJ in the *Gulf of Maine* case, you will give preference to

> a method which, while inspired by the same considerations, avoids the difficulties of application [which are created in the present case by the equidistance method] and is at the same time more suited to the production of the desired result. … [t]he practical method to be applied must be a geometrical one based on respect for the geographical situation of the coasts between which the delimitation is to be effected, and at the same time suitable

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[25] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 226; see also *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, RIAA, Vol. XXVII*, pp. 210-211, paras 222-223.

[26] *Ibid*, p. 230, para. 306; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 231.

[27] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 746, para. 287. This wording was repeated by ITLOS (*Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 234).

[28] See *supra*, para. 14.

[29] *Ibid.*, p. 246, para. 287, citing *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984,* p. 327, para. 195. See also: *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969,* p. 3*,* at p. 23, paras 22-23. See also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, pp. 78-79, para. 109; *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984,* p. 297, para. 107; or *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993,* p. 66, para. 64.

[30] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 748, para. 294.

> for producing a result satisfying the ... criterion for the division of disputed areas.[31]

Having said that, an angle bisector may not be drawn arbitrarily any more than a provisional equidistance line. In both cases the delimitation process is framed by law.

As the ICJ made clear in *Nicaragua* v. *Honduras*: "the key elements are the geographical configuration of the coast, and the geomorphological features of the area where the endpoint of the land boundary is located."[32]

It is on this basis that the Court determined the relevant coasts for drawing the bisector in that case, taking care to choose "a coastal façade of sufficient length to account properly for the coastal configuration in the disputed area."[33] Here again, this is what Côte d'Ivoire has done.

It will not have escaped you, honourable Judges, that we are also proposing an argument in the alternative. These two arguments, in practice, achieve the same result because the line that are using in the event that the Special Chamber decided to apply the equidistance/relevant circumstances method is identical to the bisector whose adoption we advocate as our principal claim. Ghana believes that it can scoff at this.[34] It is mistaken, and its sarcasm is especially misplaced because it follows this same approach. Its entire argument is built as follows: "principal claim" – tacit agreement; "in the alternative" – equidistance (without the slightest relevant circumstance). The alternative claim was the entire subject of Mr Reichler's oral statement;[35] or "principal claim" – tacit agreement; "in the alternative" – a whole slew of things – customary line, estoppel or *modus vivendi.*[36]

Aside from the fact that it is common practice and perfectly legitimate to plead "in the alternative", "*ex abundante cautela*",[37] there is nothing strange in two possible delimitation methods producing two coinciding boundary lines. In fact, there are excellent reasons for this – at least three.

First – and I can only repeat this – the goal is to achieve an equitable solution. Since one achieves it, there is no reason to depart from it when the other method is applied.

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[31] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* p. 297, para. 107, pp. 332-333, para. 212.
[32] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007*, p. 748, para. 292.
[33] *Ibid.*, p. 749, para. 298.
[34] See not. RG, p. 81, para. 3.11; ITLOS/PV.17/C23/1, 6 February 2017, p. 15, lines 1-5 (Mr Sands); *ibid*., p. 17, lines 31-36 and pp. 22, lines 20-28 (Mr Reichler).
[35] ITLOS/PV.17/C23/2, 7 February 2017, p. 27, lines 30-33 (Mr Reichler); see also: ITLOS/PV.17/C23/1, 6 February 2017, p. 8, line 25 (Agent); ITLOS/PV.17/C23/1, p. 11, lines 28-31 (Mr Sands); ITLOS/PV.17/C23/2, 7 February 2017, p. 13, lines 5 and 36, p. 19, line 2 (Ms Brillembourg); *ibid*., p. 20, lines 39-47 (Mr Sands); ITLOS/PV.17/C23/3, 7 February 2017, p. 5, lines 19-22, p. 6, line 10, p. 8, lines 38-40 and p. 10, line 5 (Ms Singh); *ibid*., p. 30, line 44 (Ms Macdonald).
[36] ITLOS/PV.17/C23/3, 07/02/2017, p. 3, lines 1-5, p. 4, lines 5-10 (Mr Reichler).
[37] See DCI, p. 5, para. 14; see also p. 2, para. 5.

All the more so, second, as, without in any way ignoring its merits, the equidistance/relevant circumstances method is itself triply subjective: in determining the relevant circumstances; then once again in making the modification to the provisional equidistance line, if necessary; and, lastly, in assessing the non-disproportionality test. Conversely, recourse to a bisector guarantees far greater objectivity once the coasts to be used for its construction have been determined, so as to reflect the general direction of the coasts of the two States.

Third, this is particularly striking when it comes to determining the effect to be given to a particular relevant circumstance, because on this point substantive law remains obstinately silent. Being more "arithmetical", the angle bisector method is also more objective in this respect. By shifting the equidistance line to the right of the bisector, the equidistance line advocated in the alternative by Côte d'Ivoire benefits from this objectivity.

Contrary to what Professor Sands claims, "all roads [do not] lead to a customary boundary".[38] However, all lead, or at least should lead, to an equitable solution. This is achieved by the angle bisector method, which is particularly objective.

However, Mr President, recourse to the bisector method must be not only appropriate and proper, but also possible. Aside from the fact that this is only the case with adjacent coasts, as the Chamber of the ICJ held in the *Gulf of Maine* case:

> [i]t is almost an essential condition for the use of such a method [the bisector method] in a specific case that the boundary to be drawn in the particular case should concern two countries whose territories lie successively along a more or less rectilinear coast, for a certain distance at least.[39]

If, as our opponents claim, the relevant coast is almost straight,[40] then our case is a textbook case not for equidistance/relevant circumstances but for the bisector, far more than for equidistance, as they endlessly proclaim.[41] In fact, on a perfectly straight coast, equidistance is quite simply the angle bisector.

Mr Pitron will now show in more detail why this is our preferred method, if you would kindly give him the floor, Mr President, and I thank you for giving me the floor.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Professor Alain Pellet, for your presentation. I give the floor back to Mr Pitron.

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

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[38] ITLOS/PV.17/C23/1, 06/02/2017, p. 11, line 47 (Mr Sands).
[39] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984,* p. 320, para. 176.
[40] ITLOS/PV.17/C23/1, 6 February 2017, p. 21, line 27 and p. 30, line 42 (Mr Reichler) ; ITLOS/PV.17/C23/2, 7 February 2017, p. 28, line 34, p. 29, lines 1-2, p. 32, lines 12-33.
[41] ITLOS/PV.17/C23/1, 7 February 2017, p. 8, line 39 (Agent); *ibid*., p. 21, line 26 and p. 30, line 41 (Mr Reichler); ITLOS/PV.17/C23/2, 7 February 2017, p. 29, line 10 and p. 32, line 15 (Mr Reichler).

Côte d'Ivoire has thus outlined the geographical circumstances that we feel are essential when drawing the maritime boundary with Ghana. Côte d'Ivoire has also recalled how these circumstances should be taken into consideration, both in terms of the choice of the method and in terms of the application of the method, to comply with the goal of fairness that is advocated by the Convention of Montego Bay.

It is now time to look at the actual course of that line. I will try to explain why we feel that the bisector method should be used in this case and how this bisector line should be drawn.

Professors Pellet and Miron, later, will look at our alternative request, which is not contradictory, namely application of the equidistance/relevant circumstances method, if your Chamber were to decide not to agree to the bisector method.

My presentation will be divided into three parts:

- first, I will take another brief look at the jurisprudential foundations of the bisector method, which is a point upon which, after several exchanges of written pleadings and one round of oral pleadings, the two Parties are still in profound disagreement;

- I will then look at the need to use this method to delimit the maritime boundary, taking into account the geographical circumstances;

- finally, I will describe the 168.7° azimuth line, which is claimed by Côte d'Ivoire.

Let us begin by looking at the foundations underpinning the method. Professor Pellet has brilliantly and clearly explained that there are a number of delimitation methods, none of which has primacy over the others. I am talking about primacy in law because neither the Convention of Montego Bay nor case law requires the use of a main method to be replaced by other methods solely if that main method is not applicable.

This is what Ghana maintains, wrongly, in our opinion, since, for Ghana, the bisector method would be applicable only if it is impossible to use the equidistance method.[1]

Professor Pellet has recalled this case law, which is crucial: "As an alternative to the equidistance/relevant circumstances method, where recourse to it has not been possible or appropriate, international courts and tribunals have applied the angle bisector method."[2]

So it is the inappropriate nature of the equidistance relevant/circumstances method that, in the instant case, leads to us discarding its application. This is precisely the principle that underlies each of the judgments which, to date, have led to the use of the bisector method rather than the equidistance method.

[1]RG, Vol. I, para. 3.15; ITLOS/PV.17/C23/2, pp. 21, 15-18.

[2] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 234. See also *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award of 7 July 2014, para. 345.

Mr President, Members of the Chamber, I know that you know the case law off by heart, but I will just point out one or two topical aspects.

In the *Tunisia* v. *Libya* case, the first case in which the bisector method was used – as you can see on your screens –, the Court applied the bisector method owing to the presence of the Kerkennah Islands to the north, to which the Court wished to grant a partial effect.[3]

In the *Gulf of Maine* case, the Chamber decided that, because of the irregularity of the coasts, particularly of the American coast to the west – and I quote the position – it was important

> to renounce the idea of employing the technical method of equidistance…It considers that preference must be given to a method which, while inspired by the same considerations, avoids the difficulties of application… and is, at the same time, more suited to the production of the desired result.[4]

In the *Guinea* v. *Guinea Bissau* case, with which you are also familiar, I again mention something that is important because the Court said that it was seeking a solution, and I quote, "which took into account the configuration of the whole west African coast", leading to a delimitation that “is appropriate in terms of a fair delimitation in the western African region, as well as to any future delimitation that might reasonably be expected, based on the principles of fairness and based on the most likely hypotheses.”[5]

It is on the basis of that reasoning that the Court opted for a line perpendicular to a single segment from Almadies Point to Cape Shilling. A bisector.

Finally, as a reminder, I will cite the final judgment on the matter, which is *Nicaragua* v. *Honduras.* In that case, you remember, the main reason that led the judges to opt for the bisector method - which you can see here, between two countries with adjacent coasts –, was the marked morpho-dynamism of the mouth of the river delimiting their border, the River Coco, on which the endpoint of the land border was to be found.

Apart from these cases, I would like to look at a number of highly important lessons that can be learnt on this basis.

First of all, the bisector method can be used even if it is possible to draw a boundary line using the equidistance/relevant circumstances method. Both of these are possible.

Second, the bisector method is preferred, if it means that you can obtain a fairer result for the Parties or for neighbouring States than if you use the equidistance method.

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[3] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 89, para. 129.
[4] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984,* pp. 332-333, para. 212.
[5] *Delimitation of the Maritime Border between Guinea and Guinea-Bissau*, Award of 14 February 1985, *RIAA, Vol.* XIX, p. 189, para. 109.

Third, this method is also to be preferred to the equidistance/relevant circumstances method because it allows for an easier way - if I may - of tempering the disproportionate effects of coastal irregularities over the course of the border.

In fact, a number of States have voluntarily rejected the equidistance method, in preference of the bisector method when delimiting their maritime boundaries. This has been done not through the courts but through agreements, as we show on the screen.

Let me first recall that, according to counsel for Ghana at the start of the week, these sketch maps are not relevant for illustrating the traditional application of the bisector method because these sketch maps are the result of some "artful manipulation".[6] I simply recall that my colleagues here today themselves relied on these agreements to support the application of the bisector method in the interests of Bangladesh against Myanmar[7] in 2012 and India[8] in 2014. Furthermore, these very same sketch maps were presented by Nicaragua in its dispute with Honduras before the ICJ[9] with the assistance of a technical adviser who today is the technical adviser to Ghana. I do not imagine that that adviser would have allowed maps to be showed to these hearings if they were “artfully manipulated”!

To come back to these agreements, I have identified ten or so on several continents. They can all be found at tab 22. I will mention just a few of them:

- In the Persian Gulf, there was the agreement between the sovereigns of Sharjah and Umm al Qaïwäin in 1964.[10] *This* is the bisector line in green – that is the maritime boundary.

- Then in west Africa, *inter alia,* an agreement was concluded by exchange of letters in 1960 between France and Portugal, with a view to defining the maritime boundary between the Republic of Senegal and what at the time was the Portuguese province of Guinea.[11]

- In Europe, there is the 1996 agreement between Estonia and Latvia.[12] I am not ignoring the existence of the islands in the gulf that our opponents referred to yesterday, but there is, even so, a bisector line behind there.

- And finally, in central and south America, the Brazilian Government and the French Government more recently, in 1981, also traced a bisector line to delimit the border between Brazil and French Guyana.[13]

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[6] ITLOS/PV.17/C23/2, p. 27, line. 29.
[7] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, ITLOS/PV.11/5/Rev.1, p. 4.
[8] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award, 7 July 2014, Hearing Transcript p. 176 (Day 2).
[9] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* CR 2007/2, pp. 6-8.
[10] *IMB*, Volume I, Report no. 7-10.
[11] *LIS*, no. 68 (1978); *IMB*, Volume I, Report no. 4-4 and Volume III, Reports nos 4-4 (4) and (5).
[12] *IMB*, Volume IV, Report 10-15.
[13] *IMB*, Volume I, Report 3-3.

In our case, as I said this morning, the boundary between the two countries can only be delimited by disregarding a number of key geographical circumstances. The bisector method should be the method chosen to delimit the maritime boundary between the two countries in the light of three circumstances. Of those that I have already referred to this morning, earlier, these are:

- the tiny segment of coast where we find the base points which determine the drawing of the provisional equidistance line;

- secondly, there is the factor of the instability of the coasts, which leads to a risk of the line moving.

- finally, there is the influence of the decision to intervene in delimitation of boundaries in the sub-region.

Let us look at each of these circumstances in turn. But first of all I would like to clarify one point – and this is important. As opposed to what Ghana maintained during its first round of pleadings,[14] Côte d'Ivoire does not contend, and has never contended, that the cut-off effect resulting from the concavity of its coasts is a circumstance that could justify the application of the bisector method. In fact, that circumstance would justify adjustment of the provisional equidistance line if you were to opt for that method. This is a point to be covered later today.

Let us look at these three circumstances, one by one, which would justify the application of the bisector method to the instant case. First of all, the tiny segment of coast.

As we have seen in my previous oral pleading, the section of coastline around BP55 is remarkably straight.

This feature has a significant influence over the location of the base points used to draw the provisional equidistance line. As counsel for Ghana rightly recalled on Tuesday morning,[15] the base points are necessarily close to each other, and there are not that many of them; and they are on a segment of straight coastline, adjacent each other.

I will look at the consequences to be drawn from the choice of the method.

Let us look at the location of the base points used to draw the provisional equidistance line.

Let us remember, just to make sure that you are fully apprised of the facts, that the Parties are relying on different points, whether they are on the Ghanaian side or the Ivorian side, insofar as they are not using the same maps. We will come back to this in further detail later on. That is not fundamental to the point I am trying to make.

[14] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, ITLOS/PV.17/C23/1, p. 25, lines 7-10.
[15] ITLOS/PV.17/C23/2, p. 32, lines 25-39.

Let us look at the base points identified by each of the Parties, shown on the sketch map now on the screen. Côte d'Ivoire has identified ten base points. Only eight points determine the provisional equidistance line out to 220 nautical miles. *This* is the map at the top. Two points on the Ivorian coast - C1 and C2, to the west of the yellow point, which is BP55, and six points on the Ghanaian coast, in red – points G1 to G6. Ghana has identified (the map at the bottom) nine base points: four on the Ivorian coast, CI1 to CI4 to the west; and five on the Ghanaian coast, points GH1 to GH5.

What conclusions can we draw from our analysis of these points?

First, they are to be found on a tiny portion of coast:

- The eight points identified by Côte d'Ivoire are located on a segment of coasts of the two States, coming to less than 9 kilometres in length (shown on the map at the top), which represents less than 1 per cent of the overall coastline lengths of the two States.

- This portion is reduced to 176 metres – 176 metres – on the Ivorian side between the westernmost Ivorian point, C2, and BP55, which represents 0.03 per cent of the Ivorian coast and half of that of the coastlines of both States, which are identical in length.

- The third comment on this portion is that it is tiny, particularly when you look at the points identified by Ghana on the lower map, in that they are to be found on a portion of coast that is not 9 kilometres in length, as for the portion used by Ghana, but 13.4 kilometres, between point CI4 to the west and point GH5 to the east, which is 1.2 per cent of the coasts of both States.

What conclusion can we draw from this analysis? It is that the base points are very close to each other, in particular those that are used to determine the provisional equidistance line which is closest to the coast. So 4 kilometres of coast, between westernmost point C2 and easternmost point G5 determine more than two-thirds of the provisional equidistance line. Looking at the Ghana's points, 670 metres of coast determine 71 nautical miles, that is, one third of the line.

Both Parties acknowledge the existence of this geographical circumstance.

But, now that this has been noted, to be strict, I have to show you that this is crucial for delimiting the maritime boundary – and it certainly is crucial.

Mr President, Members of the Chamber, basing a maritime boundary on a 176-metre segment is to reject the representative nature of the overall configuration of the coasts of the States when determining which method should be used.

176 metres, Mr President, Members of the Chamber. That is the distance between this podium that I am speaking from and the end of the park of the Tribunal. I know because I checked it on Google maps. It is 176 metres. Usain Bolt could run that in 17 seconds. It is 176 metres, half of the height of the Empire State Building.

Basing the Ivorian-Ghanaian boundary on a 176-metre segment of coastline would mean preventing any use of the overall geographical features available to you.

Basing this boundary on a 176-metre segment of coast would be to try to tell the citizens of a State that only 176 metres out of 510 kilometres of its coastal façade determine everything when it comes to their sovereignty, their maritime safety, conservation of the coast and their economic development.

This is just not tenable.

In its written[16] and oral proceedings,[17] Ghana has replied in a rather surprising way. Ghana says that this situation is not unheard of, in that there are a number of cases that have been brought before international courts which present the same situation; and since this is not unheard of, it cannot be crucial.

That is wrong. So far, no case has addressed such a tiny segment as in the instant case, on which all the base points used to draw the provisional equidistance line out to 220 nautical miles are situated.

Neither in the *Bangladesh* v. *Myanmar* judgment, where the equidistance line was determined by points situated on more than 450 kilometres of coast – you can see it here – representing nearly 20 per cent of all the coastlines of the States, where, moreover, the 450-kilometre distance (in blue) was calculated as the crow flies.

Nor in the *Barbados* v. *Trinidad and Tobago* case, which was not looking at a problem of distance between base points.

Nor in the *Cameroon* v. *Nigeria* case, where the distance of 25 kilometres between the two base points – it is not shown clearly here, but it is correct – did not correspond to the length of the coasts but to the width, again as the crow flies, of the estuary in question.

None of these cases can be assimilated to the instant case, where a tiny segment of coast of 9 or 13 kilometres – if you take the Ghanaian points – in length is being used to establish the base points used by the Parties,

No case deals with a segment representing less than 1 per cent of the coastlines of both States and less than 2 per cent of the coast maintained as being relevant by one State – Ghana, as it happens.

Let me now come to the second geographical circumstance I have to put to you, and that is the instability of the coasts. It is not just a question of knowing whether the coasts of Côte d'Ivoire and Ghana are unstable – we showed that this morning – but of knowing whether a lack of stability is decisive for the choice of the delimitation method. We say that, yes, it is.

[16] RG, Vol. I, para. 3.34.
[17] ITLOS/PV.17/C23/2, p. 33, lines 1-8.

The question has already been seen in case law, which operates a risk/solution method of reasoning, which I shall adopt here.

First of all, what is the risk?

In its first round of oral argument Ghana has developed an incorrect position. For Ghana, the risk presented by instability is that it would be impossible to fix base points.[18] In reality the risk is not about not being able to fix base points – *Nicaragua* v. *Honduras,* for example, were capable of determining base points whereas both of them were pleading for the application for the angle bisector method because their coasts were moving.[19] Bangladesh also argued this in the two Bay of Bengal cases, as Professor Pellet has recalled.

The risk is wholly different. A provisional equidistance line is built on the basis of base points situated on a coastal portion, be it large or small. It is exclusively those points that define the provisional equidistance line, so if the coasts move, the base points situated on these coasts will be different according to the coastal movements. Based on these points, the provisional equidistance line will change consequently. It is a cascade effect.

This risk was clearly understood in case law, *inter alia,* in the judgment in *Nicaragua* v. *Honduras*, which I have already mentioned. There, the judges pinpointed two difficulties:[20]

- first, the base points used for the construction of a provisional equidistance line were few in number;

- second, they were located on a coastline in movement.

These two difficulties, when combined, risked rendering inappropriate the equidistance line thus constructed. The reasoning of the Court is clear. There were very few base points; so if these were to move, the whole line would move with them. In that case, the mouth of the Coco River was very dynamic, and the equidistance line was going to move.

Are we in the same situation? Do we have the same risks?

The answer is: absolutely, yes.

We saw this morning that the coasts around BP55 are in movement. Let me recall this and ask you to look at this once again on the screen. The base points used for the construction of the provisional equidistance line are *all* situated on this 9- or 13- kilometre segment – 13 kilometres if I take Ghana's analysis of the distance – either side of BP55, that is, on an unstable coast.

[18] ITLOS/PV.17/C23/1, p. 27, 32-34.
[19] See DCI, Vol. I, 2.45.
[20] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* p. 742, para. 277.

I am repeating myself intentionally here. If the base points move, it is the entire equidistance line that will always be changing and, in the words of the Court in *Nicaragua* v. *Honduras*, will make "[a]ny equidistance line so constructed today … arbitrary and unreasonable in the near future."[21]

The Parties, moreover, were perfectly aware of this risk, which had been discussed at length during bilateral negotiations and minuted. I mentioned that already this morning.

Let us now come to the second stage of reasoning: if you have a risk, what kind of solution obviates it?

The judges found in the angle bisector method an appropriate method given that it allows us to depart from having to have base points. Let me revisit *Nicaragua* v. *Honduras,* where the judges used an angle bisector line, which you can see *here* on screen, considering:

> [o]ne of the practical advantages of the bisector method is that a minor deviation in the exact position of end points that are at a reasonable distance from the shared point will only have a relatively minor influence on the course of the entire coastal front line.[22]

That is exactly what you see here – the blue lines.

Can you transpose this solution to the maritime boundary between Côte d'Ivoire and Ghana?

Once again, the answer to that is "yes". We will see during these proceedings that the maritime boundary drawn according to the angle bisector method only relies on three points, those located either side of the segments whose angle is calculated, and which have been perfectly identified with geographic coordinates.

We would thus be complying with the requirement of reliability inherent in the course of a maritime boundary, and you would give to the Parties the assurance of a stable result, a lasting result, guaranteeing economic and political security. This security would be to the profit of Côte d'Ivoire, Ghana and also of course to the other States within the sub-region that are listening to what you decide here with some concern.

If you allow me, since I have another five minutes until half past eleven – my pleading is somewhat longer than five minutes, so possibly I should stop here and let you take your coffee break.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you. We will stop our work now, at 11.25, and we will reconvene at five to twelve. The Court stands adjourned. Thank you.

(*Break at 11.25, the hearing continued at 11.55*)

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[21] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, I.C.J. Reports 2007,* p. 742, para. 277.
[22] *Ibid.,* p. 748, para. 294.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Let us continue from where we left off this morning with Mr Pitron, who will finish his submission.

MR PITRON (*Interpretation from French*)**:** Thank you very much, Mr President.

Mr President, distinguished Members of the Tribunal, I was talking this morning about the stability and security that the angle bisector method would give, calling to your attention to the fact that it would not only profit Côte d'Ivoire and Ghana but also the entire sub-region, who are listening to you with some concern.

Togo and Benin have both officially signalled their concerns by requesting of the Registry of your Tribunal access to all the written pleadings submitted by the Parties in these proceedings.

Mr Agbenonci, Minister for Foreign Affairs and Cooperation of the Republic of Benin, wrote the following:

> It appears that the position that will be adopted by the Special Chamber regarding the delimitation of the maritime boundary between Côte d'Ivoire and Ghana is likely to have an influence on the delimitation of maritime spaces for the sub-region, including that of Benin.[23]

Indeed, the sub-region has to be almost entirely delimited. The boundary between Côte d'Ivoire and Liberia is not delimited, Togo and Benin have signed no agreement of delimitation with their respective neighbours, Nigeria might also have to delimit its maritime boundary with Ghana, and finally only four maritime boundaries have been delimited in the sub-region: that is, between Cameroon and Nigeria, Senegal and the Gambia, Guinea-Bissau and Senegal on the one side and Guinea on the other.

So the States of the region, having already proceeded to delimit their maritime boundaries, opted for a different method to that of equidistance. Senegal and the Gambia delimited their maritime boundary according to the method of latitude parallels,[24] as you can see here, and the maritime boundary between Guinea-Bissau and Senegal is based on the angle bisector method, delimiting their maritime boundary following a 240° azimuth line.[25]

Similarly, Togo and Benin rejected recourse to the equidistance method and claim to date application of the meridian method to delimit their joint maritime boundary.[26] You can see this, *inter alia,* from the file Benin submitted to the Commission on the

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[23] Letter from the Minister of Foreign Affairs of the Republic of Benin to ITLOS, 28 September 2016, Côte d'Ivoire, Vol. III, Annex 187.
[24] A. O. Adede, "The Gambia-Senegal. Report Number 4-2", *in* J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries,* 1993; p. 850, CMCI, Vol. VI, Annex 181.
[25] A. O. Adede, "Guinea-Bissau-Senegal. Report Number 4-4", *in* J.I. Charney and L.M. Alexander (eds.), *International Maritime Boundaries*, 1993, p. 868, CMCI, Vol. VI, Annex 180.
[26] Ecofin agency, *Le Togo protège ses frontières maritimes*, 4 August 2011, CMCI, Vol. V, Annex 118; Beninese agency for border area integrated management, *Frontière bénino-nigériane (Beninese-Nigerian border)*, undated, CMCI, Vol. VI, Annex 185.

Limits of the Continental Shelf on 12 May 2009.[27] The sketch map projected here, which unfortunately is not very clear, had been annexed to Benin's submission. This is of course without prejudice to future boundary delimitation procedures but it would appear that Benin is also opting for the meridian method.

With respect to its boundary with Nigeria, Benin has also rejected equidistance. In December 2011, the parliamentarians in Benin opposed the ratification of the treaty concluded in August 2006 providing the delimitation of the Benin-Nigeria boundary according to the method of equidistance.[28]

The willingness of these two States to depart from the equidistance method is based on the harm that it would cause them.

I refer to Togo here. If it were to adopt the equidistance method advocated by Ghana, Togo would be deprived of access to the high seas and would see its maritime areas reduced to 3,600 square kilometres instead of more than 20,000 using the meridian method.

With respect to Benin, lying further to the east, you see that it would share a maritime boundary with Ghana. While those two States are not even neighbours, and also this maritime boundary would cut off approximately a quarter of its maritime spaces. According to yet another method, the equidistance method, it would not have any access to the high seas – this is what the Benin Assembly observed in 2011 – and there would be a joint maritime boundary between Ghana and Nigeria at the furthest point of the 200 nautical miles, whilst the two States separate their land boundaries.

Ghana is slamming the door today on all discussion regarding the interests of the sub-region

But it was not always so. The regional concerns and impact of the delimitation of the boundary between Côte d'Ivoire and Ghana on the sub-region lay at the heart – at the heart – of the bilateral negotiations between Côte d'Ivoire and Ghana.

During the first five meetings of the Joint Côte d'Ivoire Ghana Commission, Ghana agreed to take sub-regional interests into consideration. Its representative recalled during the first meeting on 16 and 17 July 2008: "Finally I wish to draw your attention to figure 4, which shows the outline of maritime boundaries in the Gulf of Guinea from Côte d'Ivoire to Gabon, which may serve as a guide for our deliberations."[29]

So sub-regional interests at that time were a "guide" for Ghana.

[27] Preliminary indicative information on the outer limits of the continental shelf of Benin, 12 May 2009, Annex 2, p. 30, CMCI, Vol. VI, Annex 176.
[28] Beninese agency for border area integrated management, *Frontière bénino-nigériane (Beninese-Nigerian border)*, undated, CMCI, Vol. VI, Annex 186.
[29] Opening statement of Ghana at the maiden meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 17 July 2008, CMCI, Vol. III, Annex 28.

A few months later, in February 2009, Côte d'Ivoire and Ghana reasserted in an international forum with their neighbours Benin, Togo and Nigeria, under the aegis of ECOWAS, their willingness to pursue negotiations on their joint maritime boundaries in a "spirit of cooperation".[30]

It was only at the last negotiation meeting, a few months before filing the current proceedings, that Ghana, and I quote "objected to the reference to Togo and Benin [made by Côte d'Ivoire] in [its] presentation".[31]

That was in July 2014.

Ghana, thus, today is dodging the issue of the discussion on the interests of neighbouring States and relying on a purely procedural argument:[32] the States of the sub-region have no standing in the current proceedings and any concern of a regional nature thus has to be set aside.

But from a strictly procedural point of view, Ghana is right. Togo and Benin have no procedural standing within the meaning of article 31 of the Statute of ITLOS, but Ghana is assimilating "standing" here, the legal principle of admissibility, with the interests of a sovereign State representing a people, a people which should be protected or at the very least respected.

If we go a little beyond this procedural point of view, international case law invites us to adopt a macro-geographic approach to disputes, taking into account the recognized and potential rights of States neighbouring the area to be delimited. Judges and arbitrators take this into consideration. I am quoting the *North Sea Continental Shelf* cases: "account being taken for this purpose of the effects, actual or prospective, of any other continental shelf delimitations between adjacent States in the same region."[33]

Let us be precise. When neighbouring States, third parties to the case in hand, have recognized or even potential rights in the area to be delimited, the judges or arbitrators take care not to infringe these rights.

In *Cameroon* v. *Nigeria*, the ICJ noted that the rights of two other States, Equatorial Guinea and São Tomé and Príncipe, could have been affected by the maritime delimitation between the parties to the case. The two States I have just referred to were not party to the proceedings. The Court nonetheless made sure that its judgment would not infringe on their rights by refusing, *inter alia,* to delimit the maritime boundary off Bioko Island, which is under the sovereignty of Equatorial Guinea.[34] The same reasoning was employed in the *Continental Shelf between*

[30] Minutes of the meeting of experts of certain Member States of ECOWAS on the outer limits of the continental shelf, Accra, 25-26 February 2009, CMCI, Vol. III, Annex 31.
[31] Minutes of the 10th meeting of the Côte d'Ivoire-Ghana Joint Commission on delimitation of the maritime boundary between Côte d'Ivoire and Ghana, 26-27 May 2014, p. 5, CMCI, Vol. III, Annex 48.
[32] ITLOS/PV.17/C23/2, p. 36, lines 16-20.
[33] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 53, para. 101.
[34] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002,* p. 421, para. 238.

Libya and Malta case, where the Court refused to rule on sectors of the boundary in the areas that could fall under claims advanced by Italy or Tunisia.[35]

Another case. When these third States cannot assert a claim to the area to be delimited but have an interest linked to the delimitation, the judges and arbitrators still ensure their protection. This was the consideration that led the arbitral tribunal in *Guinea* v. *Guinea-Bissau* to adopt the macro-geographic approach. In that case, no other west African State was a party to the case apart from Guinea and Guinea-Bissau. This notwithstanding, the arbitrators, aware of the consequences that their award might have on neighbouring States, especially on Guinea, whose coasts were concave, pointed out that they could not disregard "delimitations still to be carried out in the region".[36] They considered relevant not only the coasts of the two States but also those coasts of the entire region, what they called the "*littoral long*", the long shore.[37]

In the present case Côte d'Ivoire is not talking about standing. Côte d'Ivoire is talking about the sovereign interests of neighbouring States, brothers and common friends of the Parties.

Côte d'Ivoire is not asking you to hand down a decision with respect to circumstances proper to States non-party to the proceedings. Côte d'Ivoire is merely requesting that you consider that, by adopting the position of equidistance as asserted by Ghana, and also, moreover, with respect to Togo, you will create a precedent which, as one author has pointed out, will have a follow-on effect on the region. This author considers that

> Maritime delimitation on the Atlantic façade in Africa seems to spread like oil. It seems that when one State has proceeded to the delimitation of its maritime boundary with one of its neighbours, it then feels the need to do the same with the other or other adjacent or opposite States. Thus it is not rare that the phenomenon gains traction and extends to an entire region.[38]

The precedent that your decision here establishes will serve as reference for the delimitation of the boundaries of the States in the sub-region, and this should not be of such a nature as to be to the detriment of the interests of those States, present here amongst us today, nor lead to any conflicts.

Having said that, I am going to wind up swiftly. The 168.7° azimuth line has to be formed.

The bisector method means that the general directions of the coasts are represented by a straight line. I am not going to come back to the differences between the so-called relevant coasts, which are used to determine the relevant area necessary for verifying non-disproportionality, the third step of the equidistance method, and the

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[35] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I. C.J. Reports 1985,* p. 13, p. 26, para. 21.
[36] *Delimitation of the Maritime Border between Guinea and Guinea-Bissau,* Award of 14 February 1985, *RIAA*, Vol. XIX, p. 189, paras 108-109.
[37] *Ibid.*
[38] Kamga, Délimitation maritime sur la côte atlantique africaine, Bruyant, 2006, p. 73.

"useful" coasts, those which are used for drawing a bisector line. I have explained this point and Professor Miron will come back to it.

To construct a bisector line, Côte d'Ivoire has just drawn two segments which produce a simplified representation of the coasts of the two States:

- the first segment, between the boundary pillar between Liberia and Côte d'Ivoire and BP55 to the west;

- and then you have a second segment between BP55 and the boundary pillar between Ghana and Togo to the east.

The choice of these segments is not at all arbitrary and, on the contrary, is relevant for a number of reasons.

- First of all, Côte d'Ivoire and Ghana have very similar coastal lengths: 515 kilometres for Côte d'Ivoire and 539 kilometres for Ghana. Once they are represented in their simplified form on the map, the difference between them is reduced to a mere 7 kilometres.

- Furthermore, a second relevant factor here: the two lines thus drawn follow the general east-north-east direction, which is the direction of the coasts of the Gulf of Guinea on which Côte d'Ivoire and Ghana are located.

- The third relevant factor: the segments cancel out geographic irregularities, especially the concave and convex nature of the coasts of Côte d'Ivoire and Ghana, respectively. Indeed, the course of lines between the boundary pillars of the Parties reduces the concavity of the one and the convexity of the other, an area respectively of 13,700 square kilometres on one side and 15,800 square kilometres on the other. These areas being very similar, the impact of the concavity and the convexity of the coasts is cancelled out.

- Finally, the last relevant factor: the segments are based on only three points: the boundary pillar between Liberia and Côte d'Ivoire to the west; boundary pillar 55 in the centre, and the boundary pillar between Ghana and Togo to the east. This reduces to zero, in other words, the risk of the bisector line generated by these sectors shifting.

The useful coasts having been determined and represented by straight lines, all we need to do is to determine the azimuth of the bisector of the angle formed by these two segments. It is a simple mathematical calculation. The Ivorian coast being oriented at an angle of 80.5° and the Ghanaian coast at 76.5°, the azimuth of the bisector is 168.7°.

A couple of words to wind up, Mr President, Judges:

The agent of Ghana stated on Monday morning that "their bisector claim is so unrealistic that it should be dismissed out of hand."[39]

[39] ITLOS/PV.17/C23/1, p. 8, lines 44-45.

I would respectfully reply that, quite to the contrary, it is reality which necessitates account be taken of the geographical circumstances proper to the case, and from them recourse be chosen to a method which results in an equitable boundary line, that is, the angle bisector method.

I would like to thank you for your kind attention and would be grateful if you gave the floor to Professor Miron, who is going to put to you the alternative and non-contradictory claim of Côte d'Ivoire.

Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Mr Pitron. I now invite the last speaker of the morning to give her presentation. Professor Alina Miron, you have the floor.

MS MIRON (*Interpretation from French*)**:** Thank you, Mr President. Just one observation: it may be that I will not be the last speaker of the morning because we have been particularly efficient and, if you will allow us, Professor Alain Pellet could begin his statement for the afternoon at around quarter to one. But you will able to let us know then if you consider it necessary to have the break or to continue.

Mr President, Judges, in truth, the oral pleadings of Côte d'Ivoire on delimitation could very well have ended here, but I do not want to hold out to you for too long this enticing prospect of a free afternoon and it is my duty to address the first point of the demonstration relating to the application of the equidistance/relevant circumstances method.

I will deal with the technical aspects of the three-stage method: namely determination of the relevant coasts and construction of the provisional equidistance line. Professor Alain Pellet, whether after me or at the start of this afternoon, will address its necessary adjustment and, finally, Mr Pitron will come back to show that the adjusted line meets the requirements of proportionality.

Mr President, Ghana criticizes us for having artificially, if that is not a contradiction, distinguished between the coasts used for the construction of the bisector and the relevant coasts in the context of the three-stage method.[1] However, as you can see on the two sketch maps on screen, this distinction is both established in jurisprudence and taken up in the textbooks. Furthermore, the Arbitral Tribunal in *Bangladesh* v. *India* highlighted it clearly *(Continued in English)*: “the identification of the relevant coasts for the delimitation in general and the depiction of the general direction of the coast when applying the angle-bisector method are two distinctly different operations.”[2]

(Interpretation from French) Indeed, the coasts used for the construction of the bisector represent what the ICJ had called the “coastal front” in *Nicaragua* v.

[1] ITLOS/PV.17/C23/1, 6 February 2017, pp. 23-24 (Mr Reichler).
[2] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award of 7 July 2014, para. 277. See also DCI, pp. 75-77, paras 3.10-3.16.

Honduras (inter alia)[3] and a guide to maritime delimitation calls the "general direction of the coast".[4] It is to be noted, moreover, in the two examples on your screens, that a large section of the coasts used face away from the area to be delimited – this is a common situation in the case of adjacent coasts – but this positioning does not disqualify them from the construction of the bisectors.

Following this general model, we have also illustrated the general direction of the Ivorian and Ghanaian coasts by straight lines, in green and in red, the purpose of which is clearly not to depict the various coastal inflections or irregularities, but to erase them, so as to identify the general orientation. The exercise shows that the coastal segments opposite the area to be delimited can run in an opposite direction to the general direction of the coasts, and even though the Ghanaian coast between Cape Three Points and the land boundary terminus with Togo – and I quote Ghana – *(Continued in English)* "faces away from the area to be delimited",[5] (*Interpretation from French*) it does not fade away from the relevant geography.

Without any contradiction whatsoever, I now turn to the determination of the relevant coasts according to the technique enshrined in connection with the application of the three-stage method. It is necessary to identify coasts which generate "projections which overlap with those of the coast of another party."[6] The first step is therefore "to identify, on the basis of the notion of frontal projection, the seaward extensions of the coasts."[7]

The application of the frontal projections technique in the situation before you leads to the Ghanaian coast between Cape Three Points and the land boundary terminus with Togo[8] being excluded from the relevant coasts. Only the Ghanaian coast between the Cape and boundary post 55 remains relevant because it meets the projections of the Ivorian coast; and on this point the two Parties are in agreement. [9]

However, we disagree on the Ivorian relevant coast.[10] Ghana would like to exclude the Ivorian coast to the west of Sassandra, claiming that "after that point, where the Côte d'Ivoire coasts turns to the south-west, it is too far from the area in dispute to be taken into account."[11] In reality, as is underscored by the jurisprudence, it is not

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[3] See also *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012; North Sea Continental Shelf, Judgment, I.C.J. Reports 1969,* p. 51, para. 96. See also *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 61, para. 73.
[4] S. Fietta and R. Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation*, OUP, 2015, p. 100.
[5] See ITLOS/PV.17/C23/1, 6 February 2017, p. 24 (Mr Reichler). [keywords: "come around to the view"; "glaring contradiction")].
[6] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 198.
[7] *Arbitration between Newfoundland and Labrador and Nova Scotia concerning Portions of the Limits of their Offshore Areas, Award in the Second Phase, 26 March 2002,* para. 1.27.
[8] RG, p. 97, para. 3.48. See also ITLOS/PV.17/C23/1, 6 February 2017, p. 23 (Mr Reichler).
[9] ITLOS/PV.17/C23/1, 6 February 2017, p. 24, lines 26-33 (Mr Reichler).
[10] *Ibid*., lines 35-36.
[11] MG, Vol. I, para. 5.80.

distance that is the determining factor but "the capacity of the coasts to generate overlapping titles".[12]

However, precisely because it takes a south-westerly direction, completing the concavity of the Ivorian coastline, the portion of Ivorian coastline between Sassandra and the land boundary terminus with Liberia continues to be opposite the area to be delimited and therefore to generate frontal projections up to the outer limit of the continental shelf. Therefore, it is the Ivorian coast in its entirety, from boundary post 55 to the east to the land boundary terminus with Liberia to the west, that is relevant.

Thus identified using the frontal projections technique, the relevant coasts of Ghana measure 121 kilometres, whereas the relevant coasts of Côte d'Ivoire stretch over 510 kilometres. The ratio between their respective lengths is therefore 4.2:1 in favour of Côte d'Ivoire.

Turning now to Ghana's sketch maps, we understand that our opponents wish, at any cost, to conceal the overlapping of projections. They stop them at the alleged customary equidistance line, thereby suggesting that this line would harmoniously separate the coastal projections. Similarly, Ghana shifts to the east the maritime extensions of the coastal fronts between Axim and Abidjan in order to minimize the visual impact of the encroachment caused by the overlap.

Furthermore, the fetishism displayed by Ghana in respect of equidistance leads it to focus attention on a "perfectly straight"[13] portion of the coasts of the two Parties, located between Axim and Abidjan, which determines the course of the equidistance boundary. But, on the contrary, the exercise of identifying the relevant coasts requires the coastal geography in its entirety to be encompassed; that is the full meaning of the proverb "the land dominates the sea" that our friends on the other side have often called on during the first round of their oral submissions.[14]

This is what I would call "Ghana's marked micro-geographic fixation". Ghana does not really care that the relevant coasts cannot be reduced to this small fraction. It nevertheless increases the number of these graphical representations that take no account of the geography. The goal is to erase the concavity of the Ivorian coasts and the convexity of its own coasts and to conceal the fact that this fragment runs in a direction that is counter to the general direction of the coast.

In the same vein, Ghana attributes to this small portion the merit of housing all the base points that determine the course of the provisional equidistance line. This assertion may well be accurate. It is not, however, conclusive.[15] The determinant base points are juxtaposed over about nine kilometres close to the land boundary terminus, whereas the relevant coasts measure 531 kilometres. A portion of 0.03 per

[12] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009,* p.105, para. 128.
[13] RG, p. 85, para. 3.22.
[14] ITLOS/PV.17/C23/1, 6 February 2017, p. 9, line 41 (Mr Sands); p. 21, line 37; p. 29, lines 5 and 21 (Mr Reichler).
[15] RG, p. 98, para. 3.50. See also ITLOS/PV.17/C23/2, 7 February 2017, p. 29, lines 36-37 (Mr Reichler).

cent of the relevant coasts of Côte d'Ivoire and 7.02 per cent of the relevant coasts of Ghana cannot be considered representative of the coastal geography.[16] Far from highlighting the correlation between the relevant coastal geography and the provisional equidistance line, Ghana's argument effectively warns against all exaltation of strict equidistance. The geometry of equidistance can sometimes be indifferent to coastal geography. You, esteemed Members, cannot.

Having made this remark, Mr President, I come to the infinitely small: the starting point of the maritime boundary and the base points used for the construction of the provisional equidistance line.

On Tuesday my dear colleague Clara Brillembourg devoted lengthy arguments[17] to a matter on which an agreement was nevertheless reached between the Parties during the negotiations:[18] the final land boundary post, boundary post 55, constitutes the starting point of the maritime boundary and there is nothing to allow Ghana to assert, as it did, that we have called that agreement into question.

Nevertheless, boundary post 55 is not on the low water line. However, to construct a provisional equidistance line according to the proper rules, a method must be found to connect the two. Ghana agrees on this, as it agrees that several solutions are possible.[19] Ours, illustrated by the sketch map on the left of your screens, has been to extend the general direction of the land boundary for 107 metres. Ghana's solution has been to reorient this segment in the opposite direction for a distance of 157 metres.

I wish to take this opportunity to say that in the middle of the night we muddled up the sketch maps and the version that you have in your folder is not the correct one. We will give you an erratum this afternoon, with the correct version which is on screen.

Côte d'Ivoire leaves it to the wisdom of the Chamber to decide which of these two methods would be more appropriate. I would simply point out that the choice has very minor consequences for the construction of the provisional equidistance line because the line is affected only for a length of less than 100 metres.

I will now turn to the determination of the low water line points, on which the identification of the base points depends. I would point out that this is question of fact which it falls to you to decide on an objective basis,[20] relying on the most reliable evidence.[21]

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[16] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 105, para. 127.
[17] ITLOS/PV.17/C23/2, 7 February 2017, pp. 12-13, lines 1-34 and 1-38 (Ms Brillembourg).
[18] RG, p. 2, para. 1.4; ITLOS/PV.17/C23/1, 6 February 2017, p. 21, lines 15-17 (Mr Reichler).
[19] ITLOS/PV.17/C23/2, 7 February 2017, p. 12, lines 14-15 and p. 13, lines 6-7 (Ms Brillembourg).
[20] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009, p.* 101, para. 117 and p. 108, para. 137; *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 264; *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award of 7 July 2014, paras 221-222.
[21] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award of 7 July 2014, para. 224.

However consensual these principles may be, Ghana nevertheless encourages you to ignore them. It claims that the Parties agreed to use British Admiralty chart 1383[22] as exclusive evidence of the low water line. It asserts that you must have regard to that alleged agreement. Furthermore, Ghana ignores the proven errors in that chart.[23] So much for objective determination and reliability of evidence. I will return to each of these shortcomings in turn.

According to Ghana, the alleged agreement on the exclusive use of chart BA 1383 is clear from the minutes of the ninth meeting of the Côte d'Ivoire-Ghana Joint Commission held on 23 and 24 April 2014. We know that Ghana is quick to presume an agreement, but it is the very text on which it relies that contradicts its argument.

What can we see when we read these minutes? First of all, they concern technical work during the negotiation process. I do not know on what basis Ghana considers that we, and you, must have regard to it during the judicial proceedings.

Second, as to the substance, the minutes highlight some confusion among the technical teams. They realize that they are using "different cartographic sources", which did not make their work any easier. They also note that among these there are some common sources, such as, "for example, international chart series 2805 and 3113".

Then there is the sentence on which Ghana pins all its hopes:

> The two parties agreed, from now on, to use the same international hydrographical charts on a scale of 1:150,000, where they exist, or on a scale of 1:350,000 or other scale appropriate for delimitation of maritime boundary or relevant remote sensing data.[24]

Is there a commitment to use exclusively chart BA 1383? No. It is not, for example, on a scale of 1:150,000 and, as such, it is certainly not the most appropriate for delimitation.

In particular, the Parties are far from placing blind trust in charts to determine the low water line. The same sentence also mentions "relevant remote sensing data".

Furthermore, the rest of the minutes show that the Parties were particularly concerned about the technical unreliability of the charts, because "*in addition to* the international marine charts", they should refer to all kinds of "data", paying attention to the acquisition period.

At the other extreme to the biased interpretation given by Ghana, the minutes of the ninth meeting show that the technical teams of the two Parties were aware of the shortcomings of the cartographic resources and the need to rectify them. It is this prudent approach that Ghana is disavowing today.

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[22] United Kingdom Hydrographic Office (UKHO), *Ivory Coast and Ghana, Lagune Aby to Tema, Chart No. 1383*, 1:350,000 (14 May 2009, United Kingdom). MG, Vol. II, M61.
[23] CMCI, pp. 65-66, paras 2.128-2.131.
[24] Minutes of the 9th negotiation meeting between Ghana and Côte d'Ivoire on their maritime boundary, 23-24 April 2014, CMCI, Vol. III, Annex 47.

The unreliability of the existing cartographic resources is further confirmed by the series of charts used by Ghana itself. As you can see from the sketch map on screen, two charts from the same international series cover the coastal segment around boundary post 55, which is crucial for the construction of the provisional equidistance line. The low water lines on these two charts differ by several hundred metres. Clara Brillembourg called this difference "microscopic".[25] Well, not quite. If Ghana had used chart 3100 instead of 1383, the resulting provisional equidistance line at 200 nautical miles would have been six kilometres further to the east, which explains why Ghana preferred chart 1383 and, above all, this is sufficient evidence of the unreliability of the existing cartographic resources.

In order to allow negotiations to progress on a more reliable technical basis, from September 2011 Côte d'Ivoire decided to call on the expertise of Argans,[26] first to carry out an audit of existing cartographic resources and then to draw up official Ivorian nautical charts. Annex 190 to the Rejoinder is a report produced by Argans, retracing the stages of production and providing details of the methodology used in the process. The official Ivorian charts thus produced, entitled A 001 and A 002, are an accurate representation of the low water line.

Of course, Ghana continues to claim that the official Ivorian charts were produced solely for the purposes of the judicial proceedings.[27] That is wrong, however. We showed this both in our Counter-Memorial and in the Rejoinder, but Ghana is very stubborn about this, so I am obliged to repeat that the process of producing these charts began in March 2014, that is to say, during the negotiations, and was for reasons of the serious flaws in the existing charts.

Côte d'Ivoire is undoubtedly forward-looking, but it is not psychic. In March 2014,[28] judicial recourse was closed by Ghana itself. No crystal ball revealed to Côte d'Ivoire that six months later Ghana would withdraw its declaration under article 298 of the Convention and file a notification of arbitration.

Nevertheless, I am pleased to note that Ghana is not arguing for the procedural inadmissibility of our charts.[29] In fact, that argument would not have much chance of success. Courts dealing with maritime issues routinely rely on cartographic evidence produced and published during proceedings,[30] as was the case, for instance, in *Guyana* v. *Suriname*,[31] *Bangladesh* v. *India*[32] and *Philippines* v. *China*.[33]

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[25] ITLOS/PV.17/C23/2, 7 February 2017, p. 16, line 11 (Ms Brillembourg).
[26] Presentation by the Argans company to the Ivorian delegation, March 2014, CMCI, Vol. III, Annex 45.
[27] RG, p. 6, para. 1.16, p. 100, para. 3.55; p. 103, para. 3.61.
[28] See DCI, p. 59, para. 2.110
[29] ITLOS/PV.17/C23/2, 07/02/2017, p. 16, lines 36-37 (Ms Brillembourg). See also DCI, pp. 59-60, paras 2.112-2.114.
[30] DCI, pp. 59-60, paras 2.112-2.114.
[31], *Delimitation of the maritime boundary between Guyana and Suriname, Award of September 2007, RIAA, Vol. XXX*, p. 110, para. 396.
[32] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014,* paras 223-224.
[33] *The South China Sea Arbitration (The Republic of Philippines* v. *The People's Republic of China)*, *Award of 12 July 2016*, p. 141, para. 329 and p. 155, para. 354.

Use of the most recent maps and charts is justified for two reasons: first, by the requirement of contemporaneousness. As the arbitral tribunal stated in *Bangladesh* v. *India*, its task is "[to] determine the appropriate base points by reference to the physical geography at the time of the delimitation."[34]

It is justified, second, by the requirement of reliability, which, according to the same tribunal, means "[to] avail itself of the most reliable evidence, resulting from the latest surveys and incorporated in the most recent large scale charts officially recognized by the Parties."[35]

Marine chart A 002, on which Côte d'Ivoire relies, meets both of these requirements laid down in jurisprudence, whereas chart BA 1383, which is favoured by Ghana, meets neither of these requirements.

Thus, chart A 002 is officially recognized by Côte d'Ivoire, as is shown by its international notification (to the United Nations, among others).[36] On the other hand, chart BA 1383 is a chart produced by the United Kingdom Hydrographic Service – a body whose expertise in cartography is certainly well known, but that does not make it a "chart officially recognized" by the Parties.

Chart A 002 is, without doubt, the one that reflects the most recent data. It is based on the compilation and analysis of bathymetry monitoring, satellite images, topographical surveys etc., which are all subsequent to 2010. Chart BA 1383 is based, in the main, on British Government surveys dating back to 1837-1846, so it is hardly surprising that the chart itself contains an explicit warning about the age of the data *(Continued in English)*: "Owing to the age and quality of the source information, some details on this chart may not be positioned accurately."

(Interpretation from French) Finally, chart A 002, on a scale of 1:100,000, is suitable for determining base points, whereas a scale of 1:350,000 in chart BA 1383 is not appropriate for delimitation purposes.[37]

The most recent attack by Ghana on chart A 002 is based on its alleged lack of technical reliability. Ghana and EOMAP, which was commissioned by Ghana, criticize the Ivorian hydrographers and Argans' experts in particular for using satellite bathymetry techniques.[38] I will refrain from summarizing the merits and shortcomings of this innovative technique, because I might well irritate both our experts and Ghana's experts for being outrageously simplistic with their comments. Argans

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[34] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014,* para. 223.
[35] *Ibid.,* para. 224.
[36] CMCI, p. 190, para. 7.16.
[37] United Nations Division for Ocean Affairs and Law of the Sea, *Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea,* United Nations Publications, E.88.V.5* (1989), p. 5, para. 8. See also *ibid*., para. 15 or United Nations Division for Ocean Affairs and Law of the Sea, *Handbook on the Delimitation of Maritime Boundaries,* New York, 2001, p. 4, point 17. See also CMCI, paras 7.16-7.17.
[38] RG, pp. 101-102, paras 3.57-3.59; RG, Vol. IV, EOMAP, *Ghana-Côte d'Ivoire Coastline Analysis*. Annexe 167; ITLOS/PV.17/C23/2, 7 February 2017, pp. 17-18, lines 29-32 and 1-33 and (Ms Brillembourg).

produced a report which responds point by point to the criticisms made against it and which explains far better than I could in the time available to me why those criticisms are unfounded.[39]

Mr President, failing to discredit the technical reliability of chart A 002, EOMAP confirms the inaccuracy of the low water line shown on chart BA 1383. In fact, this Munich-based company itself redraws a coastline which is different to that on the chart proposed to you by Ghana, only having utilized and analysed 15 satellite images.[40]

The experts commissioned by Côte d'Ivoire arrived at the same conclusion, that chart BA 1383 is inaccurate, using far more extensive and varied data – 55 satellite images, tide calculations, beach profiles, topographic survey sheets. I am taking this list from a letter which we sent to the Registry,[41] and thus to Ghana, which identifies and produces for the purposes of the proceedings all these technical data.

Ghana is clearly trying to minimize the differences between the coastlines shown on the two charts and between the resulting provisional equidistance lines: "the distance between the two equidistance lines [says Ghana] at the limit of the territorial sea is less than one nautical mile; at 200 M it is less than five nautical miles."[42]

Côte d'Ivoire would say otherwise. The gap between the two lines is 800 metres at the 12-mile limit – and that is already a lot – but it widens to 8.6 kilometres at 200 nautical miles from the coast, and that becomes significant. Côte d'Ivoire would insist that this is always to its detriment because the provisional equidistance line proposed by Ghana cuts off an area of 550 square nautical miles compared to the correctly drawn provisional equidistance line.

The differences are all the more clear when they are viewed from the perspective of sharing of resources. Ghana's provisional equidistance line – in red – overlaps the Tano West field and just brushes the Enyenra field, whereas the equidistance line proposed by Côte d'Ivoire – in blue – overlaps the two fields.

Finally, I turn to the construction of the provisional equidistance line. Like Ghana, we have used Caris Lots software to digitalize the correct low-water line, which is that on chart A 002.[43]

Two points on the Ivorian coast and six points on the Ghanaian coast determine the course of the provisional equidistance line to a distance of 220 nautical miles. Since the Ivorian point C-2 is 171 metres from boundary post 55, the lines for establishing provisional equidistance are practically invisible.

[39] DCI, Vol. III, Annex 190.
[40] RG, p. 102, para. 3.58 and Annex 167, p. 12; ITLOS/PV.17/C23/2, 7 February 2017, p. 16, lines 19-21 and (Ms Brillembourg).
[41] Letter from the Co-Agent of Côte d'Ivoire to the ITLOS Registry, 27 May 2016.
[42] RG, p. 101, para. 3.56.
[43] See also DCI, paras 3.19-3.21.

It is only after that distance that two additional points, C-3 and G-7, located at 19 km and 119 km from boundary post 55 respectively, have a bearing upon the construction of the provisional equidistance line after 220 nautical miles.

This shows how the slightest variation in each of the points closest to boundary post 55 alters the course of the provisional equidistance line.

On Tuesday Mr Paul Reichler called this situation *(Continued in English)* "a textbook case for the application of equidistance methodology".[44] *(Interpretation from French)* I am not sure that in such a situation textbooks are quite so enthusiastic about equidistance. On the contrary, as the authors of a guide to delimitation said – and I am referring here to the guide by Stephen Fietta and Raymond Cleverly:

> (*Continued in English*)
> [In the case of adjacent costs], small features, especially when close to the land boundary terminus, can have a disproportionate effect ... and thereby dictate the course of an equidistance line over a long distance. ... The jurisprudence demonstrates that such situations create a greater likelihood of geographical special or relevant circumstances requiring adjustment of a provisional equidistance line.[45]

(Interpretation from French) In this case the adjustment is required and we will let you decide, Mr President, whether you wish Professor Alain Pellet to start now.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Professor Miron, for your presentation. I turn to Professor Pellet to find out whether he wishes to take advantage of the remaining 18 minutes to begin his presentation.

MR PELLET (*Interpretation from French*)**:** Mr President, I will not have time to do much, but it will spare you from having to listen to an oral statement which is due to last for a good hour this afternoon, at siesta time. So if we start now, you will not sleep too much this afternoon.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** So I give you the floor. Be assured that we will not fall asleep at all. It is a pleasure to listen to you. I will ask you to stop at 1.00 p.m. to allow us to take lunch and break for two hours.

MR PELLET (*Interpretation from French*)**:** Mr President, Judges, Ghana is mistaken over the method, unless of course it is trying to mislead you on the method to be adopted, when it uses, willy-nilly, the expressions "methodology of equidistance" – no less than 13 times in the Reply – or "method of equidistance" – eight times – and it even makes it the title of section 3 of chapter 3, which is headed "Application of the

[44] ITLOS/PV.17/C23/2, 7 February 2017, p. 29, line 10 (Mr Reichler). See also: ITLOS/PV.17/C23/1, 6 February /2017, p. 8, line 39 (Agent); *ibid*., p. 21, line 26 and p. 30, line 41 (Mr Reichler); ITLOS/PV.17/C23/2, 7 February 2017, p. 32, line 15 (Mr Reichler).
[45] S. Fietta and R. Cleverly, *A Practitioner's Guide to Maritime Boundary Delimitation*, OUP, 2015, p. 62.

Equidistance Method".[1] It did the same in its oral pleadings at the beginning of this week.[2]

> It goes without saying that, in the context of the "equidistance/relevant circumstances" method, the adoption of which Côte d'Ivoire proposes in the alternative and as a subsidiary claim in the event that, despite the particular circumstances of this case, you rejected the angle bisector method, which it is advancing as the main claim – but of course, as I said, equidistance plays a role in that. But in that case, as Judge Jean-Pierre Cot rightly stated: "A provisional equidistance line is not a delimitation but an obligatory station along the way to the construction of the delimitation line proper."[3]

Once the "mathematical" equidistance line has been drawn, courts and tribunals with the task of delimitation have to ask themselves if the adjustment of the line or even recourse to an alternative method[4] is necessary in order to achieve an equitable solution.

It is here that factors "that have usually been referred to as relevant circumstances" come into play, whose

> function is to verify that the provisional equidistance line drawn by the geometrical method from the determined base points on the coasts of the Parties is not, in light of the particular circumstances of the case, perceived as inequitable. If such would be the case, the Court should adjust the line in order to achieve the "equitable solution" as required by Articles 74, paragraph 1, and 83, paragraph 1, of UNCLOS.[5]

I have just quoted the ICJ in the *Black Sea* case.

Consideration of relevant circumstances offers an element of flexibility which makes it possible to correct the rigidity of equidistance and to achieve the equitable solution required by those provisions.

It is true that "there is no legal limit to the considerations which States may take account of for the purpose of making sure that they apply equitable procedures";[6]

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[1] RG, p. 95.
[2] See in particular ITLOS/PV.17/C23/2, 07/02/2017, p. 27, lines 32-33, p. 28, lines 4, 11 and 21-22, p. 29, lines 10-11, p. 33, line 2 (Mr Reichler); ITLOS/PV.17/C23/3, 07/02/2017, p. 8, lines 39-40 (Ms Singh); *ibid*., p. 31, line 1 (Ms Macdonald).
[3] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, *Separate Opinion of Judge Cot*.
[4] *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Appointment of Expert, Order of 30 March 1984, I.C.J. Reports 1984,* p. 315, para. 163.
[5] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 112, para. 155; see also in the constant and abundant case law: *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002,* p. 441, para. 288; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment, I.C.J. Reports 2012*, p. 696, para. 192; or *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India,* Award of 7 July 2014, para. 341.
[6] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 50, para. 93. See also *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (UK, France), Award of 30 June 1977*, *RIAA,* Vol. XVIII, p. 385, para. 70; or

but, nevertheless, in case law some circumstances have greater importance than others. Logically, international courts and tribunals pay more attention to unusual geographical factors that are likely to create an excessive distortion in the direction of the maritime boundary and to deprive one of the States concerned of access to the sea, to which it is entitled, or to which it has a right, or to despoil it of the maritime areas over which it can assert claims. Once again, the English expresses this idea better than the language of Marcel Proust or Jules Basdevant, using the word "entitlement".

This explains the importance which judicial and arbitral bodies have attached to the principle of non-encroachment or no cut-off – the two words are synonymous – and why they do their utmost to limit cut-off effects which geographic irregularities might cause. That must be the situation in our case, where the particular configuration of the Parties' coasts requires remediation of the resulting cut-off to the detriment of Côte d'Ivoire. Two other circumstances must be taken into consideration to alter the course of the provisional equidistance line, if you decided to have recourse to the equidistance/relevant circumstances method: first of all, the presence of the Jomoro Peninsula at the extremity of the land boundary between the Parties, which exerts a significant distortion effect on the course of the maritime boundary; and, second, the geological configuration – which is very peculiar – of the continental shelf in the area concerned. Both of these also require an adjustment to be made to the provisional equidistance line, unlike the purported *modus vivendi*, whose existence is alleged by Ghana, and which it is trying make a relevant circumstance. I will, all the same, say a few words before considering how that adjustment should be made.

Mr President, in accordance with the definition given by the ICJ in the *Black Sea* case, and adopted by ITLOS in the *Bay of Bengal* case, the cut-off effect appears when the line does not allow the relevant coasts "to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way."[7]

Contrary to what Ghana would have you believe, for example when it juxtaposes the map of the Bay of Bengal with the map of our region,[8] you cannot assimilate cut-off and enclaving. Certainly, enclaving is an extreme form of cut-off; but the concept of cut-off is much broader than that of enclaving.

This raises the question of when a cut-off could justify an adjustment of the provisional equidistance line. The fullest answer in case law was given by the Arbitral Tribunal called upon to settle the maritime dispute between Bangladesh and India:

> (*Continued in English*)
> The Tribunal considers that the existence of a cut-off effect should be established on an objective basis and in a transparent manner. Further, the Tribunal emphasizes that a decision as to the existence of a cut-off effect must take into account the whole area in which competing claims have

Delimitation of the maritime boundary between Guyana and Suriname, Award of 17 September 2007, Vol. XXX, p. 83, para. 302.

[7] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 127, para. 201; also cited in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment, ITLOS Reports 2012*, para. 326.

[8] ITLOS/PV.17/C23/1, 6 February 2017, p. 27, lines 5-20 (Mr Reichler) and tab 5 of the Judges' folder. See also, for example: RG, p. 84, paras 3.18-3.20; pp. 105-106, para. 3.69.

> been made. The Tribunal proceeds from the position that there is only a single continental shelf and it is, therefore, inappropriate to make a distinction between the continental shelf within and beyond 200 nm. In the view of the Tribunal, the configuration and extent of the Parties' entitlements to areas of the continental shelf beyond 200 nm may equally be of relevance.[9]

(*Interpretation from French*) We fully concur with this point of view, and I will therefore show that in this case the cut-off resulting from the general configuration of the coasts – the relevant coasts – of the Parties requires such an adjustment.

According to Ghana there is no notable cut-off because the allegedly customary boundary based on equidistance allows Côte d'Ivoire's relevant coast – and I quote – "to project seaward without impediment" and provides "unconstrained access to the outer continental shelf and beyond".[10] These are quotations from Ghana's Reply.

The aim is to create in the reader's mind, and in your minds, distinguished Judges, the idea that in the case of unfortunate Bangladesh, yes, the marked concavity of its coast was an impediment to its entitlement to a maritime territory having full effect, whereas, in comparison, Côte d'Ivoire has no reason for complaint because it has access to the high sea. This is a striking illustration of the unfounded confusion that Ghana fosters between enclaving, in the case of Bangladesh, and encroachment, in the case of Côte d'Ivoire.

Contrary to what Ghana seems to believe, the "corrective" jurisprudence, far from relating solely to extreme situations of enclaving, draws consequences from changes in direction of coasts where they generate an excessive cut-off – as is the situation in our case. Contrary to what Ghana claims, it is certainly not sufficient that the continental shelf can extend beyond 200 nautical miles for there to be no cut-off effect. As is shown by the sketch map on screen, which is becoming familiar to you, from the land boundary terminus the maritime boundary claimed by Ghana has a north-east/south-west orientation and represents a clear encroachment on Côte d'Ivoire's entitlement to maritime areas off its coasts.

Mr President, perhaps I should not launch into the comparisons I had planned. We could perhaps start with that after lunch if you feel that this is a good time for me to stop.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you very much, Professor Pellet. We will now adjourn for a two-hour lunch break, and we will continue the first round of oral argument from Côte d'Ivoire at 3.00 p.m. The sitting is adjourned.

(*Break for lunch*)

[9] *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India, Award of 7 July 2014,* paras 404-405.
[10] RG, para. 3.69.