INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2015

Public sitting

held on Sunday, 29 March 2015, at 10 a.m.,

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

President of the Special Chamber,

Judge Boualem Bouguetaia, presiding

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

(Ghana/Côte d'Ivoire)

Verbatim Record

Special Chamber

of the International Tribunal for the Law of the Sea

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

Ghana is represented by:

Ms Marietta Brew Appiah-Opong, Attorney General and Minister for Justice,

as Agent;

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

as Co-Agents;

and

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

as External Counsel;

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

as Counsel;

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

as International Law Advisers;

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

as Advisers;

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

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

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

Mr Nana Asafu-Adjaye, Consultant, Petroleum,

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

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

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

as Technical Advisers;

Ms Nancy Lopez, Assistant, Foley Hoag LLP,

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

as Assistants.

Côte d'Ivoire is represented by:

Mr Adama Toungara, Minister for Petroleum and Energy,

as Agent;

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

as Co-Agent;

and

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

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

as Special Advisers;

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

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

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

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

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

as Counsel and Advocates;

Ms Isabelle Rouche, Avocate, Paris Bar, Gide Loyrette Nouel, France,
Mr Jean-Sébastien Bazille, Avocat, Paris Bar, Gide Loyrette Nouel, France,
Mr Eran Sthoeger, LL.M., New York University School of Law, New York, United States of America,

as Counsel;

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

as Advisers.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** During consultations held on 2 and 3 December 2014 with the President of the Tribunal, the representatives of the Republic of Ghana and the Republic of Côte d'Ivoire concluded a Special Agreement dated 3 December 2014 to submit the dispute concerning delimitation of the maritime boundary in the Atlantic Ocean between the two Parties to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal.

Notification of the Special Agreement was given on 3 December 2014 and the Chamber was created, by an Order of the Tribunal of 12 January 2015 pursuant to article 15, paragraph 2, of the Statute of the Tribunal, to deal with this dispute.

The case was named "*Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*" and was entered as No. 23 in the List of Cases.

On 27 February 2015, under paragraph 1 of article 290 of the Convention on the Law of the Sea, Côte d'Ivoire submitted a Request for the prescription of provisional measures to the Special Chamber. Pursuant to article 26 of the Statute of the Tribunal, the Special Chamber is holding the hearing today to give the Parties the opportunity to present their arguments concerning the request for the prescription of provisional measures.

I would like to take this opportunity to underline that the case for which we are meeting today is a first in the history and the life of the Tribunal. It is the first time that a Special Chamber formed by the Tribunal has received a request for provisional measures. It is also the first oral proceedings held before such a Chamber.

I would like to take this opportunity to stress to you the unique and special nature of these proceedings chosen by the Parties in the case before us today.

I will now give the floor to the Registrar to summarize the procedure and to read the submissions of the Parties.

THE REGISTRAR: Thank you, Mr President. On 27 March 2015, a copy of the Request for the prescription of provisional measures was transmitted to the Government of Ghana. By Order of 6 March 2015, the President of the Special Chamber fixed 29 March 2015 as the date for the opening of the hearing. On 23 March 2015, Ghana filed its Statement in response regarding the Request of Côte d'Ivoire.

(Interpretation from French) I shall now read the submissions of the Parties.

For Côte d'Ivoire:

> On the grounds set forth above, Côte d'Ivoire requests the Special Chamber to prescribe provisional measures requiring Ghana to:
>
> - take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area;

- refrain from granting any new permit for oil exploration and exploitation in the disputed area;

- take all steps necessary to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire;

- and, generally, take all necessary steps to preserve the continental shelf, its superjacent waters and its subsoil; and

- desist and refrain from any unilateral action entailing a risk of prejudice to the rights of Côte d'Ivoire and any unilateral action that might lead to aggravating the dispute.

(*Continued in English*) Ghana requests the Special Chamber to deny all of Côte d'Ivoire's requests for provisional measures.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Registrar.

This morning's sitting, in the course of which Côte d'Ivoire will present its statement, will last until 1 o'clock, with a 30-minute break between 11.30 and noon.

This afternoon, Ghana will present its statement in response, and that session will last from 3 o'clock until 6 o'clock, with a break from 4.30 until 5 o'clock.

I note the presence at the hearing of the Co-Agent, Counsel and Advocates for Côte d'Ivoire. I therefore now give the floor to the Co-Agent of Côte d'Ivoire, Mr Ibrahima Diaby, Director-General of Hydrocarbons in the Ministry of Petroleum and Energy, to present his delegation.

MR DIABY (*Interpretation from French*)**:** Mr President, Members of the Tribunal, as you were informed yesterday by His Excellency the Ambassador of Côte d'Ivoire to Germany, the Agent of Côte d'Ivoire, Mr Adama Toungara, has been delayed but he is on his way and will be with us shortly. Consequently, in my capacity as Co-Agent, as you have just indicated, I will have the honour to introduce the delegation of the Republic of Côte d'Ivoire and, in due course, I will read the introductory statement by the Agent.

This delegation of the Republic of Côte d'Ivoire before you, Mr President, is as follows: Mr Adama Toungara, Minister and Agent of Côte d'Ivoire, is on his way and will be joining us; myself, Mr Ibrahima Diaby, Co-Agent; as Special Advisers, Mr Thierry Tanoh, Deputy Secretary-General to the Presidency of the Republic of Côte d'Ivoire; and, alongside him, His Excellency Mr Léon Houadja Kacou Adom, Ambassador of Côte d'Ivoire to the Federal Republic of Germany; and our Counsel and Advocates, Mr Michel Pitron, Avocat at the Paris Bar and Partner at Gide Loyrette Nouel, Mr Adama Kamara, Avocat at the Côte d'Ivoire Bar and Partner at Adka, Mr Alain Pellet, Professor emeritus at the University of Paris Ouest, Nanterre La Défense, former Chairman of the International Law Commission and Member of the Institut de droit international, Sir Michael Wood, a Member of the International

Law Commission and of the English Bar, and Dr Alina Miron, Doctor of Law, Centre de droit international de Nanterre, University of Paris Ouest, Nanterre La Défense.

Our Counsel are Ms Rouche and Mr Bazille, both Avocats at the Paris Bar practising at Gide Loyrette Nouel in Paris, Mr Eran Sthoeger, LL.M, New York University School of Law, Mr Lucien Kouacou, who is en route with the Minister at the moment, a Project Director at the Directorate-General of Hydrocarbons in the Ministry of Petroleum and Energy of Côte d'Ivoire, and Ms Lucie Bustreau, from Gide Loyrette Nouel.

Mr President, Members of the Tribunal, that is the delegation of the Republic of Côte d'Ivoire. Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Mr Diaby.

I also note the presence of the Agent, the Co-Agents and the Counsel and Advocates of the Republic of Ghana. I now give the floor to Her Excellency Marietta Brew Appiah-Opong, Attorney General and Minister for Justice of the Republic of Ghana, to present the delegation of Ghana.

MS BREW APPIAH-OPONG: Mr President, Members of the Special Chamber, it is indeed an honour to appear before you today in this very important matter.

I will do my introduction as follows. I will mention the representatives of the relevant agencies present here today and then introduce to you those who will be presenting speeches to you today.

We have here today representatives of the Ministry of Justice and Attorney General's Department, the Ministry of Energy and the Ministry of Finance. We also have here this morning representatives of the Ghana National Petroleum Corporation, the Petroleum Commission, and the Environmental Protection Agency. We also have here our Counsel: Reindorf Chambers from Ghana and representatives from Foley Hoag and Matrix Chambers.

I will introduce to you those who will speak to you. As Attorney General and Agent for Ghana, I will make representations this morning. Also presenting to you will be Mr Paul S. Reichler, Counsel, from Foley Hoag, United States, Ms Clara Brillembourg, Counsel, from Foley Hoag, United States, Professor Pierre Klein, also Counsel, from Belgium, Ms Alison Macdonald, Counsel, from Matrix Chambers, England, and of course Professor Philippe Sands QC, from England.

Thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Minister.

I now give the floor to the Co-Agent of Côte d'Ivoire, Mr Diaby, to present his statement.

MR DIABY (*Interpretation from French*)**:** Mr President, Members of the Tribunal, it is an honour for me to represent the Republic of Côte d'Ivoire before this Special Chamber of the International Tribunal for the Law of the Sea, before which Côte d'Ivoire wishes to settle its dispute on the delimitation of its maritime boundary with Ghana. It is also an honour for the Côte d'Ivoire Government to institute legal proceedings to safeguard and protect its sovereign rights. Lastly, it is an honour for me, in my capacity as Agent, to defend my country's interests before the Special Chamber.

The dispute before you is symbolic in many respects. First, because it is between two neighbouring countries with chequered histories, sometimes calm and sometimes stormy, both built in a spirit of brotherhood towards the other.

The late President Félix Houphouët-Boigny, our country's first President, a founding father of the Organization of African Unity (OAU) and of the Economic Community of West African States (ECOWAS) – a man of peace and dialogue – always favoured understanding between brotherly and neighbouring peoples like those of Côte d'Ivoire and Ghana.

It was in that spirit that discussions and work on the demarcation of the land boundary started and could be completed in 1988 with a commitment from both countries subsequently to commence discussions on the demarcation of their common maritime boundary.

Today, Côte d'Ivoire, led by His Excellency Mr Alassane Ouattara, the President of the Republic, and also a man of peace and dialogue, remains convinced that the solution to the question of the demarcation of the maritime boundary will come through dialogue, restraint and respect for international law and its procedures and instruments by all parties.

It is therefore in line with that same tradition and spirit that Côte d'Ivoire has continued negotiations with Ghana concerning their common maritime boundary, leading to the establishment of a bilateral commission tasked with establishing a channel of communication and negotiation so as to allow a resolution of their dispute with due regard to their reciprocal rights.

However, this dispute is also symbolic insofar as, as you said, Mr President, it is the first time that a Special Chamber of the International Tribunal for the Law of the Sea has been called on to delimit a maritime boundary and insofar as, quite clearly, your decision will be looked at very closely by, among others, the countries in the Gulf of Guinea.

It is also symbolic insofar as it is between two States of Africa, a continent which is now endeavouring to settle its disputes by law rather than by arms, a continent which, as we know, is a new economic and cultural giant, a continent from which several members of this Tribunal have come, and to which, you said, Mr President, at the hearing on 18 February 2015, you were proud to belong.

It is in that spirit of brotherhood and mutual understanding that Côte d'Ivoire has endeavoured to resolve its dispute with its neighbour and brother, but unfortunately to no avail.

In this respect, I have three regrets. I regret that Ghana is re-writing our shared history by asserting that Côte d'Ivoire expressly accepted as a maritime boundary between Côte d'Ivoire and Ghana the line along which oil blocks are awarded by the two States.

That has never been the case. The limits of oil blocks do not represent the maritime boundaries of any country, less still those of Côte d'Ivoire.

I also regret that Ghana has awarded oil blocks and stepped up the pace of oil exploration and development activities in the disputed area, whereas Côte d'Ivoire has refrained from this kind of unilateral action to date.

Lastly, I profoundly regret that Ghana suddenly ended negotiations on 19 September 2014, just a few days before a new meeting was to be held between the Côte d'Ivoire and Ghana delegations, conducting itself in the disputed area as if it were a territory over which its sovereignty was established.

To accept such conduct would be tantamount to acknowledging that a *fait acquis* replaces law, that occupation of a territory gives rise to ownership and that, in a nutshell, might is right.

It is to avoid such an unfortunate situation and to allow your decision to be fully effective that Côte d'Ivoire is asking you today to take all the provisional measures, the justification for and details of which will be set forth by our Counsel.

Mr Adama Kamara will briefly outline the dispute between the Parties and the oil activities in the disputed area. Then Professor Alain Pellet will set out the rights for which Côte d'Ivoire is seeking protection. Then we shall hear about the consequences of the oil activities in the disputed area, firstly from Mr Michel Pitron, on harm to the seabed and subsoil; then Sir Michael Wood on harm resulting from the acquisition by Ghana of information relating to natural resources; and Dr Alina Miron on harm to the marine environment.

Thank you, Mr President. I respectfully request that you give the floor to Mr Kamara.

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French)***:** Thank you, Mr Diaby. I give the floor to Mr Adama Kamara to present his statement.

MR KAMARA *(Interpretation from French)***:** Mr President, distinguished Judges, it is an honour for me to appear before your Chamber today to defend the interests of Côte d'Ivoire in connection with its request for the prescription of provisional measures. Without prejudice to the merits of the dispute, it is essential to recall briefly the main facts of the case.

I will start by presenting the constituent elements of the dispute on the merits between the Parties over the delimitation of their common maritime boundary. Then I

will describe how the intensive oil operations currently being undertaken by Ghana, precipitously, in the disputed maritime area are an attempt to create a *fait accompli*, the hidden but nevertheless intended objective of which is to deprive your future decision on the merits of its effectiveness, thereby affecting the exercise of the judicial function. Côte d'Ivoire therefore requests that your Chamber put an immediate end to these actions.

In the proceedings for the prescription of provisional measures we have chosen not to bombard the Chamber with a plethora of witnesses, accompanied by hundreds of documents, but we have confined ourselves to points that are important and self-evident.

The dispute between the Parties on the merits of the case concerns the delimitation of their common maritime boundary in the Atlantic Ocean. Contrary to what Ghana saw fit to claim in its document instituting proceedings on 19 September 2014, the dispute is an old one and is acknowledged by the two States.

This dispute crystallized in 1988, the date on which Côte d'Ivoire for the first time raised the question of the delimitation of its maritime boundary with Ghana within the Joint Commission on redemarcation of boundaries between the two States.[1]

As Ghana did not respond, Côte d'Ivoire pointed out to it the urgent need to resolve this dispute. In any case, Côte d'Ivoire has never recognized, either tacitly or expressly, the existence of any maritime boundary line with Ghana. This absence of agreement on the part of Côte d'Ivoire on the maritime boundary line will be developed further by Professor Pellet.

It was not until 2008 that the two Parties set up a Côte d'Ivoire-Ghana Joint Commission to find a negotiated solution to their dispute. This Commission met more than ten times between July 2008 and May 2014 without finding a solution.

Unfortunately, when an eleventh meeting had been called between 30 September and 3 October 2014, Ghana saw fit to cancel the meeting suddenly and without explanation by a letter of 19 September 2014, accompanied on the same day by its notification of arbitration under article 287 and Annex VII of the United Nations Convention on the Law of the Sea.[2] On the initiative of Côte d'Ivoire, the Parties jointly referred their dispute to a Special Chamber of the Tribunal on 3 December 2014.

As regards the competing claims of the Parties, as can be seen on the sketch map at tab 13 of the Judges' folder and displayed on the screen, Côte d'Ivoire claims a boundary starting from the land boundary pillar to the north and running towards the south-east. Ghana, on the other hand, which claims a boundary starting from the same land boundary pillar, draws the delimitation line towards the south-west. The claims thus asserted by the Parties create a triangular disputed area, covering in the order of 30,000 km², calculated from the coast to the 200 nautical mile line. Côte

[1] Côte d'Ivoire, Request for the prescription of provisional measures (hereinafter "RCI"), para. 9; Annex 2 and 3.
[2] RCI, para.9.

d'Ivoire bases the delimitation it claims on the relevant circumstances in this instance, notably the geography of the coasts.

Ghana submits: "Although the two States have never formalized a maritime boundary delimitation agreement, they tacitly agree upon a boundary line that generally approximates an equidistance line."[3] Ghana describes this line as a "customary line".[4] Ghana's position is disturbing on several accounts. First, it refers to an "approximation", which is obviously in contradiction with the inherent precision of any maritime boundary delimitation.

Furthermore, as is shown on the sketch map at tab 13 of the Judges' folder and displayed on the screen, it appears that the line claimed by Ghana, in red on the sketch map, is in fact to the west of the strict equidistance line, which is a dotted line on the sketch map.

Notwithstanding the existence of this dispute over a vast maritime area, which is recognized and acknowledged by the Parties, Ghana has seen fit to act in the disputed area as if it enjoyed unlimited sovereign rights there.

Between 2008 and 2014, when the two States were negotiating on an amicable settlement to their dispute over their common maritime boundary, Ghana unilaterally created nine oil blocks, awarding them to various companies, and gave permission for those companies to conduct invasive activities with a view to the exploration and exploitation of those blocks. Thus, seven of the nine oil blocks were created by Ghana between 2008, the date of the creation of the Côte d'Ivoire/Ghana Joint Commission, and 2014. Those seven blocks were awarded to various oil companies in 2013 and 2014. The blocks are spread over an area in the order of 5,000 km^2, extending over the disputed triangle for a (north-south) distance in the order of 85 nautical miles, which is approximately 160 kilometres, from the Ivorian and Ghanaian coasts, as shown on the sketch map at tab 13 of the Judges' folder and displayed on the screen.

The creation and allocation of these blocks should never have happened. It will be explained by Professor Pellet that for more than 40 years Côte d'Ivoire has not ceased calling on Ghana, and then the oil companies, to put an end to their operations in the disputed area, pending a final agreement on the common maritime boundary.

As I have just shown you, it is acknowledged that Ghana has therefore acted in violation of basic principles of international law in general and, in particular, the very terms of the United Nations Convention on the Law of the Sea, articles 74 and 83 of which require parties to seek a peaceful settlement to their disputes and to refrain from taking any unilateral action likely to harm negotiations.

As regards the sequence of operations for the oil activities on these blocks, your Chamber will note the following elements, which are summarized in the sketch at tab 13 in the Judges' folder and displayed on the screen.

[3] Ghana, Statement of Claim, para. 19.
[4] Ghana, Statement of Claim, para. 19.

- An oil block is subject to a first phase, the exploration phase, in the course of which oil companies conduct seismic work and exploratory drilling to determine the presence of oil or gas deposits.

- If one or more oil or gas deposits are discovered, they are evaluated to determine their commercial viability before moving on to the development phase for the deposits.

- This development phase entails development drilling operations and subsea infrastructures with a view to beginning production of hydrocarbons, the exploitation phase.

Of the nine blocks concerned, eight are in the advanced exploration phase. One block, the TEN block, is in the exploitation phase. Of the eight blocks in the exploration phase, allocated very recently in 2013 and 2014, 12 drilling operations have already been conducted in the disputed area and the oil companies have announced at least five other drilling operations in the next two years.

With regard to the block in the exploitation phase, the TEN block, substantial operations are underway.[5] No less than 13 platforms and drilling vessels more than 200 metres in length have been identified in the area since March 2014.[6] 24 development wells are being drilled and ten of them have already been completed. More than 150 kilometres of flow-lines and pipelines have been installed right in the subsoil. Subsea systems, and in particular subsea well heads, are being installed on the seabed. The first barrels of crude oil are expected in mid-2016.

It should be noted that at least one of the deposits that have been identified in the TEN block, called Enyenra, which is serpentine in form, is located 750 metres from the approximate equidistance line claimed by Ghana, and to the west of a strict equidistance line, as shown in the sketch map at tab 13 of the Judges' folder and displayed on the screen.

The Agent of Ghana present here today, Ms Marietta Brew Appiah-Opong, stated on 24 September 2014, just five days after referring the dispute to the Annex VII tribunal: "Oil companies could continue to operate during the arbitration process, which could take up to three years."[7] This statement sums up the situation perfectly. In the face of an acknowledged dispute, which Ghana itself initiated, Ghana has fast-tracked the conditions for the exploitation of the disputed area, which will be imposed on the Parties and deprive your future decision on the merits of its effectiveness.

According to publicly available information,[8] additional wells are to be drilled, hundreds of kilometres of pipeline are to be buried in the subsoil and production of oil barrels will start in around one year, in mid-2016, which is about a year before the scheduled date for your deliberations on the merits of the case.

[5] RCI, paras. 25-27.
[6] RCI, annex 22.
[7] RCI, annex 10.
[8] RCI, annex 1.

This situation is intolerable and unacceptable. We must put an end to it urgently. That is the purpose of the presentations that will follow.

Thank you, Mr President, honourable Judges. I would ask the President to kindly give the floor to Professor Pellet.

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French)***:** Thank you for your statement.

I give the floor to Mr Alain Pellet.

MR PELLET *(Interpretation from French)***:** Thank you, Mr President. Good morning to you and the other Members of this Special Chamber of the Tribunal.

It is with great pleasure that I find myself here once again in this beautiful building dedicated to the law of the sea and the adjudication of disputes. I am here to defend the rights and interests of Côte d'Ivoire. These rights are seriously threatened by activities being carried out or authorized by Ghana, which are continuing and being stepped up in the disputed area. This morning I wish to give you a brief overview of the rights for which Côte d'Ivoire is seeking protection.

The case is clear, as we know from Ghana's application instituting proceedings.

> *(Continued in English)*
> The dispute concerns the establishment of the single maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean delimiting the territorial sea, exclusive economic zone and continental shelf, including the continental shelf beyond 200 nautical miles.[1]

(Interpretation from French) So we are talking about an apparently classic case of maritime delimitation, but complicated by the *fait accompli* that Ghana has created in the disputed area and striven to maintain: hence the Request for provisional measures which Côte d'Ivoire submitted to the Chamber on 27 February 2015.

As Mr Kamara said, at the provisional measures stage the Chamber is not called upon to rule between these competing claims; the Chamber merely has to establish the existence and extent of the dispute and is called upon to assess the plausibility of the claimed rights, taking care not to prejudge the merits. In more academic terms, you are called upon to verify *fumus boni iuris*, the likelihood – or even merely the apparent likelihood – of the Parties' arguments, and prescribe the necessary measures so that your judgment is then effectively applied if you agree with our submissions.[2] To apply the reasoning of the ICJ in a recent case,

> [a]t this stage of the proceedings the [Tribunal] does not need to settle the Parties' claims to sovereignty over the disputed territory and is not called upon to determine definitively whether the rights which each Party wishes

[1] Ghana's Notification and Statement of Claim, p. 3, para.3.
[2] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures*, *Order of 13 July 2006*, *Separate Opinion of Judge Abraham, I.C.J. Reports 2006*, pp. 140-141.

> to see protected exist.[3] The [Tribunal] only needs to decide whether the rights claimed by [Côte d'Ivoire] on the merits on which it is seeking protection are plausible.[4]

Of course, I am not going to plead the merits of the case, and it is not for you, the Members of the Tribunal, to decide upon the merits. That would be prejudging your future decision, which is excluded at the provisional measures stage.[5] This is precisely why we have to argue in terms of the disputed area, whose existence derives not from the Parties' respective rights but from their competing claims, whose relevance at the provisional measures stage has to be evaluated in the light of the plausibility of the Parties' arguments.

Our friends on the other side do not bother with this distinction. Ghana devotes two thirds of its observations[6] to pleading the merits. I will not be drawn into that. Pleading plausibility requires clear thinking. The Ghanaian argument, offered at some length, is that there is a boundary line based on equidistance to which the Parties have agreed for a long time, "a long-agreed boundary line that was based on equidistance".[7] Effectively, that comes down to denying the very existence of the dispute.

This is somewhat paradoxical when one recalls that even though your Chamber was constituted on the basis of a Special Agreement, it is Ghana that originally wanted to submit this … non-dispute to settlement by arbitration. Moreover, this statement is not compatible with the longstanding protests by Côte d'Ivoire and the negotiations that have gone on for years and which would have continued, had Ghana not decided to put an end to them unilaterally and abruptly in 2014 by requesting the constitution of a tribunal pursuant to Annex VII of the Convention. By its very attitude, Ghana is contradicting its own argument.

This is wrong, Mr President. The story told by Ghana ignores certain key episodes.

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[3] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013*, p. 360, para. 27. See also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, Separate Opinion of Judge Abraham, I.C.J. Reports 2006*, pp. 140-141.

[4] *Ibid.* See also *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, p. 19, paras. 56-58, citing *Aegean Sea Continental Shelf [Greece* v. *Turkey], Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, pp. 10-11, para. 31, and *Land and Maritime Boundary between Cameroon and Nigeria [Cameroon* v. *Nigeria], Provisional Measures, Order of 15 March 1996, I.C.J Reports 1996*, p. 22, para. 39.

[5] *Prince von Pless Administration, Order of 4 February 1933, P.C.I.J., Series A/B, No. 52*; *LaGrand (Germany* v. *United States of America), Provisional Measures*, *Order of 3 March 1999, I.C.J. Reports* 1999*,* p. 15, para. 27; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, p. 19, para. 8; *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1999*, para. 43, and *"ARA Libertad" (Argentina* v. *Ghana), Provisional Measures*, *Order of 15 December 2012, ITLOS Reports 2012*, para. 106.

[6] Written Statement of Ghana (hereinafter "WSG"), paras. 13-46 and 115-124.

[7] WSG, para. 3.

First of all, this case has to be addressed in its entirety and be put into historical context. It is well known that States (and not just the Parties to this dispute)[8] have not really attached much importance to their precise maritime boundaries beyond their territorial seas. For the continental shelf and for fishing zones, *de facto* use of equidistance seemed acceptable, given that the exact status of these zones and the method of delimitation were not consolidated in international law.[9] Things began to change with first the negotiations then the adoption of the United Nations Convention on the Law of the Sea, to which it is perhaps worth recalling that Ghana and Côte d'Ivoire became States Parties in 1983 and 1984 respectively.

In 1997 Côte d'Ivoire adopted its Law 77-926 delimiting maritime zones placed within its jurisdiction.[10] Ghana rather clumsily is trying to read into article 8 of that basic text the recognition of what it calls an "equidistant boundary".[11]

Article 8 reads as follows:

> With respect to adjoining coastal States, the territorial sea and [exclusive economic zone] shall be delimited by agreement in conformity with equitable principles and using, if necessary, the median line or the equidistance line, this taking into account all pertinent factors.

Reading this text in good faith makes it plain that, far from illustrating a sort of early conversion by Côte d'Ivoire to the rule of equidistance, there is, to the contrary, a clear attachment by that country to delimitation carried out "in conformity with equitable principles". I would point out that the authors of this provision appear to have derived it from the Judgment of the International Court of Justice in the *North Sea Continental Shelf* case and from the award a few months earlier in the *Delimitation of the continental shelf between France and the United Kingdom* case. Neither of these two rulings, as far as I know, can be regarded as defending or illustrating the rule of equidistance, while article 8 of the Côte d'Ivoire law paraphrases some of the passages from those two judgments.[12] Furthermore, the wording of article 8 and the very fact that it was adopted demonstrate that at that time, back in 1977, Côte d'Ivoire considered that its maritime boundaries were not delimited.

Second, as opposed to the rather smooth unfolding of history recounted by Ghana, the years since have been marked by protests demonstrating Côte d'Ivoire's opposition to Ghana's excessive focus, indeed its fixation, on equidistance. In this

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[8] See, e.g.: T. Treves, **"**Codification du droit international et pratique des États dans le droit de la mer", *RCADI* 1990, vol. 223, pp. 103-106; T. Scovazzi, "The evolution of international law of the sea: new issues, new challenges", *RCADI 2000*, vol. 286, pp. 194-199; P. Daillier, M. Forteau, A. Pellet, *Droit international public*, 8th ed., LGDJ, 2009, pp. 1279-1282.

[9] *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)*, *Judgment, I.C.J. Reports 2009*, p. 87, para. 70.

[10] Act No. 77-926 of 17 November 1977, delimiting the maritime areas placed under the national jurisdiction of Côte d'Ivoire [tab 2 in the Judges' folder].

[11] WSG, para. 21; see also para. 32.

[12] *North Sea Continental Shelf [Germany/Netherlands and Germany/Denmark], Judgment*, *[20 February 1969,] I.C.J. Reports 1969*, see, in particular, p. 46, para. 85, and p. 53, para. 101; *Case concerning the Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland and the French Republic, Arbitral Award*, 20 June 1977, *RIAA,* vol. XVIII, p. 188, para. 97.

respect, Mr President, may I refer to a telegram which was sent in 1992 by Côte d'Ivoire's Minister for Foreign Affairs to the country's Ambassador in Accra. It is shown on your screens and may be found at tab 3 in your folders. I have singled this example out because it illustrates four main points.

– First of all, at that date the Côte d'Ivoire Government was clearly of the conviction that the maritime boundary between the two States had not been delimited;

– Second, four years earlier, in 1988, Côte d'Ivoire was of the same view and had continued to be of that view since 1977, as we shall see;

– Third, in 1992 the Ghanaian Government shared the opinion that the boundary line *should* be delimited – indicating that it had not been delimited yet; and

– Fourth, Côte d'Ivoire invited Ghana to refrain "from any operation or drilling in the zone whose status remains to be determined".[13]

Another example: in 2009 Côte d'Ivoire rejected a Ghanaian proposal from the previous year to the effect that the maritime boundary should follow the line of oil concessions. That line was based on the perpendicularity method, which corresponds roughly to the equidistance principle. They said that the boundary line used "by oil companies operating in Côte d'Ivoire territorial waters" had been retained "with a view to avoiding boundary disputes" and

> is not an official agreement between our two countries following bilateral negotiations on the delimitation of the maritime boundary between Côte d'Ivoire and Ghana, as recommended by articles 15, 74 and 83 of the Montego Bay Convention.[14]

Côte d'Ivoire's opposition was reiterated at every meeting of the Joint Commission.

Third, Mr President, whilst it is true that Côte d'Ivoire took the precaution of generally not granting licences, whether for exploration or for exploitation, in the disputed area it did not always do so in fact.[15] This is normal restraint in this sort of case but it cannot be interpreted as representing acquiescence to any boundary line. Since its appeal in 1992 Ghana has not shown the same restraint or the same prudence as a good neighbour. They are now claiming that this *fait accompli*, which is unilateral, is actually an agreement. Without wishing to poison the atmosphere, I have to say that Côte d'Ivoire has always taken care to preserve its rights whenever it felt that there was a real issue at stake.

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[13] Republic of Côte d'Ivoire, Ministry of Foreign Affairs, telegram addressed to the Ambassador of Côte d'Ivoire in Accra, 1 April 1992 (tab 3 in Judges' folder).

[14] Second meeting of the Joint Ivorian-Ghanaian Commission on Delimitation of the Maritime Boundary between Côte d'Ivoire and Ghana 2009 (RCI, annex 2, para. 7).

[15] In January 2012 and September 2013, Côte d'Ivoire awarded concessions for seismic exploration in blocks CI-523 et CI-525 to a consortium comprising Taleveras Energy, Afren plc and PETROCI Holding; these blocks are partly situated in the area to which there are competing claims (http://www.ar2013afren.com/wp-content/uploads/2014/04/AfrenAR13_Final_Web_Supplementary-information.pdf; http://taleverasgroup.com/news/taleveras-signs-new-upstream-oil-and-gas-agreements-ivory-coast/).

Again, more recently, Ghana itself recognized the existence of a disagreement on the maritime boundary between the two countries and recognized the existence of a process of delimitation. It did so when it took part in negotiations with Côte d'Ivoire but also in its relations with the oil companies involved in the area. So when asked by Tullow in 2011 about the status of the disputed area, the Ghanaian Ministry of Energy replied: "As regards the maritime boundary, as you are aware, it has always been publicly known that the Republic of Ghana and the Republic of Côte d'Ivoire have not yet delimited their maritime boundary." Moreover, the Ghanaian Ministry of Energy wrote this *(Continued in English)*: "It is also publicly known that in recent years the two governments have met in an effort to negotiate their maritime boundary in accordance with international law. Those negotiations remain ongoing."[16]

(Interpretation from French) With your permission, Mr President, I would like to draw a partial conclusion from all this. It would seem to be hazardous at least to invoke an estoppel against Côte d'Ivoire, which is what Ghana is doing.[17] The acquiescence which they assert is without substance and it is clear that Ghana and the companies Ghana has cited could not have been unaware and were not unaware of Côte d'Ivoire's opposition to the equidistance line. Neither, therefore, could rely in good faith on Côte d'Ivoire's conduct. This conduct cannot be invoked against Côte d'Ivoire under the notion of estoppel even if this is admitted in international law,[18] just as one cannot speak here of the existence of a tacit agreement.

To use the ICJ's reasoning in the *Gulf of Maine* case, acquiescence presupposes "clear and consistent acceptance, and in the present case the conduct of [Côte d'Ivoire], because of its unclear nature, does not satisfy the conditions […] either for estoppel or for acquiescence."[19]

These requirements are particularly strict when it comes to boundary delimitation, which furthermore explains why there is no international jurisdiction that has ever enshrined a tacit agreement at the provisional measures stage, and, in terms of the merits, the ICJ has always called for great prudence, because "the establishment of a permanent maritime boundary is of the greatest importance and agreement should

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[16] WSG, letter from Ghana, Minister of Energy, to Mr Dai Jones, President and General Manager of Tullow Ghana Limited, 19 October 2011, vol. III, Appendix TOL-16.

[17] WSG, see, in particular, paras. 43 and 44 and 116-118.

[18] See, in particular, *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/ Myanmar), Judgment, ITLOS Reports 2012*, para. 124, which cites *North Sea Continental Shelf, Judgment,* [20 February 1969,] *I.C.J. Reports 1969*, p. 26, para. 30; *Delimitation of the Maritime Boundary in the Gulf of Maine Area [Canada/United States of America], Judgment, [12 October 1984,] I.C.J. Reports 1984*, p. 309, para. 145; and *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, [11 June 1998,] I.C.J. Reports 1998*, p. 303, para. 57.

[19] *Delimitation of the Maritime Boundary in the Gulf of Maine Area [Canada/United States of America], Judgment*, *[12 October 1984,] I.C.J. Reports 1984*, p. 309, para. 145. See also *North Sea Continental Shelf, Judgment*, *[20 February 1969,] Separate Opinion of Judge Ammoun*, *I.C.J. Reports 1969,* p. 121, para. 22; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment*, *[3 February 2009,] I.C.J. Reports 2009*, p. 86, para. 68; *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Order of 26 February 2002, I.C.J. Reports 2002*; *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, [8 October 2007,] I.C.J. Reports 2007*, p. 735, para. 253, cited in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012*, para. 117.

not be presumed to be reached easily."[20] This is especially so when one party refers to oil blocks or concessions as proof of the existence of a tacit agreement.[21]

Mr President, everything is a question of circumstance, and this does raise very delicate problems of evaluation of evidence, inevitably of a factual nature, which are hardly appropriate at the stage of provisional measures, despite all the documents Ghana has been filing.

The other Ghanaian warhorse is the "very strong presumption of equidistance" that it invokes.[22] It is not in fact a presumption problem; it is a question of the starting point when applying *the* normal method or standard method[23] now generally accepted by all international jurisdictions. It can be called the "standard approach". The drawing of a provisional equidistance line is just the first step in this method.[24] In the second step one looks at the relevant circumstances so as to arrive at a verified, equitable result. Then, in the third step, the non-disproportionality test is applied. As ITLOS stressed in the *Bay of Bengal* case, "[t]he issue of which method should be followed in drawing the maritime delimitation line should be considered *in light of* – in light of – the circumstances of each case."[25]

In our case, very clearly, there are circumstances which will lead the Special Chamber to reject the Ghanaian claim to a purely median boundary line taking no account of the concavity of the coast, nor of the cut-off effects or the disproportionate effects of Cape Three Points on the drawing of the provisional equidistance boundary line.

But I am straying from the point, Mr President, and I wonder if I am succumbing to the siren calls from Ghana inviting us to talk about the merits whilst ignoring the very principles applicable to provisional measures. For you, Members of the Tribunal, it is enough for the time being to establish that Côte d'Ivoire's position is plausible at the very least.

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[20] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras), Judgment, [8 October 2007,] I.C.J. Reports 2007,* p. 735, para. 253; see also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, [3 February 2009,] I.C.J. Reports 2009,* p. 86, para. 68, cited in *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, [14 March 2012,] ITLOS Reports 2012*, para. 117.

[21] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria; Equatorial Guinea intervening*), *Judgment, [10 October 2002,] I.C.J. Reports 2002*, pp. 447-448, para. 304 and the case law cited therein.

[22] WSG, paras. 8 and 121; see also Ghana's Notification and Statement of Claim, para. 7.

[23] See, in particular, *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, *Judgment, [3 June 1985,] I.C.J. Reports 1985*, p. 46, para. 60; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, [3 February 2009,] I.C.J. Reports 2009,* p. 101, paras. 115 and 116 ; and *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, *Judgment, [19 November 2012,] I.C.J. Reports 2012*, p. 695, para. 190.

[24] See *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, *Judgment, [19 November 2012,] I.C.J. Reports 2012*, p. 695, para. 190 -- emphasis added; see also *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, [3 February 2009,] I.C.J. Reports 2009,* p.101, para. 116, and also *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar)*, *Judgment, ITLOS Reports 2012*, para. 233.

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

Mr President, Members of the Tribunal, it is only once your judgment on the merits is delivered, with the maritime boundary having been delimited according to the principles I have just outlined, that we will be able to say for certain who has sovereign jurisdiction or sovereign rights over the disputed area, to which there are presently competing claims from the two States. It is only then that all doubt will be removed[26] and each State will enjoy the benefits of its own maritime area and hold sovereignty over its territorial seas,[27] enjoying "sovereign rights for exploration and exploitation, preservation and management of natural resources."[28]

Until your judgment is given, we are just talking about claimed rights, competing claimed rights and competing entitlements, which are all exclusive. Therefore, until then it is up to you to prescribe the appropriate measures to make sure that they are not deprived of all substance, which is certainly what would happen if the unilateral actions of Ghana were to be left as they are.

Neither sovereignty nor sovereign rights should be reduced to an empty shell. Once the judgment is given, it must be possible for them to be genuinely exercised, which would not be the case if Ghana could continue with impunity to explore the subsoil resources in the disputed area and to exploit them until the judgment is given.[29]

Like a coastal State's sovereignty over its territorial seas, its sovereign rights over its continental shelf and its exclusive economic zone are characterized by their exclusivity. In particular, I would point out that, pursuant to article 81 of the Convention, "[t]he coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes."

At the same time, article 193 states as follows: "States have the sovereign right to exploit their natural resources pursuant to their environmental policies […]". Alina Miron will come back to that aspect shortly.

At this stage we are talking about the continental shelf regime because it is over the continental shelf that Ghana is pursuing, or authorizing the pursuit of, activities that threaten the effectiveness of any future judgment by the Chamber. Mr Kamara has described those already and my colleagues will come back to the resulting harm in more detail.

For my part, I shall limit myself to emphasizing that these unilateral activities, undertaken without the agreement of Côte d'Ivoire and with not only an awareness

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[26] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*, *Judgment, [10 October 2002,] I.C.J. Reports 2002*, p. 352, para. 318. See also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011,* p. 24, paras. 75-77, or *Delimitation of the maritime boundary between Guyana and Suriname, Arbitral Award of 17 December 2007*, *RIAA,* vol. XXX, p. 128, para. 451.

[27] Cf. article 2 of the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982.

[28] Articles 56 and 77 of UNCLOS.

[29] See *Delimitation of the maritime boundary between Guyana and Suriname*, *Arbitral Award*, *RIAA*, vol. XXX, p. 132, para. 467. See also *Aegean Sea Continental Shelf [Greece* v. *Turkey]*, *Interim Protection, Order of 11 September 1976*, *I.C.J. Reports 1976*, p. 10, para. 30.

but, indeed, with the avowed intent of creating a *fait accompli*,[30] would irremediably infringe the rights that Côte d'Ivoire claims in the disputed area.

Such activities in an area that is the subject of competing claims are contrary to the spirit and letter of the Montego Bay Convention, which urges all restraint when it comes to unilateral actions that might jeopardize the principle of exclusivity,[31] precisely at a time when a definitive delimitation through agreement or judicial or arbitral ruling is pending. I refer in particular to articles 74, paragraph 3, and 83, paragraph 3, of the Convention, which strongly urge States to conclude provisional arrangements without prejudice to the final delimitation. The order prescribing provisional measures that the Chamber is called on to make fulfils the same function, which is provisional but also binding on both Parties.

The *travaux préparatoires* for articles 74, paragraph 3, and 83, paragraph 3,[32] state that the delicate balance between economic interests and the preservation of the rights of parties *pendente lite* cannot be achieved except through the conclusion of agreements of this type; and if they cannot be concluded, then it is up to the court or the arbitral tribunal in charge of delimitation – your Chamber in this instance – to make sure that this balance is respected by adopting, if necessary, provisional measures that are required to preserve that balance, as is indeed the case here.

This does not necessarily mean that all activities in a disputed area are to be excluded, but such activities are lawful only if they do not imperil the final agreement or the judicial or arbitral decision ultimately established. This principle was expressed clearly in the arbitral award of 17 September 2007 in *Guyana v. Suriname*, which clearly distinguishes between, on the one hand, unilateral activities such as purely seismic explorations which do not lead to any physical modification to the seabed or subsoil of the continental shelf and, on the other, activities such as exploitation of petroleum resources, which

> *(Continued in English)*
> … may jeopardize or hamper the reaching of a final delimitation agreement as a result of the perceived change to the status quo that they would engender. Indeed, such activities could be perceived to, or may genuinely, prejudice the position of the other party in the delimitation dispute, thereby both hampering and jeopardizing the reaching of a final agreement.[33]

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[30] See the statement by Ms Marietta Brew Appiah-Oppong, Minister of Justice and Agent of Ghana, as reported by Reuters in its dispatch of 23 September 2014 (RCI, annex 10). See also statement by Mr Pitron.

[31] V. Youri van Logchem, « The Scope for Unilateralism in Disputed Maritime Areas », in Clive H. Schofield ed.), *The Limits of Maritime Jurisdiction*, Leiden /Boston: Martinus Nijhoff Publishers, 2014, p. 193.

[32] V. Satya N Nandan and Shabtai Rosenne (eds), *United Nations Convention of the Law of the Sea 1982: A Commentary*, volume II, Martinus Nijhoff Publishers, 2003,, pp. 948-985. See also, in particular: R. Lagoni, "Interim Measures Pending Maritime Delimitation Agreements", *AJIL*, vol. 78, 1984-2, p. 353; Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: the Seventh Session (1978)", *AJIL* 1979, p. 23; or David Anderson and Youri van Logchem, "Rights and Obligations in Areas of Overlapping Maritime Claims" in S. Jayakumar et al. (eds.), *The South China Sea Disputes and the Law of the Sea*, Edward Elgar Publishing, 2014, pp. 199-205.

[33] *Delimitation of the maritime boundary between Guyana and Suriname, Arbitral Award of 17 December 2007*, *RIAA,* vol. XXX, p. 137, para. 480; see also *ibid.*, para. 481, et p. 133, para. 470.

As the arbitral tribunal also noted: “The distinction adopted by this Tribunal is consistent with the jurisprudence of international courts and tribunals on interim measures.”[34] *(Interpretation from French)* This is particularly the case with respect to the ICJ's position in the *Aegean Sea* case.[35]

It is not in dispute that Ghana has gone beyond seismic exploration, that a number of exploratory wells have been drilled, and that there has been exploitation alongside the establishment of fixed installations on the seabed or the continental shelf, amounting to a *de facto* appropriation of the natural resources of the continental shelf in the disputed areas.

It is accepted that there is a boundary dispute, with all its ensuing consequences on the allocation of the resources of the continental shelf; and yet Ghana persists in considering that the disputed area belongs to it. This stands in contrast to the customary practice of responsible States, including Côte d’Ivoire. If there is a maritime boundary dispute, as a rule they refrain from undertaking unilateral actions in areas that are the subject of competing claims;[36] and indeed Côte d’Ivoire has since 1988 expressly asked Ghana to refrain from such activities or at least suspend them pending a final judicial decision,[37] just as today we are asking the Special Chamber to prescribe provisional measures for that purpose. I know of no precedent where a State has engaged unilaterally in oil operations of such a magnitude in a maritime area that is recognized as being in dispute – and in a situation where that State itself, no less, has brought the case before a competent jurisdiction for

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[34] *Ibid.*, p. 132, para. 468.

[35] *Aegean Sea Continental Shelf [Greece* v. *Turkey], Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, p. 10, para. 30.

[36]See, for example:
- dispute between Thailand and Cambodia in the Gulf of Thailand (BBC Monitoring via Comtex, 5 August 2009, « Cambodia Says No Plans to Grant Oil Concessions in Disputed Area”, http://www.rigzone.com/news/oil_gas/a/78976/Cambodia_Says_No_Plans_to_Grant_Oil_Concessions_in_Disputed_Area#sthash.4FzJiDXm.dpuf;
- Norway and Russia in the Barents Sea, Dow Jones Newswires, 22 April 2013, “Norway to Open First New Oil, Gas Acreage Since 1994 », http://www.rigzone.com/news/oil_gas/a/125945/Norway_to_Open_First_New_Oil_Gas_Acreage_Since_1994#sthash.whBiBB63.dpuf
- dispute between Malaysia and Indonesia: Continental Energy, 30 March 2005, « Continental's Bengara-II Block Outside Disputed Area », http://www.rigzone.com/news/oil_gas/a/21408/Continentals_BengaraII_Block_Outside_Disputed_Area#sthash.Yj35ToN9.dpuf
- dispute between Malaysia and Brunei : E&P News, 18 June 2003, « Shell Could Halt Operations Offshore Brunei », http://www.rigzone.com/news/oil_gas/a/7052/Shell_Could_Halt_Operations_Offshore_Brunei
-Bangladesh and Myanmar (prior to referral of the dispute to ITLOS: tensions in 2008): http://www.idsa.in/idsastrategiccomments/OilPoliticsintheBayofBengal_AKumar_271108.

[37] See, for example, *Case concerning the delimitation of maritime areas between Canada and France (Saint-Pierre et Miquelon), Arbitral Award of 10 June 1992, RIAA*, vol. XXI, pp. 295 and 296, para. 89, or *Delimitation of the Maritime Boundary in the Gulf of Maine Area [Canada/United States of America]*, *Judgment, [12 October 1984,] I.C.J. Reports 1984*, pp. 280 and 281, paras. 61-65. See also in relation to *Case concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*: R. Lagoni, “Interim Measures Pending Maritime Delimitation Agreements”, *AJIL*, vol. 78, 1984-2, p. 366; or the dispute relating to *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine):* Sterling Ltd, 5 January 2009, “Sterling Comments on Romanian Concessions, Investment Following Dispute”, http://www.rigzone.com/news/oil_gas/a/72598/Sterling_Comments_on_Romanian_Concessions_Investment_Following_Dispute#sthash.2f34r7fg.dpuf.

maritime delimitation. On the contrary, States try to defuse the situation and continue to negotiate to arrive at an agreement on the disputed area. At the very least, they refrain from activities in a disputed area pending resolution of the dispute. The Philippines, for instance, brought a case before a tribunal constituted pursuant to Annex VII of the Montego Bay Convention. This concerned its fierce maritime dispute with China, and the Philippines unilaterally suspended its gas exploration operations pending the award from the tribunal.[38] In other cases, unfortunately, we see that States involved in a dispute of this kind, victims of such unilateral actions, have not hesitated to use force to prevent a *fait accompli* imposed by the other Party. *Guyana v. Suriname*, for instance, is one example of many.[39]

To avoid escalation, Côte d'Ivoire has preferred negotiation and recourse to your Chamber, believing that where there is a *fait accompli* the only legitimate remedy can be the law. That is why, even though it is Ghana that unilaterally requested the constitution of a tribunal under Annex VII, Côte d'Ivoire proposed that this matter be brought before ITLOS with a Special Chamber being formed. It is to make sure that the law is respected that Côte d'Ivoire made its request for the prescription of provisional measures, which is why we are here today. As the saying goes, an ounce of prevention is worth a pound of cure; and prevention is very much the primary function of provisional measures. Judicial, peaceful means still have to prove their effectiveness and the decision that this Special Chamber is called upon to take still has to be effectively put into practice, which could not be the case if such measures were not taken with a view to preventing the creation – nay, in this case the entrenchment – of a *fait accompli* in the overlap area; and this *fait accompli* would be further reinforced if the Tribunal were not to agree to our request for the suspension of Ghana's activities in the disputed area, evidenced by the continuing operation or establishment of installations on the seabed and exploitation of petroleum resources on the continental shelf.

Mr President, adopting Ghana's point of view would amount to prejudging the merits – enshrining *prima facie* a tacit agreement which does not exist and certainly has not been proven – and would mean that a policy of *fait accompli* is accepted, which would lead to further instability and an aggravation of the dispute. This would favour unilateralism over the sort of agreement that the Montego Bay Convention calls upon parties to reach. Côte d'Ivoire, on the other hand, has engaged in a process of negotiation in good faith, with a genuine desire to arrive at an agreement. Like most States in the same situation, Côte d'Ivoire has refrained from taking any unilateral action that might "during this transitional period, jeopardize or hamper the reaching of the final agreement".[40] Ghana has opted for unilateral action and is asking you to

[38] See *Jakarta Post*, 3 March 2015, *Philippines halts exploration in 'disputed' sea*, available online: http://m.thejakartapost.com/news/2015/03/03/philippines-halts-exploration-disputed-sea-contractor.html; see also Press release, "Forum Energy to Stop Exploration Work at SC 72 Due to Philippine-China Spat": http://www.rigzone.com/news/oil_gas/a/137493/Forum_Energy_to_Stop_Exploration_Work_at_SC_72_Due_to_PhilippineChina_Spat#sthash.ZdXLb4P2.dpuf.

[39] *Delimitation of the maritime boundary between Guyana and Suriname, Arbitral Award of 17 December 2007*, *RIAA,* vol. XXX, p. 316, para. 150; see also recent incidents in the South China Sea, Council on Foreign Relations, Global Conflict Tracker: http://www.cfr.org/global/global-conflict-tracker/p32137#!/?marker=13.

[40] UNCLOS, article 74, paragraph 3.

allow it to continue on that path. If you were to do that, you would be giving States free licence to pursue a dangerous course of unilateralism.

Thank you, Members of this Special Chamber, for your kind attention. Mr President, I would now ask you to give the floor to Mr Michel Pitron, who will give details of the harm caused by Ghana to the integrity of the continental shelf.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Thank you, Mr Pellet, for your statement. Before giving the floor to the next speaker, I would like to welcome Mr Adama Toungara, Minister of Energy and Agent for Côte d'Ivoire.

On my own behalf and on behalf of the Chamber, I am pleased to see that Mr Toungara has recovered, so please take a seat.

I now give the floor to Mr Michel Pitron for his statement.

MR PITRON (*Interpretation from French*)**:** Mr President, Members of the Tribunal, Professor Pellet has just reminded us that all unilateral activity is, as a general rule, excluded, except where there are special circumstances. In the absence of such circumstances, the party suffering from such unilateral action has grounds for requesting the prescription of provisional measures in accordance with article 290, paragraph 1, of the Convention.

We shall now demonstrate that the conditions laid down in this provision and the related case law are met in the present case. They are indeed met, firstly because of the physical damage caused by Ghana's oil-related activities in the disputed area – that will be my subject – and, secondly, because of the damage caused by Ghana's appropriation of information to which Côte d'Ivoire lays claim – and Sir Michael Wood will present that argument shortly – and, finally, owing to the serious harm to the marine environment – which will be addressed by Dr Alina Miron.

Before commencing my demonstration, let me address two points that I think we can get out of the way fairly quickly.

First, as emphasized by Ghana in its Written Statement, the condition of *prima facie* jurisdiction of the Special Chamber is established; it is not at issue, so I need say no more.[1]

Next, Ghana raised the issue of urgency, although it is not required by article 290, paragraph 1, of the Convention. Only paragraph 5 of that article specifically calls for urgency as a justification for the prescription of provisional measures "pending the establishment of an arbitral tribunal", which is not the case here.

However, the case law of the Tribunal and of the ICJ requires that in order to establish the existence of urgency, it is necessary to demonstrate the probability "that an action prejudicial to the rights of one or the other Party will be committed

[1] WSG, para. 86.

before a final judgment is given".[2] That case law has found acceptance in the most authoritative legal literature, to which Ghana has referred in its Written Statement.[3]

This condition, namely that urgency requires the occurrence of a prejudicial event before the decision on the merits, is obviously satisfied in this case. Ghana is indeed working in the disputed area. It has announced that drilling is to continue and that a deposit will be exploited, starting in 2016, whereas we know, on the basis of the timetable for proceedings established on 18 February 2015, that your Chamber's decision will not come before mid-2017 at the earliest.

Ghana cannot allege jurisdictional inertia on the part of Côte d'Ivoire to assert its rights over the disputed area, suggesting, as it were, that inertia deprives Côte d'Ivoire of its right to invoke urgency.[4]

Need I recall that Ghana itself took care unilaterally to rule out, by means of its Declaration of 15 December 2009,[5] made pursuant to article 298 of the Convention, the right of action in any competent jurisdiction for the purpose of settling the dispute between two States? It used the opportunity to grant a number of oil licences and authorized no fewer than 30 drilling operations in the disputed area in spite of Côte d'Ivoire's repeated objections, as Mr Kamara and Professor Pellet have recalled. As soon as the right of action became possible after Ghana withdrew its Declaration on 22 September 2014 and as soon as this Special Chamber was constituted and the timetable for proceedings established, Côte d'Ivoire announced and then submitted its Request for the prescription of provisional measures.

Having recalled these two points, let me now turn to the question of the infringement of Côte d'Ivoire's rights as a result of the physical damage to the soil, subsoil and natural resources resulting from the operations that Ghana has authorized, first in law and later in fact.

Firstly, article 290, paragraph 1, provides that a tribunal may prescribe measures that it considers "appropriate under the circumstances to preserve the respective rights of the Parties to the dispute". However, this says nothing about the type of damage that should be prohibited so as to preserve the rights involved – in other words, the nature of the damage that might justify such measures – nor do we have an unequivocal definition of such damage in the case law of the Court or that of the Tribunal.

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[2] ICJ, *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991,* para. 23, available online: http://www.icj-cij.org/docket/files/86/6968.pdf; ITLOS, *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea)*, *Provisional Measures, Order of 11 March 1998,* para. 41, available online : https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/provisional_measures/order_110398_fr.pdf

[3] Rüdiger Wolfrum, "Provisional Measures of the International Tribunal for the Law of the Sea", *Indian Journal of International Law*, Vol. 37, No. 3 (1997), p. 429. WSG, vol. IV, Annex LA-8.

[4] WSG, para. 92.

[5] Declaration of Ghana under article 298 of UNCLOS, published as Depositary Notification C.N.890.2009.TREATIES-XXI.6, dated 16 December 2009, available online at: https://treaties.un.org/doc/Publication/CN/2009/CN.890.2009-Frn.pdf

In the interests of settling this point, we can, however, consider that a consensus is emerging from the case law of both the Court and the Tribunal, to the effect that financial compensation for alleged damage does not rule out the prescription of provisional measures. That position was stated by the Permanent Court in its 1928 order[6] in the matter of the *Denunciation of the Treaty [of 2 November 1865] between China and Belgium* However, since that time it has never been invoked.[7]

More specifically and perhaps of greater relevance is the fact that there are two cases before the Court and an Annex VII arbitral tribunal, which, although they may not have resolved the theoretical debate on the standards applicable to damage, do shed light on the ordering of measures following unilateral activities within a disputed area while a dispute is ongoing – that is to say, in circumstances similar to those of the present case. I am referring to the *Aegean Sea* case, 1976,[8] and *Guyana v. Suriname* in 2007.[9]

In the *Aegean Sea* case, the Court identified the circumstances in which oil activities under way may give rise to the ordering of interim measures of protection. These are four in number and they are alternatives. They involve activities[10] that

- entail the "risk of physical damage to the seabed or subsoil or to their natural resources";

- are of a permanent character;

- are accompanied by "the establishment of installations on or above the seabed of the continental shelf";

or involve

- "the actual appropriation or other use of the natural resources of the areas of the continental shelf which are in dispute".

We find the same argument more than thirty years later, in 2007. In *Guyana v. Suriname*,[11] the arbitral tribunal had to determine whether by commencing an exploratory drilling campaign in the disputed area Guyana had breached its obligation to refrain from jeopardizing, through its unilateral activity, the reaching of a final agreement on the delimitation of its maritime boundary with Suriname. The tribunal referred to the criterion of physical damage, as identified by the Court in the

[6] *Denunciation of the Treaty of 2 November 1865 between China and Belgium, Order of 8 January 1927*, *P.C.I.J., Series A, No. 8*, pp. 8 and 9.
[7] V. Hersch Lauterpacht, *The Development of International Law by the International Court* (London: Stevens & Sons, revised edition, 1958), p. 252.
[8] *Aegean Sea Continental Shelf [Greece* v. *Turkey] , Interim Protection, Order* of *11 September 1976, I.C.J. Reports 1976*.
[9] *Arbitral Award of 17 September 2007, Delimitation of the Maritime Boundary between Guyana and Suriname*, *RIAA,* vol. XXX, p. 1.
[10] *Aegean Sea Continental Shelf [Greece* v. *Turkey]*, *Interim Protection, Order of11 September 1976, I.C.J. Reports 1976,* para. 30.
[11] *Arbitral Award of 17 September 2007, Delimitation of the Maritime Boundary between Guyana and Suriname*, *RIAA,* vol. XXX, p. 1.

Aegean Sea case, to determine the threshold beyond which oil-related activities may not be undertaken unilaterally.

Two excerpts from the award are particularly enlightening. The tribunal indicated that a distinction should be drawn "between activities that have a permanent physical impact on the marine environment and those that do not".[12] It considered that the former "may jeopardize or hamper the reaching of a final delimitation agreement". The tribunal further stipulated that "[t]hat however is not to say that all exploratory activity should be frozen in a disputed area in the absence of a provisional arrangement. Some exploratory drilling might cause permanent damage to the marine environment".[13]

It can therefore be considered as established by the consistent case law over the past 30 years dealing with facts similar to those of the present case that the oil-related activities that should be prohibited are those that entail permanent damage to the seabed or subsoil or their natural resources, such as damage caused by drilling operations, the establishment of underwater installations or the actual appropriation of resources.

The only argument that Ghana finds in response to these two decisions is that they are not relevant to this case because they were handed down in conditions in which "the Party requesting such measures intends to keep the disputed area pristine, while the other Party seeks to develop it".[14]

I cannot, to be candid, see why the intentions of the Party applying for measures, or damages in the case of Suriname, should be taken into consideration. Additionally, and contrary to what is asserted by Ghana, it is quite clear in these two decisions that both Greece and Suriname clearly intended to pursue oil-related activities in the disputed area.[15]

Turning to the facts of this case, may I refer to sketch map 3 in annex 13 of the folder given to you by Côte d'Ivoire and which was described by Mr Kamara. It clearly shows the situation of the oilfields in the disputed area. You will note that the activities conducted to date and announced by Ghana in the disputed area before the decision on the merits has been handed down are precisely of the same nature as those to be prohibited according to the case law that I have just cited, to wit, activities that cause permanent physical damage.

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[12] *Arbitral Award of 17 September 2007, Delimitation of the Maritime Boundary between Guyana and Suriname*, *RIAA,* vol. XXX, p. 133, para. 470: "It is the Tribunal's opinion that drawing a distinction between activities having a permanent physical impact on the marine environment and those that do not, accomplishes this and is consistent with other aspects of the law of the sea and international law".

[13] *Arbitral Award of 17 September 2007, Delimitation of the Maritime Boundary between Guyana and Suriname*, *RIAA,* vol. XXX, p. 137, para. 481: "That however is not to say that all exploratory activity should be frozen in a disputed area in the absence of a provisional arrangement. Some exploratory drilling might cause permanent damage to the marine environment".

[14] WSG, para. 104: "the party requesting such measures intends to keep the disputed area pristine, while the other party seeks to develop it".

[15] *Aegean Sea Continental Shelf [Greece* v. *Turkey]*, *Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976,* p. 4, relating to Greece's requests. *Arbitral Award of 17 September 2007, Delimitation of the Maritime Boundary between Guyana and Suriname*, *RIAA,* vol. XXX, p. 137, para. 481.

Firstly, as Mr Kamara has explained and illustrated with slides that contain maps that speak for themselves, many wellbores have already been drilled in the disputed area, and there are plans to drill more. We are talking here of 34 wellbores drilled and 19 planned between now and 2018.[16]

I shall now project some slides showing the various stages of a drilling operation in order to make clear how invasive and destructive the drilling of a wellbore can be.

(Projection of slide MP 1.1) [17]

Here we have a cross-section of a zone to be drilled.

(Projection of slide MP 1.2)

The drilling of the wellbore crushes the rock by abrasive rotation of a drill bit at the tip of a drill string. The work of the bit and the string is facilitated by injection of drilling mud, the base fluid of which is either water or diesel fuel. This drilling mud is also used to raise to the surface rock fragments and gas samples, to cool the drill bit and to support the walls of the borehole.

(Projection of slide MP 1.3)

Here the bit is introduced and once it reaches the required depth,...

(Projection of slide MP 1.4)

the drill string is withdrawn…

(Projection of slide MP 1.5)

and the first section of metal tubing is lowered into the shaft The tubing stabilizes the shaft walls and the geological strata and allows drilling operations to be continued.

(Projection of slide MP 1.6)

Liquid cement (shown in red) is injected into the wellbore.

(Projection of slide MP 1.7)

Then it is forced behind the tubing so as to secure the tubing to the rock.

(Projection of slide MP 1.8)

The drill bit is then reintroduced to continue crushing the rock.

(Projection of slide MP 1.9)

[16] RCI, annex 1, p. 9, and annex 12, slide 30.
[17] Tab 13 in the Judges' folder.

A second section of tubing is then lowered into the wellbore.

(Projection of slide MP 1.10)

It is secured to the rock by a further injection of cement.

The drilling continues in the same manner down to the depth where the hydrocarbons are to be found according to the seismic and geological studies. The TEN field is one of the fields in the disputed area. The drilling *there* on average extends down to 3,000 to nearly 4,000 metres, or three or four kilometres into the rock. The distance between the sea surface and the subsoil of the seabed is roughly 1,500 metres; so all in all we are talking about a total depth of between 4.5 and 5.5 kilometres from the sea surface.

In the following figure the drill bit detects hydrocarbons. Their presence is ascertained by analysing the drilling mud once it has been raised to the surface.

Drilling then continues until it has traversed all the strata of hydrocarbons. *Here* we are at a depth of three or four kilometres down into the rock.

The drill string is then withdrawn and the production string is installed. This is the device used to bring the hydrocarbons to the surface, as shown *here*. This is also cemented into the reservoir and a perforating gun is then inserted into the borehole right down to the oil layer. In fact, when we talk about oil *this* is the oil oozing out of the rock. The rock is then fractured by explosives so that the oil can be extracted and petroleum production can commence.

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French)***:** Mr Pitron, after that most impressive demonstration of exploration and production techniques, may I stop you there to announce a thirty-minute break? We will resume at noon.

(Break)

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French)***:** We shall resume the hearing. Mr Pitron, you have the floor.

MR PITRON: Mr President, Gentlemen, I have discussed briefly the question of urgency. I have described the current state of the law on the identification of the kind of damage that would justify provisional measures. I have examined, in the light of the case law, how Ghana has conducted itself, or allowed oil companies to conduct themselves, in order to demonstrate that the criteria laid down in the case law have been met in the present case.

More specifically, having described for you the sequencing of a drilling operation, I should now point out that a drilling operation takes on average 30 to 40 days, but the production phase will last for several decades.

By its very nature, drilling is irreversible because once the rock has been crushed it cannot be reconstituted. You can plug a shaft with cement, but its lining remains. You cannot restore the subsoil to its prior state. Therefore, the criterion of permanent and irreversible damage to the seabed is satisfied in the present case.

(Projection of slide MP 2)[18]

I will now project a slide showing that Tullow has begun and continues to put in place underwater structures required to exploit deposits in the TEN field. This involves several hundred kilometres of conduits, pipelines and wellheads, which are attached to the seabed or buried in its upper subsoil. This equipment is connected to the drilling rig, which you can see represented to the right of the FPSO, the vessel that is permanently moored in the zone and which extracts and stores the hydrocarbons.

On the right hand side of this slide – and this is far from insignificant – you will see that TEN is connected by these various types of subsea structures to the neighbouring Jubilee field, which shows that both technically and economically the two oilfields are intertwined.

The structures and facilities that you see are intended to remain on the site throughout the production phase, in other words for several decades – and generally they remain afterwards.

The criterion of establishment of structures on the seabed or above the continental shelf,[19] as defined in the relevant case law, is therefore met.

Lastly, Ghana and the operator have declared on several occasions that the deposits within TEN will enter the production phase in mid-2016,[20] in other words almost one year before the decision on the merits is to be handed down. The criterion of "actual appropriation … of the natural resources of the areas … which are in dispute"[21] is also met.

In point of fact, the extraction of hydrocarbons is by its very nature irreversible. The hydrocarbons are not re-injected into the subsoil. Once production has started there will be a permanent and definitive impact on the resources of the subsoil and on the latter's geological equilibrium.

According to Ghana, the damage to Côte d'Ivoire is non-existent because Côte d'Ivoire would do exactly the same thing if it had the opportunity to do so.[22] Such reasoning seems to me to be particularly specious, for that is not the point.

The point is that by conducting advanced exploration operations in the area and by commencing production, Ghana has irreparably deprived Côte d'Ivoire of the

[18] Tab 13 in the Judges' folder.
[19] *Aegean Sea Continental Shelf [Greece* v. *Turkey]*, *Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976,* para. 30.
[20] RCI, annex 13, p. 3.
[21] *Aegean Sea Continental Shelf [Greece* v. *Turkey]*, *Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976,* para. 30.
[22] WSG, para. 105.

possibility, and indeed the right, to decide if, when and how it intends to engage in offshore activity in this area, all or part of which would fall under its incontestable sovereign rights once your decision on the merits has been given.

I believe I need go no further in demonstrating that the conditions necessary for the application of article 290, paragraph 1, of the Convention and for granting Côte d'Ivoire's request for provisional measures have been met. However, I would like to go a little further and draw your attention to the fact that the conditions in which Ghana's oil-related operations have been carried out are likely to worsen the prejudice to Côte d'Ivoire's rights and consequently justify provisional measures all the more.

My purpose here is not to get into a technical and doubtless obscure discussion of how oil companies go about exploration and production in the disputed area. What I would like to call your attention to is the fact that Ghana applies a different and less protective offshore oil policy than would be applied by Côte d'Ivoire if the sovereign rights that it claims were established. I would confine myself to giving two significant examples: the process for selecting oil contractors and the conditions under which Tullow has conducted its activities.

First of all, as far as the selection of oil companies and the awarding of contracts by Ghana are concerned, there are no Ghanaian regulatory provisions which set forth the criteria for technical and financial selection of contractors, nor any procedure for the vetting of bids. In Ghana this process is left entirely to the discretion of the administration.

In this respect, Ghana is an exception among oil-producing States, particularly in Africa. I should point out by way of illustration that the Côte d'Ivoire regulations provide for precise selection criteria to be applied by the State in selecting its co-contractors.[23] Applicants must be assessed on the basis of the information that they provide in a contractor file submitted as part of the bidding process.[24]

An independent observer in Ghana, the African Centre for Energy Policy, in a statement issued late last year,[25] highlighted the shortcomings of Ghana's legislative framework for the oil industry and its damaging consequences for the country's economy.

These shortcomings are quite logically reflected in the profile of the oil companies selected by Ghana to conduct offshore operations. For example, CAMAC Energy Ghana, which operates in Expanded Shallow Water Tano, one of the blocks in the disputed area, itself stated in its 2013 annual report that it "had no operational

[23] Article 8, paragraphs 3 and 4, of the Petroleum Code of Côte d'Ivoire, available online at http://www.petroci.ci/Fichier/code_petrolier.pdf, as indicated in footnote 50 in RCI.
[24] Article 10 of Decree N°96-733 of 19 September 1996, establishing general provisions for the application of the Petroleum Code Act, available online at http://www.cepici.gouv.ci/userfiles/file/DECRET_CODE_PETROLIER.pdf
[25] RCI, annex 17.

experience in Africa prior to 2010", and that it would probably "not be able to generate revenues at a level sufficient to finance its ongoing business".[26]

As to Tullow, which operates in TEN, it does indeed have robust experience in oil exploration, not challenged by Côte d'Ivoire, which has entrusted several exploration missions to Tullow for certain of the blocks in its waters. However, Tullow has no experience as an operator in offshore oilfield development and production[27] other than in the Jubilee field nearby, which I shall now talk about.

I would now like to draw your attention to a second feature of Ghana's offshore oil policy, that is, its hastiness, as I would put it. One has to bear in mind that international oil practice requires the preparation of a comprehensive development project document and approval of the project document by the competent governmental authorities prior to the initiation of development operations. Mr Kamara has already outlined for you these different phases.

This comprehensive project document starts with a plan for development which determines how activities are to be carried out in the given field, including identification of the sites where wells are to be drilled and the type of wells to be drilled, for example, whether they are for injecting water or gas so that the oil can rise to the surface or whether they are oil production wells. It must also specify the methods envisaged for the management of the field. Each development plan is accompanied by an estimate of the optimum volume of resources that can be extracted from the field. Hence, in order to ensure that the best choices are made, international practice recognizes as an obvious necessity the preparation of a comprehensive project document before the initiation of any development operations whatsoever.

Tullow, which is operating in the Jubilee field, immediately adjacent to the disputed area, has not respected these good practices.

Thus, development operations, that is, the initial drilling, started in March 2008, whereas the development plan was not approved by Ghana until July 2009, that is, 16 months later.[28]

The fact that Ghana approved *ex post facto* each of the activities undertaken[29] during this 16-month period does not alter the fact that there was no prior approval of the comprehensive development plan.

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[26] Camac, 2013 Annual Report before the US Securities and Exchange Commission, p.10: "We had no previous operating history in the Africa area prior to 2010", "Failure by the Company to generate sufficient cash flow from operations could eventually result in the cessation of the Company's operations and require the Company to seek outside financing or discontinue operations."), available online at http://www.camacenergy.com/documents/annual-reports/2013-annual-report.pdf

[27] See Tullow Overview Presentation, December 2014, available online at http://www.tullowoil.com/images/files/cms/December_2014_Tullow_Overview_Presentation.pdf

[28] See « A brief timeline » available online on the Tullow website at http://www.tullowoil.com/index.asp?pageid=51, referred to in footnote 54 in RCI; tab 11 in the Judges' folder.

[29] WSG, vol III, Tullow Statement, para.56.

With regard to the seismic operations that should precede the preparation of the development plan, Tullow itself has recognized that these operations were insufficient and it admitted that they led to “inconsistencies” and “interpretation uncertainty”.[30]

Lastly, as regards the management of gases associated with oil extraction, Tullow has admitted to flaring more than 3.6 billion cubic metres of gas, the equivalent in energy terms of more than 1.8 million barrels of oil, over this period.[31] The World Bank has condemned flaring as a method that is contrary to international best practice and “wastes a valuable energy resource that could be used to advance the sustainable development of producing countries”.[32]

In the light of these examples, which, again, are brief and by no means exhaustive, Côte d'Ivoire has reason for concern about the capacity of Tullow to optimize the recovering of resources from a deposit. It cannot rely on information according to which the lessons learned from shortcomings that occurred in Jubilee will be applied by the company in TEN.[33]

This concern is all the more legitimate since, owing to the accelerated pace which Ghana demands in the management of its offshore reserves, the TEN field, which I have reminded you is technically and economically intertwined with the adjacent Jubilee field, is subject to the same inadequate constraints as Jubilee, which are incompatible with acceptable management of the area’s oil resources according to the criteria applied by Côte d’Ivoire.

By way of illustration and in conclusion, I would refer to the statements of a representative of the Ghanaian Government, as reported by the ECOFIN news agency on 31 May 2013, according to which the technical errors committed in Jubilee “accounted for the country’s inability in 2010 to achieve the production target of 120,000 barrels per day. ... If we fast-tracked the Jubilee we must be careful with the TEN project.”

Nevertheless, while the Ghanaian Government required the implementation of additional drilling in the TEN field specifically “to avoid the technical errors committed in the past by companies involved in oil exploration in Ghana”,[34] it nonetheless had already approved the development plan for the TEN field.

Once again, the rush to deal with this oilfield has prevailed over an upstream comprehensive approach.

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[30] See *Jubilee field subsurface overview*, Dave Hanley, Capital Markets Day, October 2008, slide 8, available online at http://www.tullowoil.com/files/pdf/ghana/Jubilee-field-subsurface-overview.pdf, mentioned in footnote 55 in RCI.

[31] See RCI, para. 42 and footnote 58.

[32] See website of the World Bank at http://www.worldbank.org/en/programs/zero-routine-flaring-by-2030 : “Flaring of gas contributes to climate change and impacts the environment through emission of CO2, black carbon and other pollutants. It also wastes a valuable energy resource that could be used to advance the sustainable development of producing countries”, tab 12 in the Judges’ folder.

[33] Article published on the website of ECOFIN, RCI, annex 18, tab 10 in the Judges’ folder.

[34] *Ibid.*

Urgency, irreversible harm to the seabed, the subsoil and resources, a policy of haste, dubious practices in the light of international standards, the denial of Côte d'Ivoire's potential rights to pursue a sovereign policy in an area to which it lays claim, these constitute so many factors that would justify the suspension of these ongoing operations by provisional measures.

And these are not the only ones.

I would like to thank you, Mr President, and I would ask you to give the floor to Sir Michael Wood.

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French)***:** Thank you, Mr Pitron. I now give the floor to Sir Michael Wood, who will make his presentation in English, I believe.

SIR MICHAEL WOOD: Mr President, Members of the Chamber,

It is a great honour to appear before you, and to do so on behalf of the Republic of Côte d'Ivoire.

We have just heard a compelling argument as to why Ghana's physical acts of exploration and exploitation in the disputed area risk seriously undermining Côte d'Ivoire's sovereign rights in relation to the resources of the area. My task now is to explain why the prescription of provisional measures is further required in order to safeguard Côte d'Ivoire's rights in relation to sensitive information. Ghana's unilateral acquisition of extensive and commercially vital information about the natural resources in the disputed triangle has already caused, and will continue to cause, grave damage to Côte d'Ivoire.

After some preliminary remarks, I shall first recall the critical importance of information and data concerning mineral resources. I shall then explain the damage that can be done to the coastal State's interests if such information and data falls in the hands of others. Finally, I shall explain why a provisional measure concerning information is necessary if your eventual judgment on the merits is to be effective.

The particular measure we seek in relation to Ghana's appropriation of critical information is -

> that Ghana … shall take all steps necessary to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area from being used in any way whatsoever to the detriment of Côte d'Ivoire;[1]

Mr President, Members of the Chamber, without the protection offered by such a provisional measure, there is a serious risk that the sovereign rights in the disputed area that may be confirmed as belonging to Côte d'Ivoire will be gravely prejudiced, so as to deprive your eventual judgment of any real effect. Without the prescription of such a measure, there is a risk of incalculable harm being done to Côte d'Ivoire's economy. Indeed, harm is already being done. For example, in these very

[1] RCI, para. 54.

proceedings the knowledge that Ghana has improperly acquired through its unilateral actions gives it a great advantage in planning its positions and strategy before this Chamber, and places Côte d'Ivoire at a corresponding disadvantage.

The damage caused by Ghana's improper acquisition of information is not only serious, it is irreversible. As the International Court said in its provisional measures Order of 3 March 2014 in the case between Timor-Leste and Australia: "Any breach of confidentiality may not be capable of remedy or reparation as it might not be possible to revert to the *status quo ante* following disclosure of the confidential information."[2]

It would not be sufficient, adequately to safeguard Côte d'Ivoire's rights, simply to order Ghana to cease its present activities in the disputed area. Ghana and the companies it has licensed have already obtained sensitive information from their exploration activities, information belonging potentially to Côte d'Ivoire, information that can be used to the detriment of Côte d'Ivoire. Even if Ghana were ordered to stop gathering information from now on, the damage to Côte d'Ivoire would still increase day by day if Ghana continues to process the data that it has already acquired. All collection and processing of data should stop immediately.

Mr President, Professor Pellet has already referred to the coastal State's sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources, in particular oil and gas. A key aspect of the sovereign rights of a coastal State is the exclusive right to acquire knowledge about their existence, about their location, about their nature and quantity and about how easy or difficult it is to extract them.

In its Written Statement, Ghana submits "that Côte d'Ivoire has failed to establish the legal existence of the alleged right to information on which it relies." Ghana argues that we do not base these rights "on any specific provisions of UNCLOS"[3] and that we have "cited no source or legal authority".

Mr President, the Convention does not spell out in its Part VI all the various components of the sovereign rights it recognizes. Rather, article 77 provides, in global terms, that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources."

These rights include all rights necessary for and connected with the exploration and exploitation of the resources of the shelf. This was already clear from the International Law Commission's commentary on the virtually identical provision in its 1956 Draft Articles on the Law of the Sea. The commentary on draft article 68 (which became article 2 of the 1958 Convention on the Continental Shelf, and then article 77 of UNCLOS) contains the following statement:

[2] *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Request for the Indication of Provisional Measures, Order of 3 March 2014*, para. 42.
[3] WSG, para. 107.

> The text as now adopted leaves no doubt that the rights conferred upon the coastal State cover all rights necessary for and connected with the exploration and exploitation of the natural resources of the continental shelf.[4]

These rights, we say, necessarily include the exclusive right to seek, obtain and use data concerning the resources of the seabed. The rights are "exclusive in the sense that … no one may undertake these activities without the express consent of the coastal State." That is confirmed by other provisions of the Convention, for example, in Part XIII on Marine Scientific Research.

Mr President, it is Ghana that has failed to cite any source or legal authority for its extraordinary proposition, denying the coastal State the exclusive right to acquire information that is inherent in its sovereign right to explore its continental shelf. There would be little substance in an exclusive right to explore the shelf if it did not include an exclusive right to obtain, and regulate access to, and then analyse commercially sensitive information about the mineral resources of the shelf. The whole purpose of exploration is to obtain data about the resource. If Ghana's argument were correct, there would be nothing left of the coastal State's exclusive right to explore.

The importance and sensitive nature of information about mineral resources is obvious. It is well recognized in international law, including in UNCLOS itself. It is clear from many provisions of UNCLOS, including, as I have said, Part XIII on marine scientific research. Notwithstanding the high importance attached to the promotion of marine scientific research, article 246, paragraph 5, grants the coastal State discretion to withhold consent to marine scientific research if it "is of direct significance for the exploration and exploitation of natural resources …" or "involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment."

The activities undertaken by the petroleum companies licensed by Ghana would clearly fall into these categories.

The importance of data related to mineral resources, and the need for strict confidentiality, is likewise recognized in the provisions of UNCLOS on deep seabed mining. Annex III, article 14 provides for the transfer to the Seabed Authority of "all data which are both necessary and relevant for the exercise of the powers and functions … of the Authority."

The critical sensitivity of maintaining the confidentiality of such data is spelt out at paragraph 3 of article 14, which provides that transferred data deemed proprietary "shall not be disclosed by the Authority to the Enterprise [that is, to the Authority's own operating arm] or to anyone external to the Authority."

I would also refer you to article 163, paragraph 8, article 168, paragraph 2, and article 7, paragraph 5, of Annex IV of the Convention; and paragraph 6 of section 9 of the annex to the Agreement relating to the Implementation of Part XI.

[4] *Yearbook of the International Law Commission 1956*, vol. II, p. 298.

Mr President, Ghana next asserts that Côte d'Ivoire has not explained how these rights "would, on the facts, suffer irreparable harm during the lifetime of this case."

It argues that such information "has long been gathered in the area in question with the knowledge of Côte d'Ivoire and with its acquiescence."[5]

Ghana conveniently overlooks the fact, already mentioned by Maître Pitron and Professor Pellet, that in 2009, and indeed, as far back as 1988, Côte d'Ivoire demanded that Ghana cease such activities in the disputed area. It ignores the fact that until recently such information-gathering activities in the disputed triangle had not attained the intensity that they now have. It ignores the fact that it was only in late September 2014 that Ghana suddenly commenced the present proceedings and a couple of days later withdrew its article 298 declaration. Until then there was no avenue open to Côte d'Ivoire to pursue a request for provisional measures.

Ghana next argues that "[n]ever before has ITLOS prescribed provisional measures requesting the provision of information by one party to the other when these were requested for the protection of the alleged rights of the other party applying for such measures."[6]

It is not entirely clear what point Ghana seeks to make by this rather convoluted assertion. The measure we seek is not confined to "the provision of information by one party to the other".

It is broader than that; it is a request for this Chamber "to take all steps necessary to prevent [the information in question] from being used in any way whatsoever to the detriment of Côte d'Ivoire."

In any event, the fact that something has not been done previously is no reason for not doing it now; ITLOS has never had to deal with a case similar to the present one.

Ghana refers in this connection to the *MOX Plant* and *Land Reclamation* cases, but those cases concerned very different facts and thus provide no guidance to the Tribunal in this case. In those cases, the sharing of information was for the purpose of cooperating on environmental matters. Here the position is quite different. Here we are seeking to uphold the coastal State's exclusive right to acquire the information in question.

Maître Kamara and Maître Pitron have described the activities that have been undertaken by Ghana, that are currently being undertaken, and that are projected to be undertaken in the period between now and the likely date of your judgment on the merits. In the last couple of years, there has been intensive activity by petroleum companies operating in the disputed area, aimed at collecting, processing, and analyzing seismic and well data about the continental shelf. These activities are critical to enhancing each company's understanding of where in the disputed area reserves exist and how commercially viable they are to extract.

[5] WSG, para. 108.
[6] WSG, para. 109.

Seismic and well studies, for example, yield critical knowledge about the external reservoir geometry, the internal reservoir architecture, and the size, accessibility, and relative quality of the petroleum resources being sought after by these companies.

The companies operating in the disputed triangle are also obliged under concession arrangements with Ghana to acquire this information. Currently, data about the continental shelf is being either collected or analyzed under licence arrangements imposed by Ghana in the disputed area across all nine licence blocks. For example, in the Central Tano block AMNI International (Petroleum Development Co Ltd) is currently required to collect and analyze data pursuant to a licence granted by Ghana as recently as 27 March 2014. In the Deepwater Cape Three Points West block, Eco Atlantic [Oil & Gas Ltd (Canada)] is currently collecting and analyzing seismic data pursuant to a licence granted by Ghana as recently as 18 July 2014.

In short, the petroleum companies operating in the disputed triangle are rapidly acquiring invaluable knowledge about the geophysical properties of the continental shelf – knowledge that will greatly facilitate their and Ghana's understanding of where potential petroleum reserves are located, the extent of those reserves, and whether their extraction is commercially feasible.

Mr President, Members of the Chamber, for the purpose of deciding on provisional measures, and without of course prejudging the merits, the Chamber has to start from the basis that its judgment on the merits may delimit the maritime border so that some or all of the disputed area appertains to Côte d'Ivoire. On that basis, and whatever the applicable test for provisional measures, the test is amply met in this case. Ghana's activities in the disputed triangle have already had direct and irreversible consequences for Côte d'Ivoire. If these activities are allowed to continue, further such consequences will occur. Ghana, various petroleum companies and, to some extent, the public at large have access to the resource information and can use it to the detriment of Côte d'Ivoire. The statement of Dr Asenso of Ghana's Ministry of Finance shows how Ghana's fiscal planning for the coming years already relies heavily on this information.[7] For its part, Côte d'Ivoire enjoys none of these advantages and its ability to secure the most beneficial arrangements for these resources is already harmed. This harm increases with every passing day that information continues to be collected and analyzed.

Normally, a coastal State has the ability to strategically plan for the exploration and exploitation of the resources of its shelf. It can implement its plan by entering into contracts with private companies that set terms for the pace and extent of exploration through agreed performance requirements; for the sharing of information relating to the nature and extent of the resources; and, in the event of successful exploration, for the sharing of production between the Government and the companies; and by setting the taxation rates.

Ghana's conduct has effectively removed the possibility that Côte d'Ivoire could negotiate and enter into these kinds of contract with any sense of symmetry as between it and its potential commercial partners. The companies that have been licensed by Ghana have gathered extensive information concerning the location,

[7] WSG, vol. III, annex S-MOF, paras 13-26.

size, nature and accessibility of oil and gas resources in the disputed area, and are continuing to do so. Côte d'Ivoire is not privy to this information, to its great detriment.

If the eventual judgment awards some or all of the disputed area to Côte d'Ivoire, as for the purpose of this request for provisional measures we must assume will be the case, Côte d'Ivoire will need to negotiate terms with oil companies for the exploitation of its shelf. Its negotiating position will be gravely weakened if those companies have access to information concerning the resource that properly belongs to Côte d'Ivoire. The harm to Côte d'Ivoire's negotiating position is clear.

Let me provide just one example. Without provisional measures, there will be severe and irreparable harm to Côte d'Ivoire's economic position as the future auctioneer of exploration and exploitation rights within the disputed area. Côte d'Ivoire may elect to exploit the natural resources within the area in question and, in order to do so, will have to solicit bids from petroleum companies. However, by then many, if not all, of the potential bidders will have obtained extensive geological information about the resources in the disputed area, either directly or from others. Côte d'Ivoire would thus be effectively deprived of its right to design the rules of the auction so as to maximize revenues, including by regulating the release of information to bidders, which is a common practice in petroleum tender processes.

The loss of bargaining power, though very real and certain, is unquantifiable. The reason can be stated briefly: the number and nature of factual inputs that would be required to determine the harm to Côte d'Ivoire would be substantial, heavily contested, and difficult to verify. Unlike a physical structure, such as in *Pulp Mills* or the *Great Belt*,[8] the petroleum companies' knowledge cannot simply be removed at the end of the proceedings. Once critical commercial information is in the hands of others, it can never be removed from the conscious awareness of the party which has had the information, as the International Court recognized in the *Timor-Leste* case.[9] No monetary amount can be assigned to Côte d'Ivoire's potential loss, even though that loss can significantly undermine Côte d'Ivoire's ability to pursue its national energy policy goals for the benefit of its citizens.

In its response, Ghana asserts that the harm to Côte d'Ivoire is fully reparable because "Ghana will be in a position to provide that information to Côte d'Ivoire if ordered to do so at the conclusion of the case".[10] That is very simplistic. Ghana ignores the important fact that raw data alone is meaningless; one needs the ability and the time to process and understand it, contextually and comprehensively, if it is to be used most effectively. Acquiring such know-how is a time-consuming and resource-intensive effort, which the petroleum companies under Ghanaian licence have already been engaged in for some years. Such know-how cannot be simply handed over on a thumb drive at the end of these proceedings.

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[8] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006,* p. 113; *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991,* p. 12.

[9] *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste* v. *Australia), Request for the Indication of Provisional Measures, Order of 3 March 2014*, para. 42.

[10] WSG, para. 108.

The potential bidders for Côte d'Ivoire concessions will thus have a huge advantage, to the significant detriment of Côte d'Ivoire that cannot be quantified or addressed in any reasonable period of time.

Mr President, by way of conclusion let me summarize the position by saying that Ghana's conduct in the disputed area constitutes an improper appropriation of information that, depending on your judgment on the merits, belongs to Côte d'Ivoire. The harm engendered by such improper appropriation cannot be undone. Preventing the dissemination of such information, and preventing Ghana from obtaining and processing additional such information, is precisely the kind of measure that article 290 of UNCLOS envisages, pending final delimitation of a maritime boundary. Not to prescribe a provisional measure concerning information would irreparably compromise Côte d'Ivoire's entitlement to formulate and pursue a national policy with respect to the use of natural resources within its territorial sea and continental shelf in a manner that best suits its interests and those of its people, including, most fundamentally, whether or not to exploit such resources and, if so, when and how to do so, and with whom.

Mr President, that concludes what I have to say this morning. I would ask that you give the floor next to Dr Alina Miron, who will address the environmental measure that we seek.

I thank you.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** I thank Sir Michael Wood for his statement and I now give the floor to Ms Alina Miron. Could I ask Ms Alina Miron how much time she would like, as we are now approaching 1 o'clock?

MS MIRON (*Interpretation from French)***:** Almost 25 minutes. I therefore beg your indulgence to enable me to complete my submissions.

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** In view of the fact that we have already deprived you of 15 minutes' speaking time when the general presentation of the case was made by the President, and the presentation of the submissions and procedure by the Registry, I shall restore those 15 minutes to you and you may continue until 1.15, but if you could manage 1.10, that would be even better for those who are hungry.

MS MIRON (*Interpretation from French*)**:** Mr President, honourable Judges, it is a great honour for me to appear before this Chamber today. I owe it to the confidence shown in me by the authorities of the Republic of Côte d'Ivoire, for which I am sincerely grateful.

My task is to show that the oil-related activities authorized by Ghana in and around the area of competing claims cause risks of serious harm to the marine environment, well beyond the risks normally associated with oil exploration and exploitation activities. This is further justification for the Chamber exercising its power to prescribe provisional measures.

Both the Montego Bay Convention and general international law require States to act with all due diligence to prevent damage to, and ensure the preservation of, the marine environment because the protection of the environment is effectively assured only by prevention.[1] This conviction is reflected in the powers conferred on the Chamber by article 290, paragraph 1, of the Convention. By virtue of this provision, you may prescribe "any provisional measures appropriate to prevent serious harm to the marine environment pending the final decision". This remarkable and exceptional power is in addition to that of ensuring the protection *pendente lite* of the subjective rights of the Parties to the dispute.[2]

It is now a known fact that oil exploration and exploitation are activities that entail risks to the quality of marine waters, to the atmosphere, to biodiversity, and to the quality of human life, in particular that of the coastal populations whose survival is dependent on fishing.[3] Consequently, prevention and monitoring measures in this regard are of crucial importance and their implementation must be governed by a precautionary approach.

As the Seabed Disputes Chamber has unanimously stressed:

> The due diligence obligation requires States to take all appropriate measures to prevent damage that might result from the activities of contractors that they sponsor. This obligation applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks (…) Such disregard would amount to a failure to comply with the precautionary approach.[4]

Ghana and the oil companies involved try to convince you, on the strength of numerous reports and supporting affidavits, that the risks caused are minimal and that their prevention policy affords a wholly satisfactory remedy for them. Unfortunately, past events stubbornly contradict the idyllic picture which Ghana paints of the state of the marine environment and its degree of diligence in the matter. In addition, the circumstances of the case also cast doubt on its capacity to respond in future to the challenges of protecting the sea.

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[1] Ph. Gautier, "Mesures conservatoires, préjudice irréparable et protection de l'environnement", in *Le procès international : liber amicorum Jean-Pierre Cot*, Brussels: Bruylant, 2009, p. 147.

[2] See also *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain), Provisional Measures, Order of 23 December 2010, Separate Opinion of Judge Paik, ITLOS Reports 2010*, para. 12; see also *ibid*., *Dissenting Opinion of Judge Wolfrum*, para. 4.

[3] See Joint UNEP–IE and E&P Forum, "Environmental management in oil and gas exploration and production", available online at http://www.ogp.org.uk/pubs/254.pdf, *passim* [tab 4 in the Judges' folder]; Ramat Jalloh, *A Legal Analysis of Marine Pollution Laws and Regulations and their Adequacy to Meet the Challenges Posed by Recent Offshore Drilling Off The Coast of Sierra Leone*, pp. 4-10, available online at http://195.97.36.231/dbases/MAPmeetingDocs/13WG384_Inf3_ENG.pdf; O.-W. Achawa, E. Danso-Boatengb, "Environmental Management in the Oil, Gas and related Energy Industries in Ghana", *International Journal of Chemical and Environmental Engineering*, April 2013, Volume 4, No. 2, p. 116, available online at http://www.researchgate.net/publication/258439245_Environmental_Management_in_the_Oil_Gas_and_related_Energy_Industries_in_Ghana [tab 7 in the Judges' folder].

[4] *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011,* para. 131.

Mr President, we must underline at the outset that the oil-related activities being carried out today on behalf of and in the name of Ghana, whether in or near the disputed area, have already given rise to pollution incidents. Thus Ghana's assertions that no such incidents have occurred are contradicted by the public records.[5]
(Projection: AM 1)

For instance, in the course of exploration activities in Jubilee, Tullow, with the agreement of Ghana, skipped certain stages in order to maximize the project yield. The risks already present in the oil activities were thus aggravated by the speed of implementation of the project, which also gave rise to several pollution incidents. Among those that were reported in the press – and there is nothing to show that they were the only ones – were the following:

- in December 2009, during exploratory drillings in Jubilee, more than 600 barrels of toxic mud were accidentally discharged into the marine environment;[6]

- in 2010, Tullow admitted another leak caused by the rupture of a pipeline;[7]

- again in 2009 and in 2010, the Kosmos Energy company admitted being the source of at least three incidents involving spills of toxic mud;[8]

- finally, in 2011 the press reported a further oil spill ...

THE PRESIDENT OF THE SPECIAL CHAMBER (*Interpretation from French*)**:** Ms Miron, forgive me for interrupting you, but could I ask you to slow down a little so that the interpreters can keep up?

MS MIRON (*Interpretation from French*)**:** Of course. To continue then, lastly, in November 2011 the press reported a further oil spill, probably originating in the Jubilee field.[9]

[5] WSG, paras. 82 and 83; statement of Kojo Agbenor-Efunam, Ghana's Environmental Protection Agency (hereinafter EPA Statement), WSG, vol. III, para. 36; statement of Paul McDade on behalf of Tullow Oil plc (hereinafter Tullow Statement) (WSG, vol. III, para. 55) ; see also papers presented at Offshore Technology Conference ("OTC") in Houston, 30 April-3 May 2012, OTC 23463, p. 1 (WSG, vol. III, annex TOL-18).
[6] R. Amorin, E. Broni-Bediako, "Major Challenges in Ghana's Oil and Gas Discovery: Is Ghana Ready?", *ARPN Journal of Science and Technology*, vol. 3, January 2013-1, available online at http://www.ejournalofscience.org/archive/vol3no1/vol3no1_4.pdf [tab 9 in the Judges' folder]
[7] R. Amorin, E. Broni-Bediako, "Major Challenges in Ghana's Oil and Gas Discovery: Is Ghana Ready?" http://www.ejournalofscience.org/archive/vol3no1/vol3no1_4.pdf [tab 9 in the Judges' folder].
[8] Center for Public Integrity, 19 January 2012, *West African Oil Boom Overlooks Tattered Environmental Safety Net*, p. 5 [RCI, annex 21]. See also Acorn International LLC, *Independent Study of Marine Environmental Conditions in Ghana*, January 2015 (WSG, vol. III, App. TOL-28, p. 37 citing articles in the press).
[9] Center for Public Integrity, 19 January 2012, *West African Oil Boom Overlooks Tattered Environmental Safety Net*, p. 1 [RCI, annex 21]. See also Modern Ghana News, 12 December 2012, "Where there is oil, there is spillage", http://www.modernghana.com/news/436208/1/where-there-is-oil-there-is-spillage.html.

No reference to these incidents is to be found either in the presentations given by Tullow at international conferences[10] or in the quality audits commissioned by the company,[11] and this casts doubt, if not on their objectivity, at least on their completeness.

In addition to this accidental pollution, about which Ghana and Tullow are at pains to remain silent, there is also operational pollution related to activities in the Jubilee and TEN fields. In this connection, atmospheric pollution caused by flared gas emissions contributes to climate change.[12] Mr Pitron has already described the reprehensible practices of Ghana in this regard and I will not dwell on them.[13]

Turning now to the marine environment, we have submitted, in annex 22 to our Request, satellite photos showing traces of pollution on board drilling vessels situated in these areas. In response, Ghana seeks first of all to discredit the general reliability of satellite evidence,[14] despite the fact that it is now a routine part of the evidence used by domestic[15] and international courts[16] in assessing the existence of pollution.

Next, Ghana[17] and Tullow[18] cast doubt on the conclusions accompanying the analysis of the photos in annex 22. We asked experts in satellite imagery to analyze annex 22 to our Request in the light of the observations of Ghana and Tullow. They have confirmed to us, with many supporting explanations, that our conclusions were well founded, and they also underlined the endemic character of this pollution, as demonstrated by the recurrence of suspicious traces on several satellite photos that were taken over a period of several months. Over a period of time these types of pollution, even if they are relatively minor, produce lasting negative effects on the marine environment. Moreover, our standpoint is corroborated by the analyses carried out by local universities which, after taking samples, have found that, to quote a paper from 2013,

> (*Continued in English*)
> The discharge of polluted fluids with the metals composition affects human socio economical and sea resources. Also the distribution of the iron content affects ground water storage in the specific areas of Ghana. Oil and grease quantity affects mainly organisms in [the] ocean.

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[10] In this connection, see papers presented at Offshore Technology Conference ("OTC") in Houston, 30 April-3 May 2012, OTC 23463, p. 1 (WSG, vol. III, App. TOL-18).
[11] ISO 14001 Focus Visit Report, 5-8 January 2015 (WSG, vol. III, annex TOL-20). ; D'Appolonia Report on Jubilee Project, May 2014 (WSG, vol. III, annex TOL-22).
[12] See supra.
[13] See statement by Mr Pitron.
[14] WSG, note 114; Statement of EPA, para. 7; Tullow Statement, para. 86.
[15] See the many examples of the use of such data by judicial bodies given in R. Purdy (dir.), *Evidence from Earth Observation Satellites: Emerging Legal Issues (Studies in Space Law)*, Martinus Nijhoff, 2012, 498 pp.
[16] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, [20 April 2010,] I.C.J. Reports 2010*, p. 96, para. 248; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, p. 14, para. 33; Inter-American Court of Human Rights, *Saramaka People v. Suriname,* Preliminary Objections Judgment, 28 November 2007, Series C No. 172, p. 18, point f).
[17] WSG, para. 82; EPA Statement, paras. 6 and 7.
[18] Tullow Statement, paras. 85-86.

(*Interpretation from French*) Contrary to the audits ordered by the oil companies, satellite photos have the advantage of being taken unannounced and unknown to the operators whose activities are being monitored and thus of providing objective evidence of the state of the marine environment at the time when they were taken. In the instant case, Ghana did not produce evidence of this regular policing of the seas. Thus it ignores the substantial obligations incumbent on it, and it is by the yardstick of these shortcomings that the Chamber is called upon to assess the risk of serious harm to the marine environment in this case.

Mr President, the main indication of the lack of due diligence by Ghana is its failure to monitor oil activities effectively. It is not sufficient to adopt guidelines for oil companies or to ratify international conventions: their effective application must also be ensured. This is the philosophy of Part XII of the Convention which, under the necessary measures to prevent, reduce or control pollution of the marine environment,[19] requires States to monitor the risks or effects of pollution continuously.[20] I quote articles 194 and 204 of the Convention in this connection. There have been a number of factors which cast a harsh light on Ghana's lack of effective monitoring:

- It does not react to accidental oil leaks or toxic mud spills or illegal degassing in or near the disputed area, nor does it take the necessary clean-up measures;[21]

- In general, the Ghanaian authorities do not engage in monitoring oil-related activities, and although the technical annex submitted by Ghana is very compendious, with its written observations, it contains no report on concrete monitoring of oil operations by the Ghanaian State. The latter seems to rely on self-monitoring by economic operators.[22]

By failing in its monitoring and control obligations in relation to oil activities, Ghana demonstrates a culpable lack of due diligence since, as the ICJ has stressed, the preventive obligation entails "a certain level of vigilance in their enforcement and the exercise of administrative control applicable to private and public operators, such as monitoring of activities undertaken by such operators …".[23]

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[19] Cf. art. 194 of UNCLOS.
[20] Art. 204 of UNCLOS.
[21] Center for Public Integrity, 19 January 2012, *West African Oil Boom Overlooks Tattered Environmental Safety Net*, p. 1 [RCI, annex 21].
[22] Center for Public Integrity, 19 January 2012, *West African Oil Boom Overlooks Tattered Environmental Safety Net*, p. 2 [RCI, annex 2]. O-W. Achawa, E. Danso-Boatengb, "Environmental Management in the Oil, Gas and Related Energy Industries in Ghana", *International Journal of Chemical and Environmental Engineering*, April 2013, Volume 4, No. 2, p. 121, available online at http://www.researchgate.net/publication/258439245_Environmental_Management_in_the_Oil_Gas_and_related_Energy_Industries_in_Ghana [tab 7 in the Judges' folder].
[23] *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, [20 April 2010,] I.C.J. Reports 2010*, p. 79, para. 197; a position endorsed by ITLOS in its Advisory Opinion of 1 February 2011 in the matter of *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)*, *ITLOS Reports 2011,* para. 115. See also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Provisional Measures, Order of 13 July 2006, I.C.J. Reports 2006*, p. 132, para. 72, citing *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 241 and 242,

(Projection: AM 2)

Mr President, allow me to give you a quite concrete example of the negligence of Ghana in relation to signs of pollution of the marine environment. It may appear anecdotal – and Ghana minimizes its scope[24] – but is nevertheless significant of its negligence.

Since the beginning of offshore oil activities, there has been a disturbing increase in the numbers of whale carcasses being washed up on the eastern shores of Ghana.[25] Previously, such incidents were rare and happened scarcely more often than once every five years. Having taken no interest whatever in the phenomenon – you will see the evidence on screen now – until 2014, the Ghanaian Environment Protection Agency does not even identify the species. Under pressure from NGOs, Ghana finally produced a report, from which the table is taken, in November 2014.[26] This is drafted as a study showing that oil activities are not to blame, but is cruelly lacking in basic documentation, for example toxicological analyses, and its conclusions are founded on just one three-day inspection on site when no whale carcasses were analyzed.[27] On the basis of that report, Ghana affirms – I quote its observations *(Continued in English)*: "There is no evidence to suggest that any activities carried out in Ghana's waters have resulted in the death of whales."[28]

(Interpretation from French) However, another report submitted by Tullow itself sets out a more nuanced interpretation of that same document and actually highlights the lack of reliable information, which can only be ascribed to the failure of Ghana to monitor and analyze the phenomenon *(Continued in English)*: "The limited monitoring results available for this study are not sufficient to indicate whether seismic activities or other oil and gas industry activities … have in fact impacted fish or marine mammal habitat offshore Ghana."[29]

(Interpretation from French) Ghana's lack of due diligence is further highlighted by the shortcomings in its legislative framework. The Ghanaian Environmental Protection Agency seems to consider that the ratification by Ghana of the principal multilateral conventions on the environment is enough to ensure an adequate

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para. 29; See also *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 78, para. 140.

[24] EPA Statement, para. 49.

[25] Enoch Ofosu, 25 October 2013, "Whale deaths and oil exploration in Ghana", http://www.myjoyonline.com/opinion/2013/October-25th/whale-deaths-and-oil-exploration-in-ghana.php; Friends of the Nation, Nov. 2013, "21st dead whale washed ashore on the coast of Western Region of Ghana", available online at http://fonghana.org/21st-dead-whale-washed-ashore-on-the-coast-of-western-region-of-ghana/; Friends of the Nation, "Another dead whale washed in Western Region of Ghana", available online at http://fonghana.org/another-dead-whale-washed-in-western-region-of-ghana/; Emmanuel Opoku, 22 August 2014, "More Dead Whales Afloat On Ghana Waters", available online at Dead whale washes up Ghana coast

[26] Environmental Protection Agency, *Report of the Subcommittee set up to investigate the incidence of mortality of cetaceans in Ghana's waters*, August 2014, available online at http://www.epa.gov.gh/web/index.php/publications/category/35-whales-report.

[27] *Ibid*., p. 41.

[28] WSG, para. 81; EPA. Statement of EPA, paras. 45-49 (WSG, vol. III, annex S-EPA).

[29] Acorn International LLC, *Independent Study of Marine Environmental Conditions in Ghana*, January 2015, WSG, vol. III, App TOL-28, p. 35 and p. 51.

regulatory framework.[30] However, oil operators and civil society in Ghana agree that oil projects are in fact being developed, to quote the Tullow experts *(Continued in English)*, "in a non-regulated environment …[where] there [are] very limited pre-existing [Health, Social and Environmental] policies, procedures, or regulations in place to manage these risks."[31]

(Interpretation from French) Moreover, this absence of regulation has had some practical negative effects. For example, owing to the lack of an appropriate legislative framework, no action has been taken by the Government against the companies responsible for oil spills in the Jubilee field in 2009 and 2010.[32] The "polluter pays" principle to which Ghana says it subscribes[33] therefore remains a dead letter.

As an article published in 2013 states *(Continued in English)*:

> Significantly, none of the companies had been cited for violation of environmental regulations by the EPA-Ghana (…). However, data from the companies themselves indicated that two of them had actually violated EPA-Ghana rules on gaseous emissions and effluent discharge levels.

(Interpretation from French) One final illustration of Ghana's lack of due diligence comes from the haste with which Ghana gave the green light to move into the exploitation phase. This begins, as a rule, with adoption of the development plan, which should in theory take into account environmental constraints. Consequently, this cannot happen before the impact study is finalized: but that is not the case for Tullow and Ghana. In fact, development operations in the Jubilee field were begun by Tullow between March and November 2008,[34] one year before the environmental impact study was finalized.[35]

[30] EPA Statement.

[31] Papers presented at Offshore Technology Conference ("OTC") in Houston, 30 April-3 May 2012, (OTC 23463, p. 1 (WSG, vol. III, App. TOL-18). See also O-W. Achawa, E. Danso-Boatengb, "Environmental management in the oil, gas and related energy industries in Ghana", *International Journal of Chemical and Environmental Engineering*, April 2013, Volume 4, No. 2, p. 116, available online at http://www.researchgate.net/publication/258439245_Environmental_Management_in_the_Oil_Gas_and_related_Energy_Industries_in_Ghana [tab 7 in the Judges' folder].

[32] Ghana News Agency, 12 December 2012, "Ghana needs robust legal framework to manage oil spills", http://www.ghananewsagency.org/features/ghana-needs-robust-legal-framework-to-manage-oil-spills-54337; Center for Public Integrity, 19 January 2012, *West African Oil Boom Overlooks Tattered Environmental Safety Net*, p. 1 [RCI, annex 21]; The Enquirer, 21 September. 2010, *Kosmos Bullies Govt Over ¢400bn Fine*, http://fpacc.blogspot.fr/2010/09/kosmos-bullies-govt-over-400bn-fine.html [tab 5 in the Judges' folder].

[33] WSG, p. 34, note 90, and EPA Statement, para. 13 (vol. III, annex S-EPA).

[34] Tullow Oil Plc, *A Brief Timeline*, available online at http://www.tullowoil.com/index.asp?pageid=51 ; Tullow Oil Plc, *Development Activities*, available online at http://www.tullowoil.com/index.asp?pageid=593 (last accessed on 21 March 2015).

[35] Ghana Field Phase 1 Development - Environmental Impact Assessment - Tullow Ghana Limited - 27 November 2009: http://www.tullowoil.com/index.asp?pageid=61 (last accessed on 21 March 2015).

There have been numerous international criticisms of this undue haste,[36] but there has been no response in the corridors of the administration in Accra, since exploitation in the TEN field, in the disputed area, followed the same hasty procedure. The development plan was approved by the Ghanaian Government in May 2013,[37] whereas the impact study was finalized in September 2014.[38]

This eagerness to move on to the resource exploitation phase not only constitutes a violation of the provisions of the Convention[39] but furthermore underlines the purely formal commitment by the oil companies, and consequently by Ghana, to protection of the marine environment since in practice environmental imperatives play no part in the design of oilfield development plans.

Lack of preparation, undue haste, indifference to negative effects, these are the evils which in this case are causing a risk of serious harm to the marine environment. As we have seen from the pollution incidents which I described at the start of my presentation, this risk has proved to be a very real one.

To date, Ghana has given no evidence of its desire or its ability to neutralize these risks. Its lack of supervision of oil-related activities leads one to fear not just a repetition of these pollution episodes but also a worsening of them. This is a feeling shared by civil society in Ghana and by representatives of the Fisheries Commission, because fishing is one of the sectors most affected.[40]

The indifference that Ghana has shown, together with the notorious shortcomings of its legislative and operational arsenal, demonstrates that when it comes to environmental obligations our adversaries simply rely on good luck. But a set of fortunate circumstances does not equate to preventive measures.

Apart from harm to the marine environment, Ghana's attitude is in violation of the subjective rights of Côte d'Ivoire. Article 193 of the Convention stipulates *(Continued*

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[36] Oxfam America, "Ghana's Oil Boom: A Readiness Report Card", 11 April 2011, pp. 25-26, available online at http://www.oxfamamerica.org/static/oa3/files/ghana-oil-readiness-report-card.pdf (last accessed on 21 March 2015). See also US Position, Ghana - IFC Investment in Kosmos Energy and Tullow Oil February 19, 2009, available online at http://www.treasury.gov/resource-center/international/development-banks/Documents/IFC%20-%20Ghana%20-%20Jubilee%20Field%20-%20web%20statement.pdf; U.S. Position on Proposed IFC Investments in Jubilee Floating Production Storage and Offloading (FPSO) and Proposed MIGA Guarantee to Jubilee Ghana MV21 B.V. 29 April 2010, available online at http://www.treasury.gov/resource-center/international/development-banks/Documents/IFC-Ghana-Jubilee%20Field%20FPSO%20web%20statement.pdf; U.S. Position, Ghana:- IFC Investment in Kosmos Energy Finance International and MIGA Guarantee to Citibank NA, 15 December 2011, available online at http://www.treasury.gov/resource-center/international/development-banks/Documents/IFC%20-%20Ghana%20-%20Kosmos%20Dec%2015%202011%20Draft%20Board%20Statement.pdf (last accessed on 21 March 2015).

[37] Tullow press release concerning approval of the Development Plan for the TEN project, 30 May 2013 [RCI, annex 11].

[38] ERM, Tweneboa, Enyenra, Ntomme (TEN) Project, Ghana, Final Environmental Impact Statement, 5 September 2014, available online at http://www.tullowoil.com/index.asp?pageid=58 (last accessed on 21 March 2015).

[39] See art. 206 of UNCLOS; see also *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion,1 February 2011, ITLOS Reports 2011*, paras. 145 and 146.

[40] Acorn International LLC, *Independent Study of Marine Environmental Conditions in Ghana*, January 2015, WSG, vol. III, App TOL-28, pp. 45 and 46.

in English): “States have the sovereign right to exploit their natural resources pursuant to their environmental policies.”

(Interpretation from French): The oil-related activities currently underway in the disputed area under Ghana’s non-supervision therefore infringe this sovereign right of Côte d’Ivoire.

I shall now move on from the objective field of environmental protection, which is of general community relevance, in order to outline in the few remaining minutes the main reasons that have led Côte d’Ivoire to bring this request for provisional measures before you.

We have demonstrated that the sovereign rights which the Convention and international law generally confer on Côte d’Ivoire are gravely imperilled by the unilateral activities of Ghana in the disputed area. Despite the existence of a dispute over maritime delimitation, of which Ghana was fully informed, and despite ongoing negotiations to settle it, Ghana has embarked on invasive exploration and exploitation activities in respect of the resources in the area. Thus it has acquired critical and essential information on the status of resources which places Côte d’Ivoire at a disadvantage in any future negotiations. Furthermore, Ghana has not taken the necessary steps to protect the marine environment in and around the disputed area.

Mr President, our request is based on a premise which is as simple as it is essential: in a maritime area where competing claims overlap and where the border remains to be delimited, a State cannot decide to explore and exploit that area and, furthermore, proceed unilaterally. As long as ownership of maritime areas remains to be determined, the only economic activities authorized by international law are those decided upon by common agreement of the interested States.

This is what happens when States try to settle their disputes through negotiation. The same is true – I would say all the more so – when they submit their dispute to an international jurisdiction, as is the case here. In that case, unilateral activities imperil not just the subjective rights of the other Party, but also the decision to be taken on the merits. In this instance Ghana has engaged in large-scale invasive activities which are not in line with good international practice. These activities could render meaningless the sovereign rights which might be conferred on Côte d’Ivoire at the end of the proceedings, with the risk of rendering your judgment on the merits ineffectual.

The provisional measures we ask you to prescribe, which would mean suspension *pendente lite* of Ghana’s activities in the disputed area, would remove the possibility of that most unfortunate outcome.

Mr President, Judges, that ends the first round of the oral pleadings of Côte d’Ivoire. Thank you very much.

THE PRESIDENT OF THE SPECIAL CHAMBER *(Interpretation from French):* Thank you, Ms Miron, for your statement and for your kind generosity in relinquishing five minutes of your speaking time.

This brings to a close the first round of oral pleadings for the Republic of Côte d'Ivoire. We will resume at 3 p.m. to hear the first round of oral pleadings of the Republic of Ghana. I wish you *bon appétit*. The hearing is adjourned.

(The sitting is closed at 1.00 p.m.)